



# Oregon

Theodore R. Kulongoski, Governor

## Public Utility Commission

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August 3, 2010

### ***Via Electronic Filing and U.S. Mail***

OREGON PUBLIC UTILITY COMMISSION  
ATTENTION: FILING CENTER  
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**RE: Docket No. UM 1437 – In the Matter of TRACFONE WIRELESS, INC.  
Application for Designation as an Eligible Telecommunications Carrier.**

Enclosed for electronic filing in the above-captioned docket is the Public Utility Commission Staff's Reply Testimony.

*/s/ Kay Barnes*

Kay Barnes

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c: UM 1437 Service List (parties)

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**PUBLIC UTILITY COMMISSION  
OF OREGON**

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**UM 1437**

**STAFF REPLY TESTIMONY OF  
KAY MARINOS  
JON CRAY**

**In the Matter of  
TRACFONE WIRELESS, INC.  
Application for Designation as an Eligible  
Telecommunications Carrier.**

**August 3, 2010**

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 100**

**Reply Testimony**

**August 3, 2010**

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**  
2 **ADDRESS.**

3 A. My name is Kay Marinos. I am employed by the Public Utility Commission of  
4 Oregon (OPUC) as the Program Manager of the Competitive Issues Section in  
5 the Telecommunications Division. My business address is 550 Capitol  
6 Street NE, Suite 215, Salem, Oregon 97301-2551.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**  
8 **EXPERIENCE.**

9 A. My Witness Qualification Statement is found in Exhibit Staff/101. I have  
10 performed various types of work within the telecommunications industry for  
11 over 25 years. My experience has been largely in the regulatory field, both  
12 within a telecommunications company, i.e., Verizon and its predecessor  
13 companies GTE, NYNEX and Bell Atlantic, and at the National Exchange  
14 Carrier Association (NECA) that provides service to all incumbent local  
15 exchange carriers in the U.S. I have a Masters Degree in Economics, and  
16 have completed all of the required and elective coursework for a Ph.D. in the  
17 same subject.

18 For the previous five years I have been the staff member at the Oregon  
19 Commission responsible for reviewing carrier applications for Eligible  
20 Telecommunications Carrier (ETC) designation and producing  
21 recommendations to the Commission regarding the applications. I also  
22 manage the annual recertification process for the continuance of federal  
23 universal service support funds to all current ETCs, including all incumbent

1 local exchange carriers (ILECs) in Oregon. I was the lead staff member in  
2 Docket UM 1217, the docket in which the Commission established the current  
3 requirements for initial and continuing designation of federal ETCs in Oregon.  
4 The ETC applications that I reviewed include those from one wireline carrier  
5 (ComSpan) and four wireless carriers (Edge Wireless, Snake River PCS, AT&T  
6 Wireless fka Cingular Wireless, and LCW).

7 **Q. WHAT IS YOUR ROLE IN THIS DOCKET?**

8 A. I am the Staff case manager in UM 1437. As the case manager, I am  
9 responsible for Staff's overall recommendation in this docket.

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

11 A. I will present Staff's summary recommendations and provide an assessment of  
12 the extent to which TracFone demonstrates that it meets the requirements for  
13 designation as a federal Eligible Telecommunications Carrier (ETC) in Oregon.

14 **Q. DID YOU PREPARE EXHIBITS FOR THIS DOCKET?**

15 A. Yes. In addition to my Witness Qualification Statement, I prepared Exhibit  
16 Staff/102 through Exhibit Staff/140.

17 **Q. HOW IS STAFF'S TESTIMONY ORGANIZED?**

18 A. Staff presents testimony on five issues. I am the summary witness, and I also  
19 serve as the expert witness on issues I, II, III, and most of the sub-issues under  
20 issue IV. All issues except issue II address the requirements for ETC  
21 designation in Oregon that all applicants must meet. Issue II is specific to  
22 TracFone's application in that TracFone is the first ETC applicant subject to an  
23 FCC order of forbearance. Issue I addresses specific requirements relating to

1 the general obligations of an ETC to offer and advertise the supported services  
2 throughout the proposed designated service area. Issue III addresses the  
3 requirement that all ETCs must submit annual reports to demonstrate  
4 continuing compliance with ETC designation requirements. Issue IV addresses  
5 the requirement that all ETCs offer Lifeline services and participate in the  
6 Oregon Telephone Assistance Program (OTAP). As Program Manager of the  
7 Oregon Telephone Assistance Program (OTAP), Staff witness Jon Cray  
8 addresses Issue IV, and three related sub-issues (A, B, and H) under Issue V.  
9 Issue V. addresses the public interest considerations related to ETC  
10 designation. A table of contents follows.

11

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**SUMMARY RECOMMENDATION**

**Q. WHAT IS STAFF'S SUMMARY RECOMMENDATION?**

A. Staff cannot recommend the Commission approve TracFone's application for ETC status in Oregon at this time. However, in the event the Commission wishes to approve TracFone's application, I will include a list of conditions in my next round of testimony that Staff recommends the Commission adopt.

**Q. WHAT ARE THE PRIMARY REASONS STAFF CANNOT RECOMMEND APPROVAL AT THIS TIME?**

A. Staff cannot recommend the Commission approve TracFone's application for the following reasons. First, TracFone's application is incomplete as filed. Although TracFone did provide some further information in testimony, Staff issued numerous data requests in an effort to obtain the information needed to make a positive recommendation. As of the date of these reply comments, many issues remain unresolved because Staff still does not have the requested information. Second, there are Commission requirements that TracFone states it cannot meet. In the event the Commission wishes to approve TracFone's ETC designation, the Commission should issue an order that either (1) is not effective until TracFone shows it can meet the requirements or (2) is not effective until TracFone applies for, and obtains, all necessary waivers of the requirements from the Commission. Third, TracFone's Lifeline offering is insufficient to meet the needs of the low-income population and it provides insufficient value for the Lifeline payments it will receive in turn from the Federal Universal Service Fund (FUSF).

1 **Q. IS THIS STAFF'S FINAL WORD IN THIS DOCKET?**

2 A. No. Staff will review the testimony of other parties and the Applicants and  
3 TracFone's rebuttal testimony, which is due on August 23, 2010. Also, it is  
4 possible that a settlement conference may be held. Staff hopes that TracFone  
5 will address and mitigate the concerns of Staff and other parties.

6 **Q. WHAT ARE THE POSSIBLE STAFF RECOMMENDATIONS OR POSITIONS**  
7 **IN THIS CASE?**

8 A. There are several possibilities. One possibility is that Staff and the Intervenors  
9 reach settlement with the Applicants on a set of conditions and support  
10 TracFone's request for ETC status. A second possibility is that Staff could  
11 recommend ETC status be denied. A third possibility is that Staff could  
12 recommend ETC status be granted, subject to conditions it believes are  
13 necessary to meet the requirement of Order 06-292, which TracFone or the  
14 other parties may dispute.

15 **Q. DOES STAFF SUGGEST ANY CONDITIONS FOR TRACFONE'S**  
16 **DESIGNATION AT THIS TIME?**

17 A. Based on the information currently available, Staff's testimony suggests  
18 conditions that could ameliorate some of the deficiencies identified in  
19 TracFone's case to date. The suggested conditions may assist the Applicants  
20 and other parties, as well as the Commission, in analyzing whether TracFone  
21 should receive ETC status. The conditions should not be viewed as final  
22 recommendations, however, until TracFone has an opportunity to file Rebuttal



1           Comments and provide more information as necessary to fill existing gaps.

2           The suggested conditions are explained within the relevant issues discussions.

3           **Q. WHAT ARE THE REMAINING SCHEDULED ACTIVITIES IN THIS**  
4           **DOCKET?**

5           A. The remaining major events in this Docket are as follows:

6                     August 23, 2010           All Parties' Reply Testimonies due

7                     September 20, 2010        Evidentiary Hearings

8                     October 18, 2010           Opening Briefs

9                     November 15, 2010        Reply Briefs

10           Therefore, the schedule allows for more opportunities for parties to share  
11           concerns and resolve issues.

12

1

**BACKGROUND AND INTRODUCTION**

2

**Q. WHAT IS AN ETC?**

3

A. The Telecommunications Act of 1996 (the Act) provides for the designation of carriers eligible to receive Federal Universal Service Fund (FUSF) support.

4

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See 47 USC § 214 (e). These carriers are referred to as Eligible

6

Telecommunications Carriers or ETCs. Section 214(e)(2) of the Act gives state

7

commissions the primary responsibility for granting ETC designation.

8

**Q. WHAT IS THE PURPOSE OF THE FUSF?**

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A. The purpose of the FUSF is to provide support to further the goals of universal service as set forth in the Act. These include the provision of quality

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11

telecommunications services at just, reasonable and affordable rates, and of

12

access to services in rural areas comparable to services in urban areas.

13

**Q. WHAT TYPES OF FUSF SUPPORT ARE AVAILABLE TO AN ETC?**

14

A. There are two types of support available to carriers designated as ETCs. The first is support from the “high-cost” fund. This support is intended to ensure

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that consumers in all regions of the nation have access to, and pay rates for,

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telecommunications services that are reasonably comparable to those in urban

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areas. The second type of support is from the “low-income fund.” This support

19

is intended to ensure that quality communications services are available to low-

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income customers at just, reasonable and affordable rates through the offering

21

of discounts to qualifying low-income customers.

22

**Q. WILL TRACFONE CLAIM BOTH TYPES OF FUSF SUPPORT?**

1 A. No. TracFone requests designation as an ETC for the purpose of claiming only  
2 low-income support.

3 **Q. WHAT ARE THE REQUIREMENTS FOR ETC DESIGNATION IN**  
4 **OREGON?**

5 A. The Commission established requirements for ETC designation in Order No.  
6 06-292, after carefully considering requirements set forth in the Act and  
7 stringent requirements proposed by the FCC. This docket is not the place to  
8 reconsider new or modified requirements for ETCs. If, due to the unique  
9 nature of TracFone's provisioning of, and model for offering, service, some of  
10 the requirements should not apply, TracFone bears the burden of  
11 demonstrating why they should not.

12 The requirements adopted in Order No. 06-292 are specific requirements to  
13 demonstrate that the ETC applicant meets the general conditions for  
14 designation in Section 214(e) of the Act. The Act simply states that an ETC  
15 must offer and advertise the supported services throughout its designated  
16 service area, either using its own facilities or a combination of its own facilities  
17 and resale of another carrier's services. Order 06-292 requirements are  
18 summarized in Appendix A of the order. For ease of reference, the  
19 appendices are included as Exhibit Staff/102. Staff employed these  
20 requirements to fashion the issues list, to which all parties agreed. As  
21 discussed above, Issue I addresses specific requirements relating to the  
22 general obligations of an ETC to offer and advertise the supported services  
23 throughout the proposed designated service area. Issue III addresses the

1 requirement that all ETCs must submit annual reports to demonstrate  
2 continuing compliance with ETC designation requirements. The annual reports  
3 requirements are listed in Appendix A, pages 4-6 of Order No. 06-292. Issue  
4 IV addresses the requirement that all ETCs offer Lifeline services and  
5 participate in the Oregon Telephone Assistance Program (OTAP). Issue V  
6 addresses public interest considerations related to TracFone's designation.

7 **Q. DO THE REQUIREMENTS FOR ETC DESIGNATION DIFFER DEPENDING**  
8 **ON THE TYPE OF FUSF SUPPORT THE ETC RECEIVES?**

9 A. The Commission determined in Order 06-292 that the requirements should  
10 generally not vary depending on the type of support that the ETC receives.  
11 However, there is one exception which relates to requirements pertaining to  
12 network improvement plans. These requirements pertain only to ETCs  
13 receiving high-cost support, which is to be used to improve and expand the  
14 ETCs' networks. In contrast, low-income support is to be flowed through, in its  
15 entirety, to qualifying low-income (Lifeline) consumers in the form of discounts  
16 on their local exchange services provided by ETCs. Because the low-income  
17 support is not intended to be used for network purposes, there is no need for  
18 network improvement plans.

19 **Q. DOES TRACFONE DIFFER SIGNIFICANTLY FROM OTHER ETCs THE**  
20 **COMMISSION HAS DESIGNATED TO DATE?**

21 A. Yes, TracFone differs in several significant ways. First, TracFone provides  
22 service by reselling the service of other wireless carriers. It does not have its  
23 own network facilities. As a pure reseller, TracFone was prohibited by

1 Section 214(e) of the Telecom Act from receiving ETC designation. However,  
2 TracFone sought, and the FCC granted, forbearance from the Act's facilities  
3 requirement. See FCC 05-165 (Forbearance Order), included as Exhibit  
4 Staff/103. Issue II addresses what, if any, impacts the FCC's Forbearance  
5 Order has on the Commission's designation of TracFone as an ETC in Oregon.  
6 Second, TracFone is the first ETC applicant to propose offering a Lifeline  
7 service that is totally free to qualifying customers. All other ETCs in Oregon  
8 offer Lifeline service as a discount off their regular services, with some cost  
9 remaining for which the customer is responsible. Third, unlike other ETCs,  
10 neither TracFone, nor any of its customers, pay to support the 911 services it  
11 uses in Oregon, or the Residential Service Protection Fund (RSPF) which  
12 supports the OTAP, Oregon's Lifeline program in which ETCs participate.

13 **Q. DO THESE DIFFERENCES IMPACT WHETHER TRACFONE SHOULD BE**  
14 **DESIGNATED AS AN ETC IN OREGON?**

15 A. TracFone, like any other ETC applicant, must meet the conditions for  
16 designation or demonstrate good cause why it should not. TracFone's  
17 differences definitely complicate the usual ETC analysis. Staff has issued  
18 numerous data requests with the objective of gaining sufficient information from  
19 TracFone to determine whether waivers, or perhaps special conditions, may be  
20 in order so that designation can be recommended. To the extent that  
21 TracFone's differences or special circumstances impact any individual  
22 requirement for designation, Staff identifies them in discussions of each issue.

**ISSUE I: DOES TRACFONE MEET THE INITIAL DESIGNATION  
REQUIREMENTS LISTED AS ITEMS 1-9 IN ORDER NO. 06-292,**

**APPENDIX A?**

**Q. WHAT ARE THE ITEMS IN APPENDIX A OF THE ORDER INTENDED TO  
ADDRESS?**

A. The items 1-10 listed in Appendix A are the specific requirements for initial ETC designation. The list is a “short hand” version of the full requirements adopted in the body of the order. The list was developed by Staff to aid ETC applicants in identifying the specific requirements that must be addressed in their ETC applications.

**Q. ARE THE ITEMS LISTED AS 1-9 IN APPENDIX A OF THE ORDER THE  
ONLY REQUIREMENTS FOR ETC DESIGNATION?**

A. No, they are not. The other requirements for designation are of sufficient significance in this case that they are identified as separate issues. That is, Item 10 on the list relates to the requirement that designation of an ETC be in the public interest; this requirement is addressed under Issue V. A requirement that is not listed in Appendix A of the order is the requirement to file annual reports to retain ongoing ETC status. That requirement is addressed under Issue II. And finally, ETC designation requires designation as an Eligible Telecommunications Provider (ETP) in the OTAP. The issue of whether TracFone meets the requirements for ETP designation is addressed under Issue IV.

1 **Q. WHAT IS YOUR CONCLUSION REGARDING WHETHER TRACFONE**  
2 **MEETS ALL THE REQUIREMENTS REPRESENTED BY ITEMS 1-9 IN**  
3 **APPENDIX A?**

4 A. While TracFone appears to meet several of the requirements listed as  
5 items 1-9 in the Appendix A list, there are others that TracFone clearly does  
6 not meet at this time. I address each of these requirements in turn immediately  
7 below.

8

9 **Issue I.A: Does the application properly and sufficiently define TracFone's**  
10 **proposed designated service area? Should the commission grant**  
11 **Tracfone's request for a waiver of the ILEC wire center list and maps**  
12 **required in 3.1 of Appendix A of the order?**

13 **Q. WHAT IS A DESIGNATED SERVICE AREA? WHAT IS ITS**  
14 **SIGNIFICANCE?**

15 A. A designated service area is the area for which an ETC is designated by the  
16 Commission to receive FUSF support. It is the area within which the ETC must  
17 abide by all requirements of its ETC designation. For instance, an ETC must  
18 offer and advertise the supported services (in TracFone's case, Lifeline  
19 services) to every requesting customer throughout its entire designated service  
20 area. The ETC applicant must clearly define its proposed designated service  
21 area so that the Commission and the Universal Service Administrative  
22 Company (USAC), the entity responsible for distributing FUSF support, know

1 exactly where the ETC is eligible to receive FUSF support and where it has  
2 committed to provide the services for which it receives support.

3 **Q. HOW MUST A DESIGNATED SERVICE AREA BE IDENTIFIED?**

4 A. Requirement 3.1. of Appendix A requires explicit identification of an ETC's  
5 proposed designated service area through two means. The first is a "Map  
6 showing applicant's licensed area boundaries and its requested designated  
7 service area boundaries overlaid on the boundaries of all ILEC wire centers it  
8 proposes to include in its designated service area." The second is a "List of  
9 ILEC wire centers (by ILEC name, wire center name, and CLLI code), with  
10 indications for each wire center, whether it will be fully or partially included in  
11 the ETC's proposed designated service area."

12 **Q. IN WHAT AREA DOES TRACFONE REQUEST ETC DESIGNATION?**

13 A. TracFone's initial application for ETC designation, filed on August 7, 2010,  
14 states on page 18: "TracFone requests ETC designation statewide in all  
15 exchanges to the extent that its underlying carriers have facilities and  
16 coverage." On October 27, 2009, TracFone filed its First Amendment to its  
17 initial application specifically to clarify its proposed Lifeline service area. In the  
18 one-page amendment, TracFone states: "By this amendment, TracFone  
19 clarifies that it will offer Lifeline service in all areas in Oregon that are served by  
20 AT&T Mobility and T-Mobile. In the second quarter of 2010, TracFone will  
21 expand its Lifeline service area to include the areas in Oregon served by  
22 Verizon Wireless. TracFone requests ETC designation statewide in all  
23 exchanges to the extent that its underlying carriers, including Verizon Wireless,



1 have facilities and coverage.” In its original application at page 2, TracFone  
2 includes US Cellular in the list of carriers from which it obtains service. Staff  
3 asked whether TracFone also requests designation in areas of Oregon where  
4 US Cellular has service. TracFone’s response was “TracFone does not have  
5 an arrangement with US Cellular in Oregon.” See reponse to Staff DR-78 in  
6 Exhibit Staff/104.

7 **Q. DOES TRACFONE’S APPLICATION INCLUDE THE REQUIRED LIST OF**  
8 **WIRE CENTERS THAT ARE TO COMPRISE ITS DESIGNATED SERVICE**  
9 **AREA?**

10 A. No, it does not. On page 15 of its application, TracFone states that it “does not  
11 have a list of ILEC wire centers served by its underlying carriers.” TracFone  
12 offered to provide a list of exchanges from [ww.telcodata.us](http://ww.telcodata.us) instead. The  
13 application continues: “However, TracFone requests a waiver of the  
14 requirements set forth in the ETC Checklist (Initial Designation, § 3.1) because  
15 it does not have access to the requested information.” On May 11, staff sent a  
16 data request to TracFone explaining that TracFone’s description of its  
17 proposed designated service area lacked the specificity required for defining a  
18 service area. Staff indicated that TracFone should submit a list of wire centers,  
19 as required, and that it is not staff’s responsibility to determine the individual  
20 wire centers in which TracFone’s three underlying carriers have facilities or  
21 coverage. In response to the data request, TracFone submitted a list of ILEC  
22 rate centers and a list of zip codes and the “servicing carrier.” Twenty of the  
23 zip codes indicated there are no TracFone servicing carriers. Neither list

1 meets the requirements. See Exhibit Staff/105. Staff issued another data  
2 request (DR-32) on June 14, referring TracFone to the listing of wire centers on  
3 the PUC website and requesting that TracFone make any required changes to  
4 its previously submitted rate center list. Staff also asked TracFone to indicate  
5 which wire centers will not be included in their entirety, i.e., where TracFone  
6 cannot provide service. TracFone's response, submitted on June 24 was:  
7 "TracFone is in the process of analyzing the relevant data and will provide a  
8 response as soon as possible." On July 27, TracFone submitted a revision to  
9 its June 24 response which staff has not yet had time to review. See Exhibit  
10 Staff/106. Staff will continue to work with TracFone to define its proposed  
11 service area as required.

12 **Q. HAS TRACFONE SUBMITTED THE REQUIRED MAP SHOWING ITS**  
13 **PROPOSED DESIGNATED SERVICE AREA OVERLAID ON THE**  
14 **BOUNDARIES OF THE ILEC WIRE CENTERS?**

15 A. No, it has not. TracFone, in its application at page 15, states that it does not  
16 have access to its underlying carriers' service area maps and that such maps  
17 are subject to non-disclosure agreements. "Therefore, TracFone needs to  
18 obtain permission from the carriers to disclose the coverage maps to the  
19 Commission." TracFone also states that it does not possess maps of the ILEC  
20 wire centers. As in the case of the wire center list that is required to define  
21 TracFone's proposed designated service area, TracFone requests a waiver of  
22 the map requirement for requirement 3.1 as well.

1     **Q. SHOULD THE COMMISSION GRANT TRACFONE'S WAIVER REQUEST**  
2           **REGARDING THE SUBMISSION OF A WIRE CENTER LIST AND A MAP**  
3           **AS REQUIRED IN THE ORDER?**

4     A. No, not at this time. TracFone must define its study area in some  
5       geographically specific manner -- either by entire ILEC wire centers or by areas  
6       on a map showing concise service area boundaries. TracFone's proposed  
7       service area obviously cannot include the entire state of Oregon as the zip  
8       code list it submitted indicates there are areas where its underlying carriers  
9       have no service. Specific identification of an ETC's designated service area is  
10      a critical requirement for designation. If TracFone cannot identify its proposed  
11      designated service area, it cannot know where it can claim FUSF support for its  
12      eligible Lifeline customers. TracFone should not be allowed to claim support in  
13      areas where the customer cannot send or receive calls from its Lifeline-  
14      supported phone because TracFone's network providers have no service  
15      there. Staff believes this issue can be resolved if TracFone works with staff.  
16      All ETCs, including wireless ETCs, designated in Oregon have managed to  
17      meet this requirement so far. Therefore, staff may change its recommendation  
18      regarding the waiver request after those discussions take place.

19  
20     **Issue I.B: Does the application demonstrate a commitment to offer the**  
21           **supported services throughout the proposed designated service area,**  
22           **including identification of how TracFone will attempt to provide service to**

1 **every requesting customer in the area as required by 3.2 of Appendix A**  
2 **of the order?**

3 **Q. CAN TRACFONE BE PERMITTED TO INCLUDE AREAS WITHIN ITS**  
4 **DESIGNATED SERVICE AREA WHERE ITS UNDERLYING CARRIERS**  
5 **DO NOT PROVIDE SERVICE?**

6 A. No, it cannot. All ETCs are required to provide the supported services  
7 **throughout** their designated service areas. Unlike facilities-based carriers  
8 who can build out their networks to reach customers that request service,  
9 TracFone, as a pure reseller, cannot provide service in areas where its  
10 underlying carriers do not provide service. For this reason, it is critical that  
11 TracFone's proposed designated service area be defined in geographic terms  
12 and specifically exclude areas where TracFone cannot offer service.  
13 Otherwise, it cannot commit to serving all requesting customers within its  
14 designated service area.

15 **Issue I.C: Should the Commission grant TracFone's request for waiver of**  
16 **requirement 4.2 of Appendix A of the order (map of network coverage and**  
17 **signal strengths)?**

18 **Q. WHAT IS THE PURPOSE OF THIS REQUIREMENT?**

19 A. The map of the applicant's network coverage and signal strengths is an aid to  
20 understanding where the ETC applicant can currently provide service, and in  
21 the case of wireless carriers, how good that service may be. It is particularly  
22 useful in the case of ETC applicants for high-cost support to determine areas  
23 where such support could be used to improve or expand the carriers' networks.

1 **Q. WHY DOES TRACFONE REQUEST A WAIVER OF THIS REQUIREMENT?**

2 A. On page 15 of its application, TracFone requests a waiver of requirements 4.1  
3 (a description of its network facilities) and 4.2 (a map showing current network  
4 coverage and signal strengths) because it does not have access to the  
5 information, which belongs to its underlying carriers. However, in a data  
6 request, Staff pointed out to TracFone that it said it would commit to the CTIA  
7 Consumer Code. That code requires that carriers provide customers with  
8 maps of coverage areas. Staff requested that TracFone submit the map it  
9 provides to customers in Oregon. The coverage map TracFone submitted is  
10 included as Exhibit Staff/107.

11 **Q. WHAT IS STAFF'S RECOMMENDATION REGARDING THE WAIVERS**  
12 **REQUESTED FOR REQUIREMENT 4?**

13 A. Staff recommends that waivers be granted as they relate to the requirements  
14 for a description of the types of network facilities and a map showing signal  
15 strengths. No waiver is needed for the map of network coverage, assuming  
16 the map that TracFone distributes to its customers is accurate. However, to  
17 the extent that TracFone's designated service area definition efforts discussed  
18 under Issue I.A yield areas inconsistent with the coverage areas shown in the  
19 map submitted by TracFone, staff reserves the right to modify its  
20 recommendation on both issues.

21 **Issue I.D: Does the application identify and describe each service plan that**  
22 **TracFone offers as required in 2.3 of Appendix A of the order?**

23 **Q. WHAT IS YOUR POSITION ON THIS ISSUE?**

1 A. TracFone's application does not meet the requirement 2.3 of Appendix A.

2 **Q. PLEASE EXPLAIN YOUR CONCLUSION.**

3 A. The application is supposed to describe every local exchange voice service  
4 offering, including those packaged or bundled with other services. The  
5 assumption is that all ETCs applicants will offer Lifeline discounts on all such  
6 services, per the requirements in OAR 860-033-0010. TracFone's application  
7 describes only its proposed Lifeline service, trademarked as SafeLink Wireless  
8 (SafeLink). I describe the SafeLink service in more detail under Issue I.E.  
9 directly below. TracFone's application, as well as Mr. Fuentes' testimony, fails  
10 to mention or describe three other types of services that TracFone offers,  
11 branded as TracFone, NET10 and Straight Talk. Staff DR-24, staff requested  
12 information on these service offerings. In response, TracFone objected to  
13 providing the requested information as irrelevant, but submitted copies of  
14 information on its website for each. The information is included as Exhibit  
15 Staff/108. These services are wireless prepaid services sold through retail  
16 outlets such as Walmart, and Sears. The customer buys a TracFone phone  
17 and must pay in advance to be able to make or receive calls – no bill is  
18 rendered. NET10 is available on a monthly basis (certain number of minutes  
19 included per month) or on a pay-as-you-go basis (using Net10 airtime cards  
20 available in set denominations that can be obtained at retail locations or  
21 purchased over the phone with a credit card). The customer can buy a NET10  
22 phone for as low as \$9.99 at retail locations. Straight Talk is a newer offering  
23 for TracFone that is sold on a monthly plan basis, in basically two varieties. In

1 the first, the customer receives up to 1,000 minutes of talk, along with  
2 additional text and web access capabilities for a month, for the price of \$30. In  
3 the second variety, the customer receives unlimited talk, text and web access  
4 for a month, for the price of \$45.

5  
6 **Issue I.E: Does the application sufficiently identify and describe the specific**  
7 **services that will be offered to qualifying low-income customers as**  
8 **required in 7.2 of Appendix A of the order?**

9 **Q. WHICH SERVICES DOES TRACFONE IDENTIFY AS AVAILABLE TO**  
10 **LOW-INCOME CUSTOMERS ELIGIBLE TO RECEIVE LIFELINE**  
11 **SERVICES?**

12 A. In its application, TracFone clearly identifies only one service that it will  
13 make available to qualifying low-income customers in Oregon as a Lifeline  
14 offering – SafeLink. The application, on page 3, describes SafeLink as a  
15 service that will provide consumers with all of the functionalities and  
16 features currently provided by TracFone to existing customers. “In addition,  
17 unlike any other ETC’s Lifeline programs, TracFone’s Lifeline service will  
18 provide quantities of wireless usage at no charge to the consumers. Simply  
19 stated, TracFone’s Lifeline service will be free!”

20 **Q. DOES THE APPLICATION IDENTIFY HOW MANY FREE MINUTES WILL BE**  
21 **PROVIDED?**

22 A. No. While the application does not identify how many free minutes customer in  
23 Oregon will receive, it does state in footnone 37 that “TracFone reserves the

1 right to modify its Lifeline plan based on changes in market conditions or the  
2 amount of USF support available.” TracFone will also provide a free handset.  
3 Further, the application states that “The phones will remain active for one year  
4 even if no additional usage is purchased.” The FCC required TracFone to  
5 provide 911-compliant handsets, and to ensure that SafeLink customers can  
6 access 911 even if they have no more free minutes left from their month’s free  
7 allotment. (I address this aspect of the service below under Issue II.)

8 **Q. HOW MANY FREE MINUTES PER MONTH WILL A SAFELINK CUSTOMER**  
9 **RECEIVE?**

10 A. Mr. Fuentes testifies each customer will receive 68 free minutes. See  
11 TracFone/1, Fuentes/3.

12 **Q. DID TRACFONE EXPLAIN HOW IT ARRIVED AT THE 68 MINUTE**  
13 **AMOUNT?**

14 A. Ultimately, yes. Staff made several attempts through data requests to give  
15 TracFone an opportunity to provide all the data it used to arrive at 68 minutes  
16 for the “free” monthly allotment. Although it is based on the weighted average  
17 amount of FUSF Lifeline support available across the state, TracFone refused  
18 to give staff all the data used to perform the weighting. In response to Staff  
19 DR-88, TracFone asserts that the weightings it used to derive the average are  
20 irrelevant since it is adding in its own money to bring the total to the monthly  
21 maximum \$10 per customer available from the FUSF. See Exhibit Staff/109.  
22 Simply stated, the \$10 monthly subsidy from the FUSF (and TracFone), plus  
23 \$3.50 more that TracFone is also providing from its own resources, yields a



1 total of \$13.50. (TracFone does not factor the \$3.50 per Lifeline subscriber  
2 available from the OTAP into its calculations, as it prefers to supply \$3.50 from  
3 its own funds. This topic is covered later under Issue IV by Jon Cray in his  
4 testimony.) When \$13.50 is divided by a rate of 20 cent per minute, the result  
5 is 67.5 “free” minutes per month per SafeLink subscriber. TracFone adds a  
6 free half-minute and rounds up to 68 minutes.

7 It should be noted that while Mr. Fuentes’ testimony states that SafeLink  
8 customers will receive 68 free minutes per month, footnote 37 of TracFone’s  
9 application states that “TracFone reserves the right to modify its Lifeline plan  
10 based on changes in market conditions or the amount of USF support  
11 available.”

12 **Q. WILL TRACFONE OFFER THE LIFELINE DISCOUNT ON ITS OTHER**  
13 **SERVICES AS REQUIRED BY OAR 860-033-0010?**

14 A. No, not at this time. Mr. Cray addresses this issue in his response to Issue IV.D.

15 **Q. WILL TRACFONE OFFER THE LARGER LIFELINE DISCOUNT AVAILABLE**  
16 **TO QUALIFYING CUSTOMERS ON TRIBAL LANDS IN OREGON?**

17 A. Apparently not. TracFone’s application makes no mention of offering a Tribal  
18 Lifeline discount. It does not specify whether TracFone requests ETC  
19 designation on Tribal Lands. Mr. Fuentes’ testimony makes no mention of this  
20 either. However, TracFone stated in response to Staff DR-28, that “TracFone’s  
21 SafeLink Wireless Lifeline plan will not vary for residents of tribal lands and  
22 residents on non-tribal lands.” See Exhibit Staff/110. Staff has been trying

1 through a series of data requests to obtain a definitive answer from TracFone  
2 on this issue.

3 **Q. PLEASE EXPLAIN THE TRIBAL LANDS DISCOUNT ISSUE.**

4 A. Under the low-income FUSF program, qualifying low-income consumers living  
5 on Tribal Lands are eligible for a discount of up to \$25 per month on their  
6 telephone service. This is more than double the \$10 amount available for  
7 consumers who do not reside on Tribal Lands. When Staff first asked  
8 TracFone whether it will offer the Tribal discount (DR-28 cited above),  
9 TracFone responded that “TracFone is currently not eligible to receive Tier IV  
10 support from the federal Universal Service Fund, the support tier that  
11 reimburses carriers for providing a higher level of benefits on tribal lands.”  
12 However, the FCC’s ETC designation order of TracFone clearly states, in  
13 footnote 49, that TracFone specifically requested not to be designated on  
14 Tribal Lands. See Exhibit Staff/111. Staff issued DR-85 that specifically  
15 asked TracFone to provide a reference to the FCC document **prohibiting**  
16 TracFone from receiving Tribal Lifeline support. In its response, TracFone  
17 confirmed that it is not prohibited from offering Tribal Lifeline service if it  
18 receives ETC designation from Oregon on Tribal Lands. See Exhibit Staff/112.  
19 But, since TracFone is still unable to clearly identify the areas in which it  
20 requests designation, this issue remains unresolved. Should TracFone be  
21 designated on Tribal Lands, the Commission should require TracFone to offer  
22 the larger Tribal discount available by offering more minutes to qualifying  
23 residents of Tribal Lands.

1

2

**Issue I.F: Does the application demonstrate that TracFone offers a local**

3

**usage plan that is comparable to the basic local service offerings of the**

4

**ILECs in the proposed designated service area as required in 2.4 of**

5

**Appendix A of the order?**

6

**Q. DOES THE COMMISSION ORDER NO. 06-292 PROVIDE ANY**

7

**DISCUSSION REGARDING THIS REQUIREMENT?**

8

A. Yes. On pages 5-6 the Order, the Commission accepts Staff's

9

recommendation that the burden lies with a wireless ETC applicant to "show

10

how its local usage calling plan is 'comparable' to those offered by the ILECs in

11

its proposed service area, to be analyzed on a case by case basis. Further,

12

Staff suggests that all ETCs should have at least one affordable offering similar

13

to an ILEC's basic local service offering, as an alternative for low-income

14

customers."

15

**Q. DOES TRACFONE'S APPLICATION OR ITS TESTIMONY DEMONSTRATE**

16

**THAT TRACFONE MEETS THE COMMISSION'S COMPARABLE LOCAL**

17

**USAGE REQUIREMENT?**

18

A. No, neither one does so. TracFone's application does not even identify the

19

number of local usage minutes that will be included in its one and only

20

proposed Lifeline service offering. TracFone's application at page 11 states

21

that the FCC has not adopted any local usage requirements, but if it does,

22

TracFone will comply. TracFone notes that wireless services are different than

23

wireline services and seems to imply that local usage comparability is irrelevant

1 since only TracFone will offer Lifeline service that includes a free handset and  
2 a free specified amount of usage. Mr. Fuentes' testimony at page 3 does  
3 reveal that TracFone will offer 68 minutes of use each month for no charge,  
4 and that Lifeline customers will be "allowed" to purchase additional usage  
5 cards at a rate of \$0.20 per minute. Mr. Fuentes asserts on page 17 that "The  
6 FCC concluded that TracFone's Lifeline service would meet the comparability  
7 requirement of 47 C.F.R. §54.202(a) given the differences between wireless  
8 and wireline services." The FCC viewed comparability in a very broad sense,  
9 without actually scrutinizing any proposed TracFone Lifeline offering.

10 TracFone has not met its burden of demonstrating that its proposed Lifeline  
11 offering includes local usage comparable to any ILECs' in Oregon.

12 **Q. CAN TRACFONE'S PROPOSED SAFELINK OFFER BE CONSIDERED**  
13 **COMPARABLE TO ILEC LOCAL USAGE SERVICE OFFERINGS?**

14 A. No, neither 68 minutes of use per month nor a per-minute rate of 20 cents are  
15 comparable to ILEC's local usage service offerings. ILECs in Oregon are  
16 required by ORS 759.235 to provide unlimited local calling on a flat-rate basis,  
17 and wireline CLECs offer similar service. ILECs also offer measured-rate  
18 service that consists of a small flat monthly fee and charges that apply per  
19 minute. The additional minute rates for Qwest's measured-rate services range  
20 from 2.5-8 cents for the first minute of a call and 0.5-3 cents for minutes  
21 beyond the first minute of a call. These are daytime rates that do not reflect  
22 discounts for evening, nights and weekend calls. None of these usage rates  
23 approximate the 20 cents per minute that TracFone proposes to charge.

1 Furthermore, ILECs and other ETCs designated in Oregon offer a range of  
2 local calling plans from which Lifeline customers may choose based upon their  
3 own calling needs. No other ETC, ILEC or non-ILEC, offers Lifeline customers  
4 only one calling plan, let alone one with such low usage as TracFone  
5 proposes. TracFone's NET10 plan rate of 10 cents per minute is a little closer  
6 to per-minute rates charged by ILECs than SafeLink's 20 cents per minute, but  
7 TracFone will not offer this service to Lifeline customers. TracFone's  
8 StraightTalk plans offer much more than 68 minutes, i.e., either 1000 minutes  
9 or unlimited minutes per month. But TracFone will not offer these services to  
10 Lifeline customers either.

11 **Q. DID ANY OTHER STATE REJECT TRACFONE'S PROPOSED LIFELINE**  
12 **SERVICE ON THE BASIS OF NON-COMPARABILITY OF LOCAL USAGE?**

13 A. Yes. One of two unresolved issues identified by the Minnesota Public Utilities  
14 Commission was the inadequacy of TracFone's proposed 67-minute monthly  
15 usage allowance (the other was TracFone's refusal to pay to fund the state's  
16 911 and telephone assistance programs). Four community organizations  
17 intervened in that proceeding, maintaining that TracFone's monthly usage  
18 allowance was inadequate. In Minnesota, as in Oregon, the ILECs offer  
19 unlimited local usage plans. The Minnesota Commission found that  
20 TracFone's offer of 67 free minutes in that state, coupled with the availability of  
21 additional minutes at 20 cents each, does not meet the "basic  
22 telecommunications needs of Lifeline households as effectively as the

1 unlimited fixed-location local usage offered by the incumbent LECs.” See  
2 Minnesota Order at page 7, included as Exhibit Staff/113.

3 **Q. DID THE MINNESOTA COMMISSION MAKE OTHER OBSERVATIONS?**

4 A. Yes, it did. While the Minnesota Commission recognized the advantages of  
5 TracFone’s proposed Lifeline offering, it concluded that on balance, the  
6 advantages did not outweigh the disadvantage of the low usage allowance and  
7 the additional rate of 20 cents per minute. Because the Minnesota  
8 Commission issued its order in June of this year, it was well aware that  
9 TracFone “offers higher-value usage plans in some jurisdictions, with higher  
10 monthly usage allowances and less expensive supplementary minutes (ten  
11 cents each).” See page 8 of the order. Further, it noted that “TracFone states in  
12 its application that it ‘operates in accordance with the spirit of universal  
13 service,’ striving for uniform rates throughout the state and throughout the  
14 country.” Based on this reasoning, the Minnesota Commission granted  
15 TracFone’s application “with the condition that it modify its service offering to  
16 include the highest-value local usage plan it offers in any other jurisdiction.” It  
17 further concluded that “this modified local usage plan would be comparable in  
18 value to – although clearly different in form from – the unlimited local usage  
19 plans offered by the incumbent LECs.”

20 **Q. SHOULD THE MINNESOTA COMMISSION’S CONDITION BE ADOPTED IN**  
21 **THIS CASE?**

- 1 A. The general intent of this condition should be considered and included as a  
2 condition for designation. I address the overall issue of the drawbacks of  
3 TracFone's proposed Lifeline offering in greater detail under Issue V.D.  
4

5 **Issue I.G: Does the application demonstrate TracFone's ability to remain**  
6 **functional in emergencies as required in 8.1 of Appendix A of the order?**

7 **Q. PLEASE DESCRIBE THIS REQUIREMENT AND ITS PURPOSE.**

- 8 A. This requirement addresses the reliability of a carrier's network. It requires a  
9 demonstration of the applicant's ability to remain functional in emergencies,  
10 specifically addressing the amount of backup power available, the ability to  
11 reroute traffic around damaged facilities, and the ability to manage traffic  
12 spikes during emergency periods.

13 **Q. DOES TRACFONE ADDRESS THIS REQUIREMENT?**

- 14 A. Yes. In testimony, Mr. Fuentes states on page 17 that because TracFone does  
15 not have its own facilities, this requirement is not applicable to it. However,  
16 TracFone did not request a waiver of this requirement.  
17

18 **Issue I.H: Does the application describe the current status of E911**  
19 **deployment and compliance as required in 8.2 of Appendix A of the**  
20 **order?**

21 **Q. PLEASE DESCRIBE THIS REQUIREMENT AND ITS PURPOSE.**

- 22 A. This requires a description of the applicant's current status of E911 deployment  
23 and compliance. Its purpose is to address public safety concerns.

1 **Q. DOES TRACFONE ADDRESS THIS REQUIREMENT?**

2 A. Yes. In testimony Mr. Fuentes states on page 18 that because TracFone does  
3 not have its own facilities, “it has no ability to report on the status of E911  
4 deployment of its underlying carriers.” TracFone states that it will fully comply  
5 with the FCC’s E911 requirements applicable to resellers. I will not comment  
6 on this issue at this time, but may do so after reviewing testimony filed by  
7 OEM.

8

9 **Issue I.I: Can TracFone meet all responsibilities under the CTIA Consumer**  
10 **Code as it has committed to do, given its reseller status?**

11 **Q. WHAT IS THE CTIA CONSUMER CODE?**

12 A. The CTIA Consumer Code is a code to which wireless carriers may become  
13 signatories. A copy of the Code is attached to TracFone testimony. See  
14 TracFone/3, Fuentes/1. Signatories to the code commit to: 1) disclose rates  
15 and terms of service to customers, 2) make available maps showing where  
16 service is generally available, 3) provide contract terms to customers and  
17 confirm changes in service, 4) allow a trial period for new service, 5) provide  
18 specific disclosures in advertising, 6) separately identify carrier charges from  
19 taxes on billing statement, 7) provide customers the right to terminate service  
20 for changes to contract terms, 8) provide ready access to customer service, 9)  
21 promptly respond to consumer inquiries and complaints received from  
22 government agencies, and 10) abide by policies for protection of customer  
23 privacy.



1 **Q. WHY IS IT IMPORTANT THAT TRACFONE COMMIT TO ABIDE BY THIS**  
2 **CODE?**

3 A. The Commission uses a commitment to abide by this code as a means to  
4 assure customer service and quality standards for wireless ETCs. The code  
5 represents the wireless carriers' equivalent of ILEC consumer protection and  
6 service quality measures. The Commission encourages wireless ETC  
7 applicants to commit to abide by the code if they are not already a signatory.

8 **Q. IS TRACFONE A SIGNATORY TO THE CODE? IF NOT, WILL**  
9 **TRACFONE ABIDE BY THE CODE?**

10 A. No, TracFone is not a signatory to the Code. However, TracFone states that it  
11 will comply with the CTIA Consumer Code. See TracFone/1, Fuentes/10. It  
12 then proceeds to explain that provisions 3, 4, 6, and 7 do not apply to  
13 TracFone because of the prepaid nature of its service. Therefore, TracFone  
14 will comply with the CTIA Consumer Code to the extent that it can.

15

16 **Issue I.J: Will TracFone's reseller status limit its ability to resolve all**  
17 **complaints regarding its service that may be received by the PUC?**

18 **Q. DOES TRACFONE ADDRESS THIS ISSUE?**

19 A. TracFone asserts that its reseller status has not limited its ability to address  
20 any complaint in the more than ten years that it has been providing service.  
21 See TracFone/1, Fuentes/18-19. In response to Staff DR-33, TracFone states  
22 "TracFone keeps a log of all complaints which includes the type of complaint

1 involved. TracFone does not track specific types of complaints.” See  
2 Exhibit/Staff 114.

3 **Q. DO YOU SEE ANY POTENTIAL PROBLEMS RELATED TO CUSTOMER**  
4 **COMPLAINT RESOLUTIONS IF TRACFONE IS GRANTED ETC**  
5 **DESIGNATION?**

6 A. Yes, I do. It seems that since TracFone does not own the networks used to  
7 provide its service, it is unlikely to be able to resolve any complaints about no  
8 reception, dropped call, etc. as other wireless ETCs can. While it can resolve  
9 complaints related to handset operations or downloading of minutes, such  
10 complaints represent only a subset of all possible complaints that may be  
11 referred to the PUC. This presents an area for further exploration.

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1                                   **ISSUE II: IMPACT OF FCC FORBEARANCE ORDER**

2

3                   **ISSUE II. Do the requirements imposed on TracFone by the FCC in its order**  
4                   **granting TracFone forbearance from the facilities requirement of the Telecom**  
5                   **Act (FCC 05-165) have any impact on, or relationship to, the Commission's**  
6                   **authority to grant ETC designation?**

7

8                   **Q. WHAT IS THE NATURE OF THE FORBEARANCE GRANTED TO**  
9                   **TRACFONE?**

10                  A. Section 214(e)(1)(A) of the Communications Act, as amended, requires ETCs  
11                   to offer services, at least in part, over their own facilities. Consistent with this  
12                   requirement, Section 54.201(i) of the FCC rules prohibits the designation as an  
13                   ETC of any carrier that offers services exclusively through the resale of another  
14                   carrier's services. TracFone, which is a pure reseller, sought forbearance  
15                   from these requirements, and the FCC granted forbearance in Order 05-165  
16                   dated September 8, 2005. See Forbearance Order included as Exhibit Staff/4.

17

18                  **Q. WHAT REQUIREMENTS DID THE FCC IMPOSE ON TRACFONE IN THE**  
19                  **FORBEARANCE ORDER?**

20                  A. The Forbearance Order requires TracFone to:  
21                   a) provide customers with 911 and E911 access regardless of activation  
22                   status and availability of prepaid minutes;

- 1           b) provide customers with E911-compliant handsets and replace, at no  
2           additional charge, non-compliant handsets of existing customers who  
3           obtain Lifeline service;
- 4           c) comply with conditions a) and b) as of the date it provides Lifeline  
5           service;
- 6           d) obtain a certificate from each PSAP confirming compliance with a) where  
7           Lifeline service is offered (FCC 09-17 modified this to allow TracFone to  
8           self-certify, with documentation from underlying carriers, if PSAPs do not  
9           act within 90 days);
- 10          e) require customers to self-certify, under penalty of perjury, at time of  
11          service activation and annually thereafter that they are the head of  
12          household and receive Lifeline service only from TracFone (penalties for  
13          perjury must be clearly stated on the certification form);
- 14          f) establish safeguards to prevent customers from receiving multiple  
15          TracFone Lifeline subsidies at the same address (TracFone must track  
16          the customer's primary residential address and prohibit more than one  
17          TracFone Lifeline service at each residential address); and,
- 18          g) have direct contact with its Lifeline customer (phone, fax, internet, in-  
19          person) when establishing initial and continued eligibility. (The customer  
20          may purchase handsets at the retail outlets e.g., WalMart, etc., but must  
21          deal directly with TracFone to certify and verify customer's eligibility.)

22       **Q. WHAT IS TRACFONE'S POSITION ON THIS ISSUE?**

1 A. TracFone asserts on page 6 of its application that “the Oregon Public Utility  
2 Commission is required by Section 10(e) [of the Communications Act] to act in  
3 accordance with the FCC’s TracFone Forbearance Order, and therefore, may  
4 not apply the facilities-based requirement to TracFone.”

5 **Q. HAS ANY STATE DISAGREED WITH TRACFONE’S POSITION, AND IF SO,**  
6 **ON WHAT BASIS?**

7 A. Yes, the Oklahoma State Corporation Commission (OCC) confirmed the  
8 opinion of the Administrative Law Judge (ALJ) assigned to TracFone’s  
9 application for ETC designation. The OCC stated that “Since the FCC lacks  
10 the authority to designate an ETC in Oklahoma, it is illogical to draw the  
11 conclusion that the Forbearance Order must be construed to apply to the  
12 Oklahoma Commission’s requirements for ETC designation.” However, the  
13 ALJ noted that the Commission may take the Forbearance Order into  
14 consideration in determining whether to grant ETC status to TracFone. The  
15 Commission Order, which was issued on May 13 of this year, encouraged the  
16 parties to establish a procedural schedule so the matter may proceed to an  
17 administrative hearing. See documents included under Exhibit Staff/115.

18 **Q. WHAT IS YOUR RECOMMENDATION REGARDING THE FCC**  
19 **FORBEARANCE ORDER ISSUE?**

20 A. After consideration, staff views this as a non-issue. As an initial matter, it is not  
21 necessary for the Commission to resolve whether it is legally bound by the  
22 FCC Forbearance Order because TracFone has not satisfied other  
23 requirements for ETC designation in Oregon. But, should the Commission

1       decide to approve TracFone's application, then, regardless of whether the  
2       Commission is legally bound by the Forbearance Order, staff recommends the  
3       Commission impose conditions a) through d), as well as f) of the FCC  
4       Forbearance Order listed above. Staff presumes this condition would be  
5       acceptable to TracFone because it is already subject to these conditions.  
6       However, requirements e) and g) conflict with the certification and verification  
7       procedures used in the OTAP process. In granting forbearance, the FCC  
8       required TracFone to file a compliance plan. In the plan, TracFone stated that  
9       it "will comply with all certification and verification requirements for Lifeline  
10      eligibility established by states where it is designated as an ETC." See  
11      TracFones Compliance Plan, page 14, included as Exhibit Staff/116.  
12      Therefore, the Commission should hold TracFone to its word in this regard.  
13      The OTAP procedures are discussed in greater detail in Staff witness Jon  
14      Cray's testimony.

**ISSUE III: ETC ANNUAL REPORTING REQUIREMENTS****ISSUE III. Will TracFone be able to comply with all annual reporting****requirements for ETCs in Oregon? If not, should waivers be granted?****Q. DESCRIBE THE ANNUAL REPORTING REQUIREMENTS AND WHY THEY ARE NECESSARY.**

A. The annual ETC reporting requirements, also referred to as annual recertification requirements, are listed in Appendix A, pages 4-6 of Order No. 06-292. They largely follow the same requirements adopted for initial ETC designation. The reports are due on July 15 of each year. One purpose of the annual reporting is to enable the Commission to certify each October 1 to the FCC that ETCs receiving high cost support in the state are using such funds only for the purposes intended by the Act. Another is to monitor whether all ETCs are complying with ongoing responsibilities, including providing and advertising the supported services throughout the designated service area.

**Q. DOES TRACFONE INDICATE IT WILL BE ABLE TO COMPLY WITH ALL ETC ANNUAL REPORTING REQUIREMENTS?**

A. TracFone states that it will be able to comply with all reporting requirements “to the extent that they are applicable to a reseller that only offers Lifeline service.” See TracFone/1, Fuentes/21. TracFone states further “The reporting requirements also ask for number of customers and handsets by ILEC study area. However, it can report number of customers in Oregon.” TracFone also

1 states that “to the extent that TracFone is unable to meet a particular ETC  
2 reporting requirement, TracFone will petition the Commission to waive that  
3 requirement.” Less than two weeks later, in response to Staff DR-33.  
4 TracFone indicated it can obtain data to submit outage and trouble reports from  
5 its underlying carriers. Three weeks later, in response to Staff DR-87,  
6 TracFone responded that it “has since determined that it does not have access  
7 to trouble reports by wire center. Therefore, TracFone will request a waiver of  
8 this requirement.” See Exhibit Staff/117.

9 **Q. WHAT IS YOUR ASSESSMENT OF TRACFONE’S ABILITY TO COMPLY?**

10 A. I have serious doubts as to TracFone’s ability to comply with the ETC annual  
11 reporting requirements. As to the fact that TracFone will receive only low-  
12 income support, and not high-cost support, there is only one annual reporting  
13 requirement that would be inapplicable. That requirement relates to network  
14 improvement plan updates. Any other requirements that TracFone cannot  
15 meet are likely to be associated with its lack of ownership of the underlying  
16 facilities used to provide its services. These are related to the same initial  
17 designation requirements for which TracFone cannot assume direct  
18 responsibility, but rather depends on its underlying carriers. Furthermore, after  
19 first asserting that it can provide certain data, TracFone later, upon further  
20 questioning from staff, admits that it cannot. Due to TracFone’s unique status  
21 and lack of local presence, I recommend that the Commission contemplate  
22 requiring different customer and service quality measures for TracFone if it



1 decides to grant ETC designation. Alternatively, designation could be made on  
2 a trial basis to determine TracFone's performance.

3 **Q. DO YOU SUPPORT TRACFONE'S SPECIFIC REQUEST FOR A WAIVER OF**  
4 **THE LIFELINE COUNTS BY ILEC STUDY AREA?**

5 A. No, I do not. TracFone's justification for the waiver is that "TracFone does not  
6 have the ability to track its customers by ILEC wire center." If this is the case, it  
7 is unclear how TracFone is able to report Lifeline customer counts to USAC for  
8 support reimbursement. Not all ILECs charge the same Subscriber Line  
9 Charge (SLC) which is the basis for TracFone's Lifeline reimbursement from  
10 the FUSF. For instance, in Oregon, United Telephone's SLC is \$6.30, while  
11 the SLC for the other ILECs is \$6.50. Surely TracFone must be required to  
12 track at least this level of detail on an ILEC basis. Furthermore, the  
13 requirement is not by ILEC wire center, as TracFone states, but rather by ILEC  
14 study area. All wireless ETCs designated in Oregon comply with this  
15 requirement. TracFone should as well, particularly as it requests ETC status  
16 only to offer Lifeline services.

17 **Q. HAS TRACFONE REQUESTED WAIVERS OF ANY OTHER ANNUAL ETC**  
18 **REPORTING REQUIREMENTS THAT IT MAY NOT BE ABLE TO MEET?**

19 A. No, it has not.  
20

1           **ISSUE IV: DOES TRACFONE MEET THE REQUIREMENTS FOR ETP**  
2                           **DESIGNATION AND PARTICIPATION IN THE OTAP?**  
3

4           **Q. DOES STAFF HAVE ANY COMMENTS ON THIS ISSUE?**

5           A. Jon Cray of Staff is the expert on this issue as he is the program manager for  
6           the OTAP. I concur fully in his reply comments. As the manager responsible  
7           for ETC designations, I would like to emphasize that if TracFone cannot meet  
8           the requirements for ETP designation, the Commission cannot grant it ETC  
9           designation. To be eligible for ETC status, an applicant must offer Lifeline  
10          services. i.e., receive ETP designation. Mr. Cray expresses some concern as  
11          to whether TracFone has sufficiently demonstrated that it meets all of the  
12          requirements for designation and participation in the OTAP. See Staff Exhibit  
13          200 for Mr. Cray's analysis.  
14



1 **ISSUE. V.A: Is TracFone legally required to submit to the Commission**  
2 **remittance reports and surcharge fees for each on of its existing and**  
3 **intended service offerings?**  
4

5 **Q. WHAT IS STAFF'S ASSESSMENT OF THIS ISSUE?**

6 A. Staff witness Jon Cray addresses this issue. This issue presents legal matters  
7 that staff's counsel will address later in the proceeding. See Staff Exhibit 200  
8 for Mr. Cray's response.

9  
10 **ISSUE. V.B: Is an ETC eligible to receive RSPF funds for the provision of**  
11 **OTAP services if it not legally required to submit to the Commission**  
12 **remittance reports and surcharge fees [See, e.g., OAR 860-033-0006(4)]?**  
13

14 **Q. WHAT IS STAFF'S ASSESSMENT OF THIS ISSUE?**

15 A. Staff witness Jon Cray addresses this issue. Generally, Mr. Cray concludes  
16 that since TracFone will not request monthly OTAP support, eligibility is not an  
17 issue. See Staff Exhibit 200 for Mr. Cray's analysis.

18  
19 **ISSUE. V.C. Does the "free" nature of the SafeLink service offering engender**  
20 **problems associated with administration, customer fraud and abuse, etc.,**  
21 **and if so, can they be overcome?**

22 **Q. WHY SHOULD THIS BE AN ISSUE?**

1 A. No previous ETC applicant in Oregon has proposed a wireless prepaid Lifeline  
2 service offering that is advertised as totally “free” to qualifying customers.

3 SafeLink has been offered in numerous states over the past two years and  
4 may be offered in more states. TracFone’s tremendous success in attracting  
5 SafeLink customers to date can largely be attributed to the appeal of a “free”  
6 service that is marketed very aggressively.

7 Staff recognizes the positive aspects of a Lifeline service with no cost to the  
8 consumer, and the potential such a service may have to increase Lifeline  
9 subscribership in Oregon. However, there are also serious pitfalls that may be  
10 encountered when the free service is a wireless service. The Commission  
11 must recognize these pitfalls, and guard against the associated potential for  
12 waste, fraud and abuse that may result.

13 **Q. PLEASE EXPLAIN YOUR FRAUD AND ABUSE CONCERNS WITH THE**  
14 **OFFER OF FREE WIRELESS SERVICE.**

15 A. Unlike a wired phone service, a wireless service is not stationary. It can be  
16 used anywhere there is signal available and by any person who possesses the  
17 handset. While this is a benefit of wireless service, it also means that  
18 customers can lose the handset, the handset can be stolen, or it can be sold,  
19 along with the service that comes with it. These events may be more likely to  
20 occur when the customer has paid nothing to obtain the handset, or the  
21 service, compared to when the customer must pay something out of his/her  
22 own pocket to maintain the service. This problem is compounded by the fact  
23 that TracFone advertises the service as free for a year, and the free minutes

1 will continue to be downloaded each month. Indeed, people selling the  
2 SafeLink phones on the internet note how many months of free service come  
3 with the phone. See Exhibit Staff/118. While there are surely many SafeLink  
4 customers that value the free service enough to keep tabs on the handset and  
5 use the service, there are obviously others who prefer the cash to the service.  
6 In the latter cases, TracFone is able to collect \$10 a month from the FUSF,  
7 regardless of who is in possession of the phone.

8 **Q. DOES TRACFONE MAINTAIN CLOSE OVERSIGHT OF ITS SAFELINK**  
9 **CUSTOMERS?**

10 A. It does not appear so. Unlike service providers that collect payments from their  
11 Lifeline customers every month, TracFone renders its prepaid services from  
12 afar and has less of a direct, ongoing financial relationship with its customers.  
13 Phones and airtime cards are sold through retailers such as Walmart, Sears,  
14 etc. Since TracFone renders no bills, makes no customer contracts, and  
15 provides no handset subsidies through monthly charges, it has little need to  
16 know who its customers are or where they live. A handset, a credit card or an  
17 airtime card is all that is needed for service. While this model saves costs for  
18 TracFone, it presents challenges for ensuring the integrity of the Lifeline  
19 program.

20 **Q. WHY SHOULD THE COMMISSION BE CONCERNED ABOUT THIS ISSUE?**

21 A. Although the SafeLink service may be free to those who obtain it, the costs of  
22 the service are borne by other telecommunications users through their  
23 contributions to the FUSF. TracFone obtains support funds from the FUSF for

1 each SafeLink customer it claims. Measures must be instituted to ensure that  
2 TracFone does not receive funds for SafeLink customers who have had their  
3 phones lost or stolen, have chosen to sell them, or have represented  
4 themselves as eligible when in fact they are not. If they do, the cost of such  
5 waste, fraud or abuse is borne by all users of telecommunications services.

6 As TracFone has gained more and more SafeLink customers, it has  
7 significantly increased the size of the FUSF, the associated surcharge rate,  
8 and the risk of increased instances of fraud, waste and abuse. Concern is  
9 mounting regarding the increasing growth of the low-income portion of the  
10 FUSF, as the FCC grants forbearance to more prepaid wireless resellers such  
11 as Virgin Mobile, i-wireless, Head Start, etc. In addition, the FCC's recent  
12 referral to the Federal-State Joint Board on Universal Service seeks  
13 recommendations as to whether rules and procedures need to be tightened.  
14 This referral is included as Exhibit Staff/119.

15 **Q. DID THE FCC RECOGNIZE SOME OF THESE PROBLEMS WHEN IT**  
16 **GRANTED FORBEARANCE TO TRACFONE? IF SO, WHAT MEASURES**  
17 **DID IT REQUIRE?**

18 A. Yes. The FCC recognized some of the potential problems, but certainly not all.  
19 Because TracFone does not normally have a direct relationship with its  
20 customers, the FCC required in the Forbearance Order that TracFone deal  
21 directly with the customer to certify and verify initial customer eligibility. That  
22 order at paragraph 19 prohibits the performance of these functions at the retail  
23 outlets that sell TracFone phones and phone cards. See Forbearance Order,

1 TracFone Application, Exhibit 2. In addition, the FCC required TracFone to  
2 “track its Lifeline customer’s primary residential address and prohibit more than  
3 one supported TracFone service at each residential address.” (paragraph 18)  
4 Despite all these precautions, however, the FCC permitted TracFone  
5 customers to “self certify” as to their eligibility. In other words, the customers  
6 need only fill out an application, indicate the social services program for which  
7 they claim they are eligible, and certify that they receive Lifeline service only  
8 from TracFone. Once customers receive SafeLink phones, they can continue  
9 receiving service automatically for a year or more regardless of whether they  
10 are still eligible for Lifeline services.

11 **Q. SHOULD THE COMMISSION PERMIT TRACFONE TO FOLLOW THE FCC**  
12 **REQUIREMENTS?**

13 A. The Commission must require TracFone to follow the initial eligibility and  
14 verification procedures established for participation in the OTAP. The OTAP  
15 procedures are much more stringent and effective in ensuring that only eligible  
16 customers receive Lifeline services. The OTAP personnel process the  
17 applications for Lifeline services. This process performs checks with social  
18 services agencies to verify the eligibility of the applicant, identifies duplicate  
19 applications that may be submitted by the same person, and ensures that no  
20 more than one person in the same household receives Lifeline benefits from  
21 any ETC. This process is far superior to applicants “self-certifying” that they  
22 are eligible and that no other person in the household receives Lifeline benefits  
23 from TracFone. Checks are performed monthly to ensure customers are still



1 eligible. Every other ETC in Oregon is involved in this eligibility and verification  
2 process. There is no reason why TracFone should not be as well. In  
3 TracFone's plan for compliance with the FCC's forbearance order, it clearly  
4 states TracFone will abide by any state requirements for eligibility verification.  
5 See Exhibit Staff/116 for the compliance plan.

6 **Q. IS THERE SOME DOUBT AS TO WHICH PROCEDURES TRACFONE**  
7 **WOULD FOLLOW?**

8 A. TracFone's application stated it would follow the Forbearance Order  
9 requirements and ask for a waiver of any conflicting state requirements.  
10 However, TracFone now agrees to follow the OTAP procedures for eligibility  
11 and verification. See Mr. Cray's testimony in Staff Exhibit 200 for a fuller  
12 discussion of this issue.

13 **Q. DOES TRACFONE ADDRESS HOW IT COMBATS THE POTENTIAL FOR**  
14 **WASTE, FRAUD AND ABUSE IN ITS APPLICATION OR TESTIMONY?**

15 A. TracFone does not address this issue in its application. However, on pages 32-  
16 33 of his testimony, Mr. Fuentes addresses this issue, albeit from a limited  
17 perspective. He states that "In the more than two years since TracFone  
18 commenced offering Lifeline service as an ETC, it has been able to effectively  
19 detect attempted fraud and to prevent waste, fraud and abuse of USF  
20 resources." No evidence is offered to support this contention. Mr. Fuentes  
21 identifies potential waste, fraud and abuse in only two respects. The first  
22 concerns validation of the identity and addresses of SafeLink applicants. To  
23 this issue, Mr. Fuentes states that "TracFone relies on a third-party vendor to

1 validate the identity and addresses of applicants included on SafeLink Wireless  
2 Lifeline service applications.” In response to Staff Data Request DR-44,  
3 TracFone identifies this “vendor” as a NexisLexis database to which TracFone  
4 subscribes. Specifically, TracFone states that “The database uses various  
5 public records to enable TracFone to verify that a person with the applicant’s  
6 name and Social Security Number lives at the address listed on the application  
7 and to confirm that the address is associated with a residential dwelling.” See  
8 Exhibit/Staff 120. Although the quality of data in such a database may be  
9 debatable, it is irrelevant if the Commission orders TracFone to follow OTAP’s  
10 eligibility and verification procedures.

11 The second aspect of potential fraud addressed by Mr. Fuentes relates to the  
12 resale of SafeLink phones and services that has actually occurred on the  
13 internet. Oregon Staff found these phones for sale on eBay and Craig’s List  
14 sites and reported them to the FCC.

15 **Q. WHAT DOES TRACFONE DO TO COMBAT THESE PROBLEMS?**

16 A. To the internet sale issue, Mr. Fuentes asserts that TracFone has a Loss  
17 Prevention department that monitors and searches the internet to “ensure” that  
18 SafeLink services are not used for resale or fraudulent purposes. Yet Oregon  
19 Staff found several of these phones for sale, apparently before TracFone’s  
20 Loss Prevention team did. In response to Staff Data Request DR-56, asking  
21 for information regarding the Loss Prevention Department (how many people,  
22 how often do they monitor, how many cases have been detected), TracFone  
23 objected to the questions based on irrelevancy and the highly confidential and

1 commercially sensitive nature of the information. It states that “TracFone’s  
2 decisions regarding the amount of resources it believes is necessary to prevent  
3 fraud relates to its business strategy and assessment of the risks of fraud.”

4 See Exhibit/Staff 121. Staff believes this information is important and relevant  
5 and is troubled by TracFone’s refusal to provide it. Perhaps the information  
6 would reveal inadequacies with TracFone’s loss prevention program. Further,  
7 it may be beneficial to TracFone to ignore the extent of the problem because it  
8 will continue receiving payments from the FUSF until the fraud is actually  
9 detected by someone.

10 **Q. WHAT ELSE DOES TRACFONE SAY ABOUT THIS ISSUE?**

11 A. TracFone continues by stating that “during the past year it has become aware  
12 of only a few instances of fraud related to the use if [sic] the SafeLink Wireless  
13 brand name or resale of SafeLink Wireless products out of its more than three  
14 million Lifeline customers.” TracFone states in response to Staff DR-55 that its  
15 Loss Prevention Department passes the suspected fraud cases along to the  
16 operations team “to investigate the status” of the customers. In response to  
17 Staff DR-51, TracFone states that the TracFone Lifeline operations  
18 department, which is located in Miami, has “approximately” fourteen  
19 employees. Staff is concerned whether 14 people are sufficient to perform the  
20 operations department functions and follow-up on fraud cases for almost 3  
21 million Lifeline customers. Furthermore, TracFone admits in its response to  
22 Staff DR-57 that TracFone has not conducted any internal audits of its Lifeline  
23 operations. See Exhibit/Staff 122 for these responses.

1 **Q. IS THERE ANY MECHANISM THAT COULD BE USED TO IDENTIFY**  
2 **PHONES THAT ARE NOT REPORTED AS LOST OR STOLEN, THAT ARE**  
3 **SOLD TO SOMEONE ELSE OR ARE NOT USED?**

4 A. The only way to tackle this problem is through the continuing verification  
5 process, and even that is not fool-proof. If a phone is sold, lost, or stolen and  
6 continues to be used by the new owner and not reported to TracFone, chances  
7 are good that the new owner will continue to receive service and TracFone will  
8 continue to be reimbursed from the fund. This is a problem particular to the  
9 “free” wireless service since the original (or the new) owner of the phone does  
10 not have to pay anything to continue the service. There appears to be no way  
11 of guarding against this, short of TracFone contacting each Lifeline customer at  
12 some regular interval to check that the phone is still in the proper hands. The  
13 Commission should adopt a condition to address this problem.

14 **Q. HAVE OTHER STATES ADOPTED ANY MECHANISMS TO ADDRESS**  
15 **THESE PROBLEMS?**

16 A. As a condition of TracFone’s ETC designation in its state, the Wisconsin  
17 Commission ordered TracFone to file a plan describing how it will “prevent  
18 reimbursement for Lifeline credits being paid to inactive customers or  
19 accounts.” See Wisconsin Order, page 11, included as Exhibit/Staff 123. The  
20 “non-usage” mechanism adopted requires TracFone to track usage on  
21 SafeLink phones and disconnect service and de-enroll the SafeLink customer if  
22 the phone has not been used for two months. Staff was aware of this practice  
23 through its contacts with staff at the Florida Commission, which also requires

1 TracFone to follow this practice. However, TracFone did not mention this  
2 procedure in its application or testimony, or initially offer to follow it in Oregon.  
3 In response to Staff DR-19 asking for more information on this procedure,  
4 TracFone stated that this “non-usage” policy has been implemented in every  
5 jurisdiction where TracFone offers Lifeline service as an ETC. See  
6 Exhibit/Staff 124. In response to further Staff inquiries (Staff DR-82), TracFone  
7 provided a description of the non-usage procedure it gave to the FCC on  
8 February 4 of this year. See Exhibit Staff/125.

9 **Q. HOW DOES THE NON-USAGE MECHANISM WORK?**

10 A. If a SafeLink customer shows no activity on his/her phone for two consecutive  
11 months, TracFone will deactivate the service. If the customer then tries to use  
12 the phone anytime within the following 30-day “grace period,” the call will be  
13 intercepted and routed to an Interactive Voice Response (IVR) system that  
14 advises the customer to contact TracFone. If there is no usage during the  
15 grace period, intercept will not occur, but the customer can still dial 911. If the  
16 customer advises TracFone during the grace period that they wish to continue  
17 Lifeline service, the service will be reinstated. In essence, this constitutes a  
18 three-month period for which TracFone can claim reimbursements for those  
19 customers who did not contact TracFone and were therefore not reinstated,  
20 even though the phone was never used during this time. If a non-TracFone  
21 wireless Lifeline customer does not use his/her phone for a month, the discount  
22 still flows through to the **customer** on his/her bill, and the customer still owes  
23 its own money for the remainder of the bill. In contrast, the entire subsidy for a

1 TracFone Lifeline customer flows to TracFone, with no customer benefit and no  
2 service rendered.

3 **Q. DID STAFF REQUEST DATA FROM TRACFONE TO DETERMINE THE**  
4 **EFFECTIVENESS OF THE NON-USAGE MECHANISM IN OTHER STATES?**

5 A. Yes. Staff asked TracFone for data on the number of SafeLink customers who  
6 had 2-month inactivity and were de-enrolled in all the states where TracFone  
7 was supposedly following this procedure. TracFone objected to the data  
8 request as irrelevant and “highly confidential and commercially sensitive.” See  
9 TracFone response to Staff DR-67 in Exhibit Staff/126. TracFone’s only  
10 statement aside from that was that it is required to submit quarterly reports to  
11 the Wisconsin Public Service Commission and the Ohio Public Utilities  
12 Commission. Information submitted in response to Staff DR-82 indicates that  
13 TracFone has submitted data to the FCC regarding the number and  
14 percentage of Lifeline customers who do not use their phones in a month, the  
15 number who were de-enrolled as a result, and the number who were  
16 subsequently re-enrolled. See Exhibit Staff/125 previously referenced. This  
17 information was filed under confidential cover. Staff did not have time prior to  
18 preparation of comments to request this particular data from TracFone.

19 **Q. IS OTHER DATA AVAILABLE?**

20 A. Although TracFone would not supply data revealing the results of non-usage  
21 tests done so far, data from Florida has been made available. In the second  
22 quarter of 2009, in Florida, over 21,000 customers (5.5% of the customer  
23 base), were removed due to 60-day inactivity. In the third quarter of 2009, over

1 33,000 (8%) were removed due to 60-day inactivity, 12,700 were removed due  
2 to failing to complete annual verification (3%), and almost 4300 (1%) were  
3 voluntarily removed. For just those two quarters, 71,500 customers were  
4 removed. At a per-customer monthly subsidy of \$10, this amounts to \$715,000  
5 per month or \$8.6 million per year – from just the state of Florida! Because  
6 TracFone can claim 3 months of support at a minimum, the non-usage policy  
7 still results in over \$2 million of FUSF support flowing to TracFone in Florida for  
8 no service rendered and no cost to TracFone. See Exhibit Staff/127.

9 All the problems inherent in TracFone's free Lifeline service are likely to be  
10 compounded, and the monetary consequences to the fund multiplied, as  
11 TracFone starts signing up people living in homeless shelters for TracFone's  
12 free Lifeline services.

13 **Q. SHOULD THE COMMISSION IMPOSE A NON-USAGE REQUIREMENT ON**  
14 **TRACFONE AS A CONDITION OF DESIGNATION?**

15 A. Yes. It is obvious that a non-usage condition must be placed on TracFone if it  
16 is to receive ETC designation in Oregon. TracFone should be required to file a  
17 plan for compliance with the condition, stating exactly how the condition will be  
18 implemented. TracFone should also be required to file monthly reports stating  
19 the results.

20  
21 **ISSUE V.D. What are the specific advantages and disadvantages of**  
22 **TracFone's Lifeline/OTAP offering(s)?**

23 **Q. WHAT ARE THE ADVANTAGES OF SAFELINK SERVICE?**

1 A. Safelink service provides the same advantages of wireless services as other  
2 wireless ETCs provide, most significantly mobility. Because customers receive  
3 service at no cost, there are no issues of contracts or credit checks.

4 **Q. DID TRACFONE IDENTIFY ANY DISADVANTAGES OF ITS LIFELINE**  
5 **SERVICE OFFERING?**

6 A. No, it did not.

7 **Q. CAN YOU IDENTIFY ANY DISADVANTAGES OF TRACFONE'S PROPOSED**  
8 **LIFELINE OFFERINGS?**

9 A. Yes, I can offer several serious disadvantages. First, TracFone proposes only  
10 one Lifeline offering, contrary to OAR 860-033-0010. TracFone proposes to  
11 offer only the SafeLink Lifeline service, even though it has other non-Lifeline  
12 offers such Net10 and two varieties of Straight Talk. This severely limits  
13 customer choice. There is no reason why low-income customers should be  
14 denied subsidy on TracFone's cheaper or higher-value offerings. This issue is  
15 addressed fully in Jon Cray's testimony so I will not address it further here.

16 Second, the lack of a local presence for customer care is a significant  
17 drawback, particularly because the target population is low-income consumers.  
18 Other ETCs have direct contact with their customers through walk-in centers or  
19 company stores. TracFone has no local presence for Lifeline customer service  
20 anywhere in the state. The FCC has determined that TracFone's Lifeline  
21 customers must deal directly with TracFone (not its retailers) for Lifeline  
22 services. But TracFone's service center is in Miami, Florida. Customers must  
23 deal with them by phone, fax or internet. Further, it appears that most of the



1 information customers need (applications, coverage maps, terms and  
2 conditions, etc.) is primarily available only on the website. This requires  
3 internet access, which is not prevalent among the low-income population.

4 Third, free minutes can be used for international calling to 60 countries and  
5 for texting. TracFone advertises the ability to call internationally as an  
6 advantage of SafeLink. But use of FUSF support for these purposes violates  
7 the support rules. FUSF support is to be used for local calling services and  
8 **access** to long distance calling, **not** for the long distance call through to a  
9 foreign destination. If a customer uses all his/her free minutes for international  
10 calling, the Lifeline support funds are misused and not used for the purpose  
11 intended by the Act.

12 **Q. WHAT IS THE MOST SIGNIFICANT DISADVANTAGE OF TRACFONE'S**  
13 **PROPOSED SAFELINK OFFER?**

14 A. The most significant disadvantage to the proposed SafeLink offer is that it does  
15 not deliver the maximum value to the Lifeline customer who receives it or to all  
16 the other phone service consumers who must contribute to the FUSF to pay for  
17 it. Neither party gets their "ten dollars worth." Lifeline customers should  
18 receive more than the 68 free minutes that TracFone proposes, and a rate  
19 lower than 20 cents on additional minutes that they purchase.

20 **Q. WHY SHOULD THE FREE MONTHLY ALLOTMENT OF MINUTES BE**  
21 **GREATER THAN THE 68 TRACFONE PROPOSES?**

22 A. There are at least four reasons. First, it is based on a per-minute rate of 20  
23 cents that is high relative to other service offerings. TracFone's own NET10

1 offer is based on half that amount – 10 cents per minute. At 10 cents per  
2 minute, a monthly support payment of \$10 from the FUSF plus \$3.50 from  
3 TracFone would yield 136 free minutes – double the SafeLink offer. Second,  
4 for the same \$10 of monthly FUSF support, Virgin Mobile offers its Lifeline  
5 service a monthly allotment of 200 minutes. See Exhibit/Staff 128. Oregon’s  
6 low-income consumers should not be given a lesser benefit simply because  
7 Virgin Mobile has not yet applied for ETC status here.

8 **Q. WHAT IS THE THIRD REASON?**

9 A. For the same \$10 of monthly subsidy or less, TracFone offers more than 68  
10 minutes to SafeLink customers in other states. TracFone informed the Florida  
11 Commission on June 25 that it will increase the allotment of free minutes to  
12 SafeLink customers in that state to 150 minutes. See Exhibit Staff/129. In  
13 response to Staff DR-94, TracFone states that it is “testing” different amounts  
14 of airtime minutes and is offering the following number of minutes to Lifeline  
15 customers on a “promotional basis”: Alabama – 120, Florida – 150, Illinois –  
16 200, and Louisiana – 250.” See Exhibit Staff/130.

17 **Q. WHAT IS THE FOURTH REASON?**

18 A. The average household requires far more than 68 minutes of calling per month,  
19 which is the equivalent of barely two minutes per day. TracFone’s “Fact Sheet”  
20 shows that the average prepaid wireless customer uses around 200 minutes  
21 per month. See Exhibit Staff/131. One study of low-income consumers found  
22 that they need at least 300 minutes per month to perform routine activities.  
23 See Exhibit Staff/132. NASUCA recommends that the FCC adopt a minimum

1 number of monthly minutes to ensure adequate value to prepaid wireless  
2 carriers from Lifeline services. See Exhibit Staff/133.

3 **Q. WHY SHOULD THE COST OF AN ADDITIONAL MINUTE BE LESS THAN 20**  
4 **CENTS?**

5 A. First, as stated above, 20 cents per minute is high relative to other service  
6 offerings. Low additional minute rates are critical for low-income consumers.  
7 Second, TracFone has agreed to offer additional minutes at 10 cents per  
8 minute for SafeLink customers in several other states, including Washington  
9 and South Carolina.

10 **Q. WHY SHOULD CONSUMERS WHO PAY TO SUPPORT THE FUSF CARE**  
11 **ABOUT HOW MANY FREE MINUTES A LIFELINE CUSTOMER RECEIVES?**

12 A. As with any subsidy program, the people who must pay for the program are  
13 better off when their contributions yield the maximum benefits to the  
14 beneficiaries of the program. Their dollars are being used to deliver the  
15 most useful services possible. They get more “bang” for their ten bucks. The  
16 full benefits of their contributions are passed to Lifeline consumers rather than  
17 to the company providing the Lifeline service. One analyst estimated that  
18 services like TracFone's costs \$3 per person per month to provide, yet  
19 TracFone receives \$10 per month for that service from the FUSF. See Exhibit  
20 Staff/134. As the fund size increases, and customers are forced to pay more  
21 into the fund, it is especially important that the funds are used to the maximum  
22 benefits of all.

1 **Q. DO YOU HAVE ANY RECOMMENDATIONS REGARDING TRACFONE'S**  
2 **LIFELINE OFFERINGS BASED ON THE DISCUSSION ABOVE?**

3 A. Yes, I recommend several conditions be placed on TracFone relative to its  
4 Lifeline offerings if it wishes to receive ETC designation in Oregon. The  
5 Commission should not designate TracFone as an ETC in Oregon unless  
6 TracFone agrees to:

- 7 • Provide the highest free minute allotment that TracFone offers in any state  
8 (trial or otherwise), but not less than 200 minutes, in its SafeLink offering
- 9 • Provide the lowest additional minute rate that TracFone offers in any state,  
10 but no more than 10 cents per minute, to SafeLink customers
- 11 • Modify the SafeLink free minute allotment and additional minute rate quarterly  
12 if better offers are made available in other states
- 13 • Offer a Lifeline discount on other services TracFone offers, e.g., NET10 and  
14 Straight Talk; designation would not be effective until TracFone is actually  
15 able to offer the discounts on these services
- 16 • Offer Tribal Lifeline service at a level of minutes that reflects the higher level  
17 of federal support available.

18  
19 **ISSUE V. E. Will TracFone's designation result in creamskimming in the rural**

20 **ILEC areas in which it seeks designation?**

21 **Q. PLEASE EXPLAIN CREAMSKIMMING AND ITS RELEVANCE AS AN**  
22 **ISSUE.**

1 A. The FCC requires a creamskimming test when a competitive carrier seeks ETC  
2 designation in only a portion of a rural ILEC's study area. See FCC 05-46,  
3 pages 22-25, included is Exhibit Staff/135. The creamskimming test is to  
4 ensure that the competitive ETC will not serve a disproportionate share of the  
5 rural ILEC's high-density, low-cost areas, while receiving support that the ILEC  
6 has averaged across its entire study area. If a state designates a non-ILEC  
7 ETC in only a portion of a rural ILEC's study area, a petition must be submitted  
8 to the FCC for "redefinition" of that study area before the state's ETC  
9 designation can become effective.

10 **Q. IS TRACFONE REQUESTING DESIGNATION IN ONLY A PORTION OF ANY**  
11 **RURAL ILEC'S STUDY AREA?**

12 A. In testimony on pages 31-32, Mr. Fuentes states "TracFone does not propose  
13 to serve less than an entire study area of any rural ILEC, so creamskimming is  
14 not an issue in this proceeding." But at the end of the same paragraph, he  
15 states that "TracFone can provide Lifeline service only wherever its underlying  
16 vendors have coverage. If its underlying vendors do not have coverage, it  
17 cannot provide service." Yet, as discussed under Issue I, TracFone has still  
18 not clearly defined its proposed designated service area, i.e., where it **can**  
19 provide service. If TracFone proposes designation throughout all rural ILEC  
20 service areas, and is indeed able to provide wireless signal throughout those  
21 areas, there is no issue. However, if TracFone proposes to include only a  
22 portion of a rural ILECs' study area, there may be a creamskimming issue.

1 **Q. DOES THE CREAMSKIMMING ISSUE APPLY TO AN ETC SEEKING ONLY**  
2 **LOW-INCOME, AND NOT HIGH-COST, SUPPORT?**

3 A. The answer is not clear, as evidenced by petitions for forbearance from the  
4 creamskiimming test filed by two wireless carriers seeking ETC designation for  
5 low-income support only. Those carriers are NTCH, Inc. and Cricket  
6 Communications, Inc. Their petitions are included as Exhibits Staff/136 and  
7 Staff/137, respectively.

8 **Q. DID TRACFONE FILE COMMENTS ON THE RECENT CRICKET PETITION?**

9 A. Yes, it did. The filing is included as Exhibit Staff/138. TracFone filed in support  
10 of the petition. It noted that “Some states have included as issues in the ETC  
11 proceedings whether TracFone must provide a cream skimming analysis.”  
12 Using Oregon as an example, TracFone asserts at pages 3-4 that staff’s “need  
13 for a cream skimming analysis in these circumstances is unexplained and  
14 unexplainable.” From this statement, TracFone proceeds to then incorrectly tie  
15 the requirements for coverage maps and wire center lists (Issue I) to the  
16 creamskiimming issue and imply that Oregon and Indiana are imposing  
17 unreasonable requirements on TracFone. This is curious as the requirements  
18 for maps came directly from the FCC’s recommendations to impose stricter  
19 requirements for ETC designation. The maps were not intended to be used for  
20 a creamskiimming test.

21 **Q. WHAT DO YOU RECOMMEND REGARDING THIS ISSUE?**

1 A. The issue can be put aside until TracFone determines exactly where it seeks  
2 designation. An FCC decision may be forthcoming that will clarify whether the  
3 FCC requires a creamskimming test for low-income-only ETC applicants.  
4

5 **ISSUE V.F. What are the potential impacts of TracFone's designation on**  
6 **ILECs and other designated ETCs in the state?**

7  
8 **Q. DOES TRACFONE ADDRESS THIS ISSUE?**

9 A. On pages 30-31 of his testimony, Mr. Fuentes states that TracFone "expects to  
10 substantially increase the Lifeline participation rate in Oregon. However, given  
11 that at least 80 percent of qualified households are not receiving Lifeline  
12 benefits, there is a significant number of qualified households that no current  
13 ETC is serving. Therefore, while the current ETCs will have to compete for  
14 Lifeline customers with another ETC if TracFone commences Lifeline service in  
15 Oregon, they will not necessarily lose any current Lifeline customers."

16 **Q. DO YOU AGREE?**

17 A. It appears very likely based on TracFone's success in other states, that its free  
18 Lifeline offering will appeal to many low-income consumers. Some of those  
19 may decide to switch their current Lifeline credit from an existing ILEC wireline  
20 phone to TracFone's free mobile offer while still retaining their wireline service.  
21 This is likely given the low monthly allotment of minutes on TracFone's  
22 SafeLink service and an entire household's need for many more minutes of  
23 calling per month. Consumers who currently use their Lifeline discounts for

1 services from wireless ETCs may, or may not, decide to switch Lifeline  
2 providers. It is reasonable to assume that high-usage wireless Lifeline  
3 customers may prefer to stay with current Lifeline plans that offer more usage.  
4 Other consumers who currently have no Lifeline service are likely to jump at  
5 the opportunity to get free cell phone service from TracFone. Since TracFone  
6 already has a large base of low-income customers, TracFone will likely be  
7 successful in converting many of them to the free service. Finally, TracFone  
8 will likely have an advantage over other Lifeline providers who charge for their  
9 Lifeline service.

10 **Q. COULD THE CUSTOMERS OF ILECS AND OTHER ETCS BE IMPACTED**  
11 **UNFAVORABLY?**

12 A. These customers may bear the burden of TracFone's designation if it leads to  
13 increased costs for 911 and OTAP services. While the new SafeLink  
14 customers will benefit from these services, they will not pay to support them.  
15 Neither will TracFone's non-Lifeline customers. Additionally, service levels for  
16 both 911 and OTAP may be negatively impacted depending on the number of  
17 new telephone subscribers TracFone adds to the existing ones.

18  
19 **ISSUE V.G. What are the anticipated impacts of TracFone's designation on**  
20 **the federal universal service fund?**

21 **Q. DOES TRACFONE ADDRESS THIS ISSUE IN ITS APPLICATION OR**  
22 **TESTIMONY?**



1 A. Yes. In its application on pages 24-25, TracFone refers to the FCC's order first  
2 designating TracFone as an ETC in several states and the District of Columbia.  
3 In that order, the FCC forecasted that the impact of TracFone's designation on  
4 the FUSF will be "negligible."

5 **Q. WAS THE FCC FORECAST ACCURATE?**

6 A. In barely two years since the order was issued and TracFone started offering its  
7 Lifeline service, TracFone has dramatically increased its draw on the fund from  
8 \$0 to **\$332 million** per year based on annualized 1Q2010 disbursement data  
9 available on the USAC website. TracFone has yet to offer Lifeline service in  
10 several states, such as California, and it has only begun offering its services to  
11 homeless shelter residents. Largely as a result of TracFone and other Lifeline-  
12 only providers, the low-income portion of the FUSF has grown from \$822  
13 million in 2008 to \$1.2 billion annualized based on 2010 first quarter  
14 disbursements. **In the first quarter of 2010, over one-fourth of the total**  
15 **low-income funds went to TracFone.** By the end of 2009, TracFone  
16 surpassed the ILECs in the states of New Hampshire, Massachusetts,  
17 Michigan, Delaware, Maryland, Virginia, West Virginia, North Carolina,  
18 Tennessee, Alabama, Georgia and Florida as the ETC with the most Lifeline  
19 customers in the state. Obviously, the FCC was very wrong in its predictions!

20 **Q. DID TRACFONE SUPPLY ANY FORECASTS OF HOW MANY LIFELINE**  
21 **SUBSCRIBERS IT EXPECTS TO GAIN IF IT RECEIVES ETC DESIGNATION**  
22 **IN OREGON?**

1 A. Although asked, TracFone objected to data requests for information regarding  
2 its forecasts for gaining Lifeline customers in Oregon. CUB asked TracFone  
3 how many subscribers it currently has in Oregon in CUB DR-4, but TracFone  
4 refused to answer on the basis that the information is irrelevant and beyond the  
5 jurisdiction of the Commission, despite the fact that such information is  
6 required on the OTAP application which TracFone filed as confidential. In CUB  
7 DR-5, CUB asked TracFone for a forecast of customers it expects to add as a  
8 result of ETC designation in Oregon and TracFone's response was that it has  
9 not developed a forecast. In CUB DR-6, CUB asked TracFone what  
10 percentage of the total Oregon customer base TracFone forecasts to be likely  
11 participating in Lifeline. TracFone replied that is has not developed such a  
12 forecast, but "it is hopeful that it will be able to increase the level of Lifeline  
13 participation by qualified low-income Oregon households above the 10.7  
14 percent level contained in Federal Communications Commission data." This is  
15 non-responsive. See Exhibit Staff/139 for these data request responses.

16 **Q. SINCE TRACFONE WILL NOT SUPPLY ANY FORECASTS, CAN STAFF**  
17 **PRODUCE AN ESTIMATE OF THE LIKELY IMPACTS?**

18 A. At the end of 2009, there were 49,500 OTAP recipients out of an estimated  
19 354,000 eligible households. In Tennessee, Virginia and Florida, TracFone  
20 doubled the number of Lifeline subscribers in each state. See TracFone/1,  
21 Fuentes/30. If TracFone does the same in Oregon, it will obtain approximately  
22 49,500 new Lifeline customers. In so doing, it will increase FUSF support  
23 requirements by almost \$6 million annually. If TracFone captures half of all

1 eligible households in Oregon currently without Lifeline assistance (152,000  
2 households), it will increase FUSF requirements by \$18 million annually.

3 **Q. WHY SHOULD THE COMMISSION BE CONCERNED ABOUT THE IMPACTS**  
4 **OF TRACFONE'S DESIGNATION ON THE FEDERAL FUND?**

5 A. Although TracFone is drawing its money from the federal (not state) fund, all  
6 telephone consumers, including those in Oregon, pay into the federal fund to  
7 finance the support it receives. As the fund grows so do the associated costs  
8 of waste, fraud and abuse. If the Commission designates TracFone in Oregon,  
9 it must ensure that the best safeguards are in place here to minimize such  
10 costs, and that Oregon low-income consumers receive a TracFone Lifeline  
11 offering that is no less valuable than that offered by TracFone in other states.  
12 While the FCC bears the ultimate responsibility of what happens to the federal  
13 fund, each state should do its part to ensure that such funds are put to the best  
14 use in assisting low-income consumers. Indeed, Commissioner Philip Jones of  
15 the Washington Commission stated in his dissenting opinion against  
16 TracFone's petition for ETC designation in Washington State that: "The  
17 process for designating ETCs, as well as the oversight and management of the  
18 use of federal universal service subsidies, is a shared responsibility between  
19 the FCC and state commissions." See Exhibit Staff/140.

20  
21 **ISSUE V.H. What are the anticipated impacts of TracFone's designation on**  
22 **the Oregon Telephone Assistance Program (OTAP) related to fund size,**  
23 **administrative resource requirements, etc.?**

1 **Q. ARE THE IMPACTS ON THE OTAP LIKELY TO BE SIGNIFICANT?**

2 A. Staff witness Jon Cray addresses this issue in his testimony. See Staff Exhibit  
3 200. Depending on the number of qualifying low-income customers that  
4 request TracFone's Lifeline service, the impacts on the OTAP could be  
5 significant. If TracFone's SafeLink offer were to double the number of Lifeline  
6 subscribers in Oregon, as it did in several other states, the administrative  
7 resources needed would double, and costs of the program would rise  
8 substantially.

9

10 **ISSUE V.L. Are there any other public interest issues that should be**

11 **considered?**

12 **Q. DO YOU HAVE ANY FURTHER PUBLIC INTEREST ISSUES TO**  
13 **ADDRESS?**

14 A. No, not at this time. However, if other parties raise additional issues, I will  
15 comment on those in rebuttal testimony.

16

17 **Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?**

18 A. Yes.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 101**

**Witness Qualification Statement**

**August 3, 2010**

**WITNESS QUALIFICATION STATEMENT**

NAME: Kay Marinos  
EMPLOYER: Public Utility Commission of Oregon  
TITLE: Program Manager, Competitive Issues  
ADDRESS: 550 Capitol St NE Suite 215  
Salem, Oregon 97301-2551  
EDUCATION: PhD/ABD and MA in Economics  
University of Hawaii, 1981  
BA in Economics  
Hofstra University, 1975

**PROFESSIONAL EXPERIENCE:**

Program Manager, Competitive Issues, Public Utility Commission of Oregon, 2008  
– Present  
Manage group responsible for competitive issues,

Senior Telecommunications Analyst, Public Utility Commission of Oregon, 2004 -  
Present

Senior Consultant, Verizon Communications, 2000 -2003  
Managed special project teams to ensure compliance with regulatory and legal requirements in various aspects of national telecommunications business, including new product development, interconnection, proprietary information and billing.

Senior Specialist, Bell Atlantic & NYNEX, 1988 - 2000  
As subject matter expert, performed wide range of analytic functions to develop and support company's objectives in federal regulatory proceedings. Major issues included Telecom Act implementation, competitive markets, interconnection, pricing flexibility, price caps, rate restructuring, cost recovery, and cost allocation.

Manager, National Exchange Carrier Association, 1984 -1988  
Managed development of telecom industry forecasts of interstate usage and dedicated access services used to determine nationwide carrier pool rates.

Business Research Analyst, GTE Hawaiian Telephone, 1982 - 1983  
Developed revenue and demand forecasts for budgeting and network planning.

Economist & Planner, State of Hawaii, 1978 – 1982

Managed energy conservation and emergency planning projects, lectured in economics at the University of Hawaii, and supervised economic and demographic studies for urban redevelopment in industrial area of Honolulu.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 102**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**



**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1217

In the Matter of )  
)  
PUBLIC UTILITY COMMISSION OF )  
OREGON )  
)  
Staff Investigation to Establish )  
Requirements for Initial Designation and )  
Recertification of Telecommunications )  
Carriers Eligible to Receive Federal )  
Universal Service Support. )

ORDER

**DISPOSITION: REQUIREMENTS ESTABLISHED**

In this docket, the Public Utility Commission of Oregon (Commission) considered the requirements that must be met by carriers seeking certification and recertification as Eligible Telecommunications Carriers (ETCs). After careful consideration of the testimony and briefs in this case, as well as decisions of the Federal Communications Commission (FCC), the Commission establishes the ETC requirements as set forth in this order, and as specified in Appendix A to this order.

**Background**

The Telecommunications Act of 1996 (the Act) provides for the designation of carriers eligible to receive Universal Service Fund (USF) support. *See* 47 USC § 214(e). USF support is designed to promote quality services at just, reasonable, and affordable rates; access to advanced telecommunications and information services; access to services in rural areas comparable to services in urban areas; and other policies as are developed over time. *See* 47 USC § 254(b). Universal service is further defined as “an evolving level of telecommunications services.” 47 USC § 254(c)(1). Designated ETCs are eligible to receive USF support, but must “use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 USC § 254(e).

An ETC that is an incumbent local exchange carrier (ILEC) receives USF support based the cost of providing supported services. A competitive ETC (CETC) only receives USF support for customers that it serves in areas where USF support is distributed to ILEC ETCs. *See* 47 CFR § 54.307(a). The ETC can offer services, either using its own facilities or through a combination of its own facilities and resale of another

**Initial Designation – Application Requirements (Issues II.A., II. B. 1 &2)**

Requirements apply to all applicants (wireline and wireless) in all ILEC service areas (rural and non-rural) regardless of type of federal universal service support sought unless specifically noted.

1. Common carrier status

- 1.1. Demonstration of the applicant's common carrier status.
- 1.2. Description of the general types of services and geographic area for which the applicant is authorized in the state of Oregon.

2. Commitment and ability to provide all supported services

- 2.1. Statement of commitment to offer all required supported services and description of each supported service currently offered (voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers).
- 2.2. Identification of any required supported services that are not currently offered, and an explanation of when and how such services will be made available.
- 2.3. Identification and description of each of applicant's service offerings (e.g., calling plans) that will qualify for federal universal service support (the name the plan is marketed under, the number of minutes and included calling area, and the price).
- 2.4. Demonstration that the applicant offers a local usage plan that is comparable to the basic local service offerings of the ILEC in the proposed designated service area.
- 2.5. Acknowledgment that applicant may be required to provide equal access if it is the only remaining ETC in an area (non-LEC applicants only).

3. Commitment and ability to provide supported services throughout the designated service area

- 3.1. Explicit identification of the proposed designated service area through:
  - 3.1.1. Map showing applicant's licensed area boundaries and its requested designated service area boundaries overlaid on the boundaries of all ILEC wire centers it proposes to include in its designated service area, and
  - 3.1.2. List of ILEC wire centers (by ILEC name, wire center name and CLLI code), with indications for each wire center, whether it will be fully or partially included in the ETC's proposed designated service area.
- 3.2. Commitment to offer supported services throughout the proposed service area and to provide service to all customers consistent with the requirements of 47 CFR Section 54.202(a)(1)(i). This section of the FCC rules includes the six-step process that must be used when service is requested within the applicant's designated service area, but outside its existing network coverage.

4. Types of facilities used to offer supported services
  - 4.1. Description of types of network facilities currently used to provide service.
  - 4.2. Map showing extent of current network coverage and, for wireless applicants, signal strengths.
  - 4.3. Identification of current relevant resale or interconnection agreements.
  
5. Commitment to use support funds only for the intended purposes
  - 5.1. Affidavit, signed by responsible corporate officer, certifying that support funds received pursuant to 47 C.F.R. Part 54, Subpart D, and Part 36, Subpart F, will be used only for the intended purposes.
  - 5.2. Copy of certification required by FCC pursuant to 47 C.F.R. Subpart 54.809 to receive Interstate Access Support, or pursuant to 47 C.F.R. Subpart 54.904 to receive Interstate Common Line Support.
  - 5.3. Formal network improvement plan demonstrating how applicant will use support funds (all federal support types except low-income support).
    - 5.3.1. Detailed plan covering each of first 2 years of designation.
      - 5.3.1.1. Current counts of eligible lines/handsets in service in each ILEC wire center with disaggregated per-line support, and in each ILEC study area where support is averaged, by residence, single-line business, and multi-line business categories.
      - 5.3.1.2. Forecast of support amount, by type other than low-income, and by ILEC service area, that the applicant expects to receive, as well as an explanation of how the forecast was derived.
      - 5.3.1.3. Detailed information for each project that will use support funds:
        - 5.3.1.3.1. Description and purpose of the project, its physical location and the ILEC serving that area.
        - 5.3.1.3.2. The start date and completion data (by quarter).
        - 5.3.1.3.3. Amount of support money allocated to the project, in total and broken down by investment and expense types.
        - 5.3.1.3.4. The amount of company's own funds that will be used for each supported project.
        - 5.3.1.3.5. Brief explanation of why the carrier would not make these improvements without the availability of support funding.
        - 5.3.1.3.6. Quantification of resulting service improvements by type (increased coverage, signal strength, capacity, etc.), population benefited, and geographic area benefited (shown on map).
    - 5.3.2. Overview plan for years 3-5, consisting of descriptions of how applicant plans to expand or improve services 3-5 years into future, using its own money and future support funds. This is a higher level plan to share the applicant's vision and objectives for its operations in Oregon.

6. Commitment to advertise supported services throughout the service area
  - 6.1. Statement of commitment to advertise supported services throughout the service area.
  - 6.2. Brief description of advertising plans for supported services (excluding low-income service offerings).
7. Commitment to offer and advertise Lifeline, Link Up, and OTAP services
  - 7.1. Statement of commitment to offer and advertise required low-income services.
  - 7.2. Identification and description of specific services that will be offered to qualifying low-income customers.
  - 7.3. Description of advertising plans designed to reach the target low-income population.
8. Ability to remain functional in emergencies
  - 8.1. Demonstration of ability to remain functional in emergencies specifically addressing:
    - 8.1.1. Amount of backup power available.
    - 8.1.2. Ability to reroute traffic around damaged facilities.
    - 8.1.3. Ability to manage traffic spikes during emergency periods.
  - 8.2. Description of current status of E911 deployment and compliance; if full deployment has not been attained, describe plans to achieve full deployment.
9. Commitment to meet service quality and consumer protection standards
  - 9.1. Commitment to specific, objective measures for service quality and consumer protection, e.g., the CTIA Consumer Code for wireless carriers or the applicable Commission rules for wireline carriers.
  - 9.2. Commitment to resolve complaints received by PUC, and designation of specific contact person to work with PUC's Consumer Services Division for complaint resolution.
10. Public interest showing
  - 10.1. Demonstration that designation would be in the public interest; this must address:
    - 10.1.1. Specific ways in which consumer choices will be increased.
    - 10.1.2. Specific advantages and disadvantages of applicant's service offerings.
    - 10.1.3. Any other specific criteria determined by the Commission.
  - 10.2. Creamskimming analysis for cases in which the applicant's proposed designated service area will not include the entire study area of a rural ILEC.

**Annual Recertification Requirements (Issue II.A.)**

Requirements apply to all applicants (wireline and wireless) in all ILEC service areas (rural and non-rural) regardless of type of federal universal service support received unless specifically noted.

1. Supported services offerings
  - 1.1. Local usage plans: Identification of basic local usage plan offerings, including each offering's name, advertised public description, number of local minutes included, calling area, and rates. ETCs that file tariffs for basic local service offerings can meet this requirement by providing specific tariff references.
  - 1.2. CETCs only: status report on provision of supported services that were not available at designation (e.g., toll restriction for qualifying low-income consumers).
  - 1.3. CETCs only: acknowledgment that carrier may be required to provide equal access if it is the only remaining ETC in an area. This is a one-time requirement and does not apply if the CETC provided such acknowledgment at initial designation.
  
2. Provision of supported services throughout the designated service area
  - 2.1. Report on the number of unfulfilled service requests.
    - 2.1.1. Wireless carriers: report on number of unfulfilled service requests during past calendar year, noting location of each such request, and description of ETC's attempts to provide service; a brief description of how the ETC ensures that every request for service that cannot be immediately fulfilled is recorded and processed further under the 6-step process set forth in 47 C.F.R. Section 54.202(a)(1)(i).
    - 2.1.2. Wireline carriers that file service quality reports to the PUC: reference reports filed for primary held orders over 30 days.
    - 2.1.3. Wireline carriers that do not file service quality reports to the PUC: report conforming to requirements in either 2.1.1. or 2.1.2. above.
  
3. Advertisement of supported services throughout the service area
  - 3.1. Demonstration that supported service offerings (excluding low-income offerings) were advertised during the past calendar year throughout all geographic areas in the state where the carrier is designated as an ETC. This demonstration should identify the types of media used (e.g., newspaper, radio, internet) and the general frequency of advertising for supported services. It should also include examples of actual advertisements for supported services (noting dates, specific distribution methods, and target geographical populations) sufficient to demonstrate the geographical extent of the ETC's advertising during the past year.
  
4. Offering and advertisement of Lifeline, Link Up, and OTAP services
  - 4.1. Report on the number of customers in the Lifeline program, by ILEC study area, during December of the previous calendar year.

- 4.2. Brief description of how and where low-income program service offerings were advertised.
  - 4.3. Copies of all actual advertisements for Lifeline, Link Up, and OTAP service offerings that were run during the previous calendar year. These may include newspaper advertisements, radio announcements, pamphlet distributions, website postings, etc.
5. Ability to remain functional in emergencies
- 5.1. Statement certifying that ETC is able to remain functional in emergencies.
  - 5.2. Outage report:
    - 5.2.1. Wireless ETCs: annual outage report consistent with definitions and details in 47 C.F.R. § 54.209(a)(2).
    - 5.2.2. Wireline ETCs subject to PUC outage reporting requirement: reference to PUC outage reporting requirement, with indication of whether any reports were filed during previous calendar year.
    - 5.2.3. Other ETCs: annual outage report conforming to requirements in either 5.2.1. or 5.2.2. above.
  - 5.3. CETCs only: E911 implementation status if not complete at time of application.
6. Commitment to service quality and consumer protection
- 6.1. Statement certifying compliance with specific, objective measures for service quality and consumer protection, e.g., the CTIA Consumer Code for wireless ETCs or applicable Commission rules for wireline ETCs.
  - 6.2. Trouble report:
    - 6.2.1. Wireless ETCs: annual report of troubles per 100 handsets, by wireless switch, experienced by customers of the ETC within the designated service area. Troubles should be categorized into 4 general types: no service, network busy, interruption of service, and poor reception. If the ETC cannot report by the 4 categories listed, it should obtain Staff's approval for any different categorizations prior to filing.
    - 6.2.2. Wireline ETCs that file PUC trouble reports: reference filed trouble reports.
    - 6.2.3. Other ETCs: submit annual trouble report conforming to requirements in either 6.2.1. or 6.2.2. above.
7. Use of support funds
- 7.1. Affidavit, signed by responsible corporate officer, certifying that support funds received pursuant to 47 C.F.R. Part 54, Subpart D, and Part 36, Subpart F, will be used only for the intended purposes.
  - 7.2. Copy of most recent certification submitted to FCC pursuant to 47 C.F.R. Subpart 54.809 for Interstate Access Support, or pursuant to 47 C.F.R. Subpart 54.904 for Interstate Common Line Support.
  - 7.3. CETCs only: Network improvement plan update consisting of:
    - 7.3.1. Demonstration of use of support funds (other than low-income funds) received during previous calendar year, including:
      - 7.3.1.1. The amount of support funds, by type, received during the year.

- 7.3.1.2. Year-end counts of eligible lines/handsets in service for each ILEC service area as they were reported to USAC for the past December.
- 7.3.1.2. Identification of each project for which the support was used, the actual support expenditures (by amount and type) for each project, and status of project (completed or still in progress).
- 7.3.1.3. The resulting benefits to consumers (qualitative and quantitative) from each project and updates to coverage and signal strength maps.
- 7.3.1.4. Explanation of how and why actual spending of support funds differed from spending proposed in the previous network improvement plan.
- 7.3.2. Updates to network improvement plan for the current calendar year and the following year:
  - 7.3.2.1. Forecast of support amount, by type (LSS, HCL, ICLS, IAS), that the applicant expects to receive during each of the next 2 years, as well as an explanation of how the forecast was derived.
  - 7.3.2.2. Detailed information for each project that will use support funds:
    - 7.3.2.2.1. Description and purpose of the project, its physical location and the ILEC serving that area.
    - 7.3.2.2.2. The start date and completion data (by quarter).
    - 7.3.2.2.3. Amount of support money allocated to the project, in total and broken down by investment and expense types.
    - 7.3.2.2.4. The amount of company's own funds that will be used for each supported project.
    - 7.3.2.2.5. Brief explanation of why the carrier would not make these improvements without the availability of support funding.
    - 7.3.2.2.6. Quantification of resulting service improvements by type (increased coverage, signal strength, capacity, etc.), population benefited, and geographic area benefited (shown on map).

8. Public interest factors

- 8.1. Report on any special commitments or requirements imposed at initial designation or during the previous annual recertification process.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 103**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**



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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition of TracFone Wireless, Inc. for	)	
Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47	)	
C.F.R. § 54.201(i)	)	

**ORDER**

**Adopted: September 6, 2005**

**Released: September 8, 2005**

By the Commission: Commissioner Abernathy issuing a statement.

**I. INTRODUCTION**

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

**II. BACKGROUND**

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

<sup>1</sup> TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004 (Forbearance Petition or Petition). On February 17, 2005, pursuant to section 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until September 6, 2005, the date on which TracFone's Petition shall be deemed granted in the absence of a Commission decision that the Petition fails to meet the standard for forbearance under section 10(a). *TracFone Wireless, Inc.'s Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 3677 (2005).

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

<sup>3</sup> 47 U.S.C. § 214(e).

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

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

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

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

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

<sup>6</sup> TracFone has eight ETC petitions pending before the Commission. *See* TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed June 8, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed June 21, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed June 21, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45, filed November 9, 2004.

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

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

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

<sup>10</sup> 47 U.S.C. § 254(e).

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

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

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<sup>11</sup> 47 U.S.C. § 214(e)(1)(A).

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

<sup>13</sup> 47 C.F.R. §§ 54.401, 54.411.

<sup>14</sup> See 47 C.F.R. § 54.401(a)(2).

<sup>15</sup> See 47 C.F.R. § 54.411(a)(1).

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

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

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

### III. DISCUSSION

6. For the reasons provided below, we conditionally grant TracFone's Petition and forbear from section 214(e) of the Act and sections 54.201(d)(1) and 54.201(i) of our rules for the purpose of considering its Petitions for ETC Designation for Lifeline support only.<sup>23</sup> If ultimately granted ETC status, TracFone will be eligible only for Lifeline support. As a limited ETC, TracFone would not be eligible to receive support for the other supported services under the low-income program nor would it be eligible, as an ETC, to receive support for services supported by the other universal support mechanisms.<sup>24</sup> We will address TracFone's petitions for ETC designation in subsequent orders. In sum, this grant is conditional on TracFone (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides it provides Lifeline service; (d) obtaining a certification from each Public Safety

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

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

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

<sup>21</sup> *Id.* at 8875-6, para. 179.

<sup>22</sup> *Id.*

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

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

Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) requiring its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.<sup>25</sup> Finally, as explained below, within thirty days of the release of this Order, we require TracFone to file with the Commission a plan outlining the measures it will take to implement these conditions.

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

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

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

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

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

<sup>26</sup> 47 U.S.C. § 160(a).

<sup>27</sup> 47 U.S.C. § 160(b).

<sup>28</sup> *Id.*

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

10. Universal service has been a fundamental goal of federal telecommunications regulation since the passage of the Communications Act of 1934.<sup>30</sup> Congress renewed its concern for low-income consumers in the Telecommunications Act of 1996 when it established the principles that guide the advancement and preservation of universal service.<sup>31</sup> Specifically, the Act directs the Commission to consider whether “consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas, ... have access to telecommunications [services] ... at rates that are reasonably comparable to rates charged ... in urban areas.”<sup>32</sup> We therefore examine the facilities requirement from which TracFone seeks forbearance in light of the statute’s goal of providing low-income consumers with access to telecommunications services.

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

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

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<sup>29</sup> 47 U.S.C. § 254(b)(3).

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

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

<sup>32</sup> 47 U.S.C. § 254(b)(3) (emphasis added).

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

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

<sup>35</sup> 47 C.F.R. §§ 54.401, 54.504.

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

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

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

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

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<sup>36</sup> See 47 C.F.R. § 251(c)(4).

<sup>37</sup> Forbearance Petition at 5.

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

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

<sup>40</sup> August Reply Comments at 10.

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

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

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

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

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

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

<sup>45</sup> *Id.*

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



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

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

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<sup>47</sup> See 47 C.F.R. § 54.712.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>56</sup> See USTelecom August 17 *Ex Parte* at 4.

<sup>57</sup> TracFone July 13 *Ex Parte* at 2-3.

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

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

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

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

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

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<sup>59</sup> 47 C.F.R. § 54.401.

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

<sup>61</sup> *Id.* at 8305, para 1.

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

<sup>63</sup> *1997 Universal Service Order*, 12 FCC Rcd at 8972, para. 370.

<sup>64</sup> 47 U.S.C. § 254(e).

<sup>65</sup> USTelecom August 17 *Ex Parte* at 5 n.1.

<sup>66</sup> 47 U.S.C. § 254(e) (emphasis added).

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

#### IV. ORDERING CLAUSE

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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

**STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for  
Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i) (CC Docket No. 96-45).*

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

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

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 104**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-78 In its amended application, TracFone clarified that it will offer Lifeline service in all areas of Oregon that are served by AT&T Mobility, T-Mobile and Verizon Wireless. On page 2 of its original application, TracFone also includes US Cellular in the list of carriers from which it obtains service. What is the nature of TracFone's service arrangement with US Cellular? Is TracFone also requesting designation in all areas in Oregon where US Cellular offers service?**

**Response**

As TracFone clarified in its amendment to its ETC petition, it will offer Lifeline service in areas of Oregon serviced by AT&T Mobility, T-Mobile, and Verizon Wireless. TracFone does not have an arrangement with US Cellular in Oregon and is not requesting designation in areas of Oregon served that are only served by US Cellular.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 105**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**



**DR-1 TracFone's August 7, 2009, application for ETC designation states on page 18: "Specifically, TracFone requests ETC designation statewide in all exchanges to the extent that its underlying carriers have facilities and coverage." In its First Amendment filed on October 27, 2009, TracFone clarifies that the underlying carriers are AT&T Mobility, T-Mobile, and Verizon Wireless. This description of the requested designated service area lacks the specificity required for defining the proposed designated service area. A designated service area is defined by a list of wire centers that will comprise the area. The burden to produce this list lies with the applicant. Further, the applicant must commit to offer service throughout each wire center within the designated service area. If only a portion of a wire center is to be included, that portion must be defined and the applicant must prove partial inclusion is warranted. An ETC application cannot proceed without the required wire center list; therefore, please provide the list if TracFone wishes to move forward with its application.**

**Response**

A list of ILEC rate centers in TracFone's service area is provided as Exhibit 1-A. A list of zip codes in TracFone's service area and the underlying wireless carrier or carriers providing service in the zip code is provided as Exhibit 1-B. TracFone is willing to discuss the data it has available with the Commission so that the Commission can better understand the extent of TracFone's service area.

# **EXHIBIT 1-A**

Lifeline Services  
OR ILECs and Rate Centers

ILEC and Rate Center
<b>BEAVER CREEK COOP TEL CO</b>
BEAVER CRK
<b>CANBY TEL ASSN</b>
CANBY
<b>CASCADE UTILITIES INC</b>
CORBETT
ELKTON
ESTACADA
HAINES
SCOTTSBURG
<b>CENTURYTEL OF OREGON, INC.</b>
AURORA
BLY
BOARDMAN
BONANZA
BROWNSVL
BURNS
CAMAS VLY
CHILOQUIN
CRESWELL
DEPOE BAY
DRAIN
ECHO
FT KLAMATH
GILCHRIST
GLIDE
HEPPNER
HUNTINGTON
IONE
JOHN DAY
LAKEVIEW
LEBANON
LEXINGTON
MALIN
MONUMENT
NO HARNEY
PAISLEY
PAULINA
PILOT ROCK
SCAPPOOSE
SENECA
SHEDD
SILVERLAKE

SO HARNEY
SPRAGUERIV
SWEET HOME
UKIAH
WAMIC
YONCALLA
<b>CITIZENS TEL. CO. OF OR DBA FRONTIER COMM. OF OR</b>
AZALEA
CANYONVL
CAVE JCT
DAYS CREEK
GLENDALE
MYRTLE CRK
O BRIEN
RIDDLE
SELMA
WOLF CREEK
<b>COLTON TEL CO</b>
COLTON
<b>EAGLE TELEPHONE SYSTEM INC</b>
RICHLAND
<b>GERVAIS TEL CO</b>
GERVAIS
<b>HELIX TEL CO</b>
HELIX
<b>HOME TEL CO</b>
CONDON
<b>MIDVALE TEL EXCH INC - OR</b>
HARPER
<b>MOLALLA TEL CO</b>
MOLALLA
<b>MT. ANGEL TELEPHONE COMPANY</b>
MOUNTANGEL
<b>NEHALEM TELECOMMUNICATIONS, INC. DBA NEHALEM TEL &amp; TEL</b>
NEHALEM
<b>NORTH-STATE TEL CO</b>
DUFUR
<b>OREGON TEL CORP</b>
DAYVILLE
HEREFDUNTY
MT VERNON
PRAIRIE CY
<b>OREGON-IDAHO UTILITIES, INC. - OR</b>
JORDAN VLY
<b>PEOPLES TEL CO</b>
LYONS
<b>PINE TEL SYSTEM</b>

HALFWAY
<b>PIONEER TEL COOPERATIVE</b>
ALSEA
BELLFONTAN
HORTON
PHILOMATH
SOUTHBEACH
TIDEWATER
YACHATS
<b>QWEST CORPORATION - OR</b>
ALBANY
ASHLAND
ASTORIA
ATHENA
BAKER
BEND
BLUE RIVER
CANNON BCH
CENTRAL PT
CLACKAMAS
CORVALLIS
COTTAGEGRV
CULVER
DALLAS
EUGENE
FALLS CITY
FLORENCE
FOREST GRV
GRANTSPASS
HARRISBURG
HERMISTON
HILLSBORO
INDEPENDNC
JACKSONVL
JEFFERSON
JUNCTIONCY
KLAMATHFLS
LAPINE
LEABURG
LOWELL
MADRAS
MAPLETON
MARCOLA
MEDFORD
MILTONFWTR
NEWPORT
NO PLAINS

NYSSA
OAKLAND
OAKRIDGE
ONTARIO
PENDLETON
PHOENIX
PORTLAND
PRINEVILLE
RAINIER
REDMOND
ROGUERIVER
ROSEBURG
SALEM
SANDY
SEASIDE
SILETZ
SISTERS
ST HELENS
STAFFORD
STANFIELD
SUMPTER
SUNNYSIDE
TOLEDO
UMATILLA
VALE
VENETA
WARRENTON
WOODBURN
<b>SCIO MUTUAL TEL CO</b>
SCIO
<b>ST. PAUL COOPERATIVE TELEPHONE ASSOCIATION</b>
ST PAUL
<b>STAYTON COOP TEL CO</b>
STAYTON
<b>TRANS-CASCADES TEL CO</b>
ANTELOPE
<b>UNITED TELEPHONE - NORTHWEST - OR</b>
ARLINGTON
BAY CITY
BEAVER
BUTTEFALLS
CARLTON
CASCADELKS
CLOVERDALE
CRATERLAKE
FISH LAKE
GARIBALDI

GRASS VLY
HOOD RIVER
KENT
LINCOLN CY
MORO
MOSIER
ODELL
PACIFIC CY
PARKDALE
PROSPECT
ROCKAWAY
RUFUS
SHADY COVE
SHERIDAN
THE DALLES
TILLAMOOK
WHITE CITY
WILLAMINA
<b>VERIZON NORTHWEST INC. - OR</b>
AMITY
AMSVL TRNR
BANDON
BEAVERTON
BROOKINGS
BURLINGTON
CLATSKANIE
COOS BAY
COQUILLE
COVE
DAYTON
DETROIT
ELGIN
ENTERPRISE
GOLD BEACH
GRESHAM
HOOD LAND
IMBLER
JOSEPH
LA GRANDE
LAKESIDE
LANGLOIS
LOSTINE
MCMINNVL
MILL CITY
MYRTLE PT
NEWBERG
PORTORFORD

POWERS
PROVOTMPHY
REEDSPORT
SHERWOOD
SILVERTON
STFRD-SNDY
TIGARD
UNION
VERNONIA
WALLOWA
YAMHILL
<b>Grand Total</b>



# **EXHIBIT 1-B**

ZIP CODE	STATE	SERVICING CARRIER
97001	OR	ATT
97021	OR	ATT
97029	OR	ATT
97033	OR	ATT
97037	OR	ATT
97039	OR	ATT
97041	OR	ATT
97044	OR	ATT
97057	OR	ATT
97063	OR	ATT
97415	OR	ATT
97466	OR	ATT
97522	OR	ATT
97536	OR	ATT
97539	OR	ATT
97541	OR	ATT
97711	OR	ATT
97750	OR	ATT
97812	OR	ATT
97823	OR	ATT
97836	OR	ATT
97839	OR	ATT
97861	OR	ATT
97874	OR	ATT
97423	OR	ATT-VZW
97435	OR	ATT-VZW
97453	OR	ATT-VZW
97454	OR	ATT-VZW
97458	OR	ATT-VZW
97459	OR	ATT-VZW
97461	OR	ATT-VZW
97462	OR	ATT-VZW
97463	OR	ATT-VZW
97464	OR	ATT-VZW
97465	OR	ATT-VZW
97467	OR	ATT-VZW
97480	OR	ATT-VZW
97488	OR	ATT-VZW
97489	OR	ATT-VZW
97490	OR	ATT-VZW
97492	OR	ATT-VZW
97493	OR	ATT-VZW
97494	OR	ATT-VZW
97495	OR	ATT-VZW
97496	OR	ATT-VZW
97498	OR	ATT-VZW

97523	OR	ATT-VZW
97530	OR	ATT-VZW
97531	OR	ATT-VZW
97534	OR	ATT-VZW
97543	OR	ATT-VZW
97634	OR	ATT-VZW
97810	OR	ATT-VZW
97826	OR	ATT-VZW
97838	OR	ATT-VZW
97843	OR	ATT-VZW
97844	OR	ATT-VZW
97859	OR	ATT-VZW
97868	OR	ATT-VZW
97875	OR	ATT-VZW
97004	OR	ATT-VZW
97010	OR	ATT-VZW
97011	OR	ATT-VZW
97017	OR	ATT-VZW
97019	OR	ATT-VZW
97028	OR	ATT-VZW
97049	OR	ATT-VZW
97064	OR	ATT-VZW
97067	OR	ATT-VZW
97102	OR	ATT-VZW
97107	OR	ATT-VZW
97108	OR	ATT-VZW
97109	OR	ATT-VZW
97112	OR	ATT-VZW
97117	OR	ATT-VZW
97118	OR	ATT-VZW
97122	OR	ATT-VZW
97125	OR	ATT-VZW
97130	OR	ATT-VZW
97131	OR	ATT-VZW
97134	OR	ATT-VZW
97135	OR	ATT-VZW
97136	OR	ATT-VZW
97141	OR	ATT-VZW
97143	OR	ATT-VZW
97144	OR	ATT-VZW
97147	OR	ATT-VZW
97256	OR	ATT-VZW
97324	OR	ATT-VZW
97326	OR	ATT-VZW
97329	OR	ATT-VZW
97336	OR	ATT-VZW
97342	OR	ATT-VZW

97343	OR	ATT-VZW
97344	OR	ATT-VZW
97345	OR	ATT-VZW
97346	OR	ATT-VZW
97350	OR	ATT-VZW
97357	OR	ATT-VZW
97360	OR	ATT-VZW
97375	OR	ATT-VZW
97376	OR	ATT-VZW
97380	OR	ATT-VZW
97386	OR	ATT-VZW
97388	OR	ATT-VZW
97390	OR	ATT-VZW
97391	OR	ATT-VZW
97411	OR	ATT-VZW
97412	OR	ATT-VZW
97413	OR	ATT-VZW
97417	OR	ATT-VZW
97419	OR	ATT-VZW
97420	OR	ATT-VZW
97427	OR	ATT-VZW
97430	OR	ATT-VZW
97431	OR	ATT-VZW
97432	OR	ATT-VZW
97434	OR	ATT-VZW
97439	OR	ATT-VZW
97449	OR	ATT-VZW
97406	OR	NO SERVICE
97410	OR	NO SERVICE
97443	OR	NO SERVICE
97447	OR	NO SERVICE
97476	OR	NO SERVICE
97484	OR	NO SERVICE
97819	OR	NO SERVICE
97830	OR	NO SERVICE
97834	OR	NO SERVICE
97840	OR	NO SERVICE
97842	OR	NO SERVICE
97848	OR	NO SERVICE
97864	OR	NO SERVICE
97870	OR	NO SERVICE
97873	OR	NO SERVICE
97901	OR	NO SERVICE
97902	OR	NO SERVICE
97906	OR	NO SERVICE
97910	OR	NO SERVICE
97917	OR	NO SERVICE

97761	OR	TMO-ATT
97031	OR	TMO-ATT
97040	OR	TMO-ATT
97050	OR	TMO-ATT
97058	OR	TMO-ATT
97065	OR	TMO-ATT
97452	OR	TMO-ATT-VZW
97455	OR	TMO-ATT-VZW
97456	OR	TMO-ATT-VZW
97457	OR	TMO-ATT-VZW
97469	OR	TMO-ATT-VZW
97470	OR	TMO-ATT-VZW
97477	OR	TMO-ATT-VZW
97478	OR	TMO-ATT-VZW
97479	OR	TMO-ATT-VZW
97482	OR	TMO-ATT-VZW
97487	OR	TMO-ATT-VZW
97499	OR	TMO-ATT-VZW
97501	OR	TMO-ATT-VZW
97502	OR	TMO-ATT-VZW
97503	OR	TMO-ATT-VZW
97504	OR	TMO-ATT-VZW
97520	OR	TMO-ATT-VZW
97524	OR	TMO-ATT-VZW
97525	OR	TMO-ATT-VZW
97526	OR	TMO-ATT-VZW
97527	OR	TMO-ATT-VZW
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97045	OR	TMO-ATT-VZW
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97080	OR	TMO-ATT-VZW
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97106	OR	TMO-ATT-VZW
97113	OR	TMO-ATT-VZW
97116	OR	TMO-ATT-VZW
97119	OR	TMO-ATT-VZW
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97124	OR	TMO-ATT-VZW
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97202	OR	TMO-ATT-VZW
97203	OR	TMO-ATT-VZW
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97222	OR	TMO-ATT-VZW
97223	OR	TMO-ATT-VZW
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97225	OR	TMO-ATT-VZW
97227	OR	TMO-ATT-VZW
97228	OR	TMO-ATT-VZW
97229	OR	TMO-ATT-VZW
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97231	OR	TMO-ATT-VZW
97232	OR	TMO-ATT-VZW
97233	OR	TMO-ATT-VZW
97236	OR	TMO-ATT-VZW
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97239	OR	TMO-ATT-VZW
97240	OR	TMO-ATT-VZW
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97301	OR	TMO-ATT-VZW
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97303	OR	TMO-ATT-VZW
97304	OR	TMO-ATT-VZW
97305	OR	TMO-ATT-VZW
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97307	OR	TMO-ATT-VZW
97308	OR	TMO-ATT-VZW
97309	OR	TMO-ATT-VZW
97310	OR	TMO-ATT-VZW
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97317	OR	TMO-ATT-VZW
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97710	OR	VZW
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97904	OR	VZW
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97908	OR	VZW
97909	OR	VZW

97911	OR	VZW
97913	OR	VZW
97920	OR	VZW

**DR-2 TracFone does not provide the required maps of coverage area because it maintains this information is subject to non-disclosure agreements (p. 15 of application). On the other hand, TracFone commits to adhering to the CTIA Consumer Code. That code requires carriers to provide customers with maps of coverage areas. Please provide coverage area maps that TracFone distributes to its customers.**

**Response**

A coverage map is attached as Exhibit 2.

# **EXHIBIT 2**

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 106**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-32** In its response to Staff DR1, TracFone submitted a list of “rate centers” that it proposes to include in its designated service area. Please refer to the following link on the PUC website and compare the wire center listings there to the list TracFone submitted. <http://www.oregonusf.gov/docs/ousfsupportperline.pdf> After reviewing this listing, please make any necessary revisions to TracFone’s most recent list of wire centers for designation and also indicate which wire centers will not be included in their entirety (i.e., where TracFone cannot provide service).

**Response** *June 24, 2010*

TracFone is in the process of analyzing the relevant data and will provide a response as soon as possible.



DR-32 In its response to Staff DR1, TracFone submitted a list of "rate centers" that it proposes to include in its designated service area. Please refer to the following link on the PUC website and compare the wire center listings there to the list TracFone submitted. <http://www.oregonusf.gov/docs/ousfsupportperline.pdf> After reviewing this listing, please make any necessary revisions to TracFone's most recent list of wire centers for designation and also indicate which wire centers will not be included in their entirety (i.e., where TracFone cannot provide service).

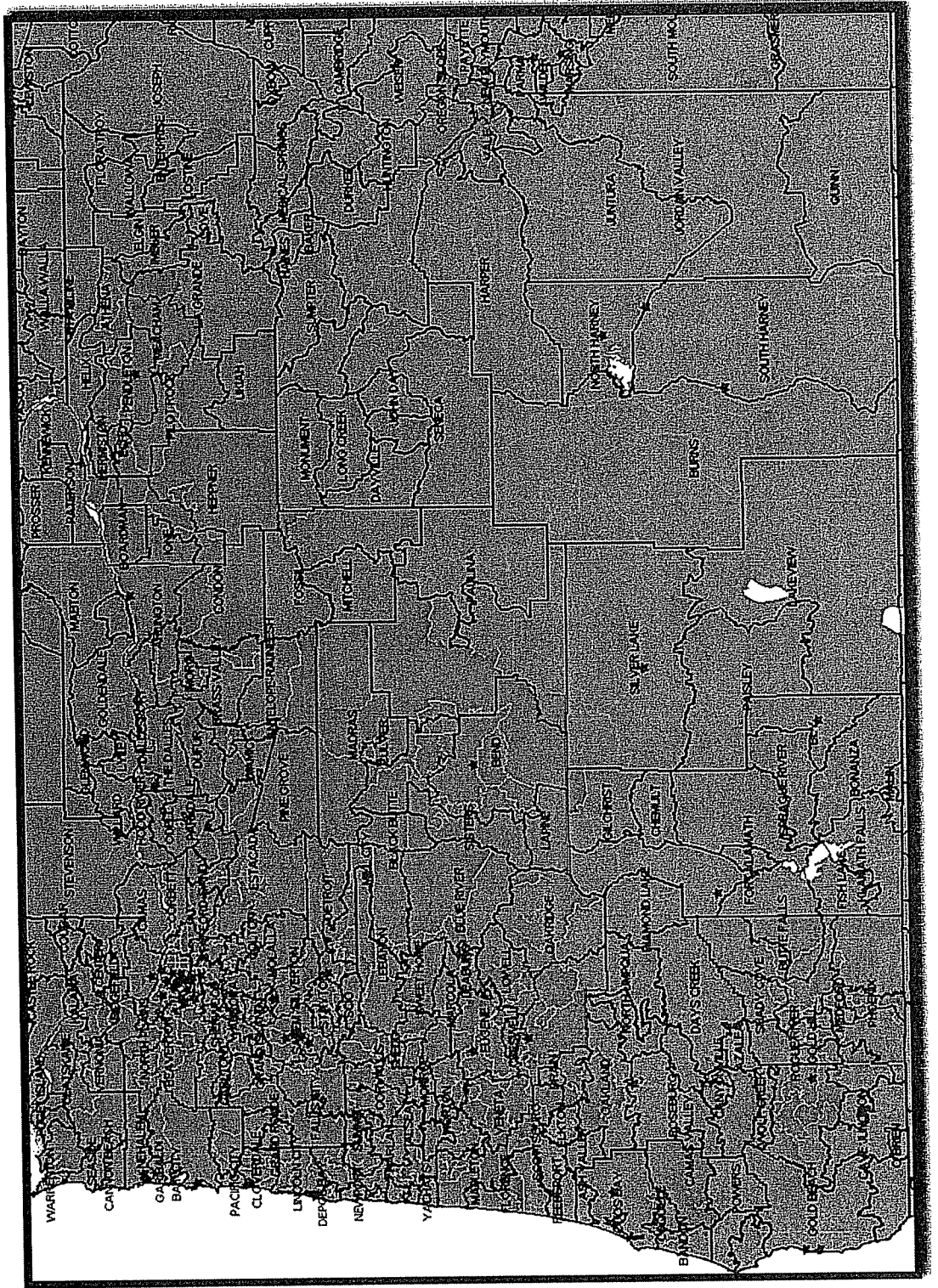
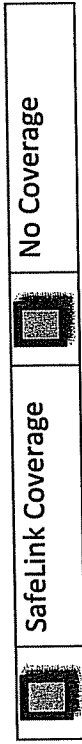
Response (AMENDED) - JULY 27, 2010

TracFone has attempted to compare its list of rate centers and the PUC's list of wire centers to develop a list of wire centers that are within TracFone's service area. However, TracFone has found that the two lists are not directly comparable. The attached map depicts the current proposed SafeLink Wireless® coverage in Oregon. See Exhibit 32. TracFone remains ready and willing to discuss with Commission Staff the data to which it has access for describing its service area, as well as alternative ways to describe its service area.

# Exhibit 32

SafeLink Coverage: Oregon  
Lifeline Services  
7/26/2010

Refer to Figure 1 below for SafeLink Coverage



CASE: UM 1437  
WITNESS: Kay Marinos

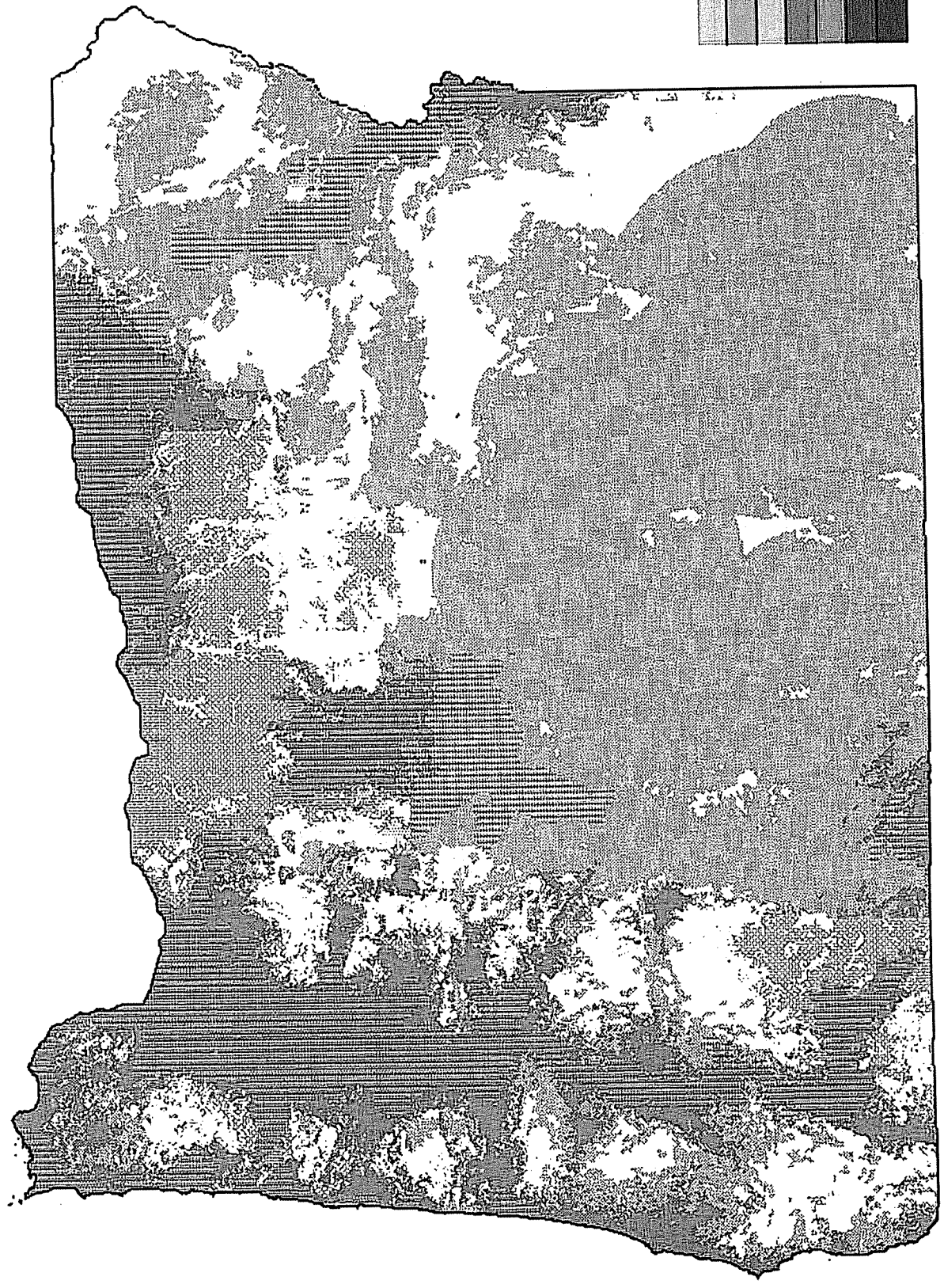
**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 107**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

Verizon
AT&T
TMO
TMO&ATT
TMO&VZW
VZW&ATT
All 3 Carriers



CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 108**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-24** Please describe each calling plan that TracFone offers, including Net10, Straight Talk and others, addressing rates, terms, and various means by which customers purchase, obtain, and continue service. Also indicate which plans are priced on a monthly basis.

**Response**

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Without waiving its objection, a description of the calling plans offered under TracFone's brand names is provided as Exhibit 24.

# Exhibit 24





THE CELL PHONE THAT PUTS YOU IN CONTROL

Search TracFone



my account

register

español

NO BILLS

NO CONTRACTS

NO SURPRISES

YOU'RE IN CONTROL

ACTIVATE / REACTIVATE PHONE

BUY AIRTIME

ADD AIRTIME

BUY PHONES AND MORE

TRACFONE PROGRAMS

SERVICE & SUPPORT

Please make your Value Plan selection, and then click on the Enroll button at the bottom right of the screen.

Individual Plan: It's one of the lowest priced monthly plans in the market today! Automatically receive Minutes on your TracFone every month! It's easy, convenient and at a great price.

50 Minutes Value Plan \$9.99 / month View Details

125 Minutes Value Plan \$19.99 / month View Details

200 Minutes Value Plan \$29.99 / month View Details

Family Plan: Take advantage of one of the lowest priced monthly plans on the market for your entire family and save! Automatically receive Minutes for every TracFone in your home every month.

Family Value Plan First Phone- 50 Minutes \$9.99\* / month Each Additional Phone -40 Minutes \$5.99 / month View Details

TracFone Service Protection Plan: Enroll today and automatically receive a 30-day service extension when you need it most! Enrollment is FREE! You pay the \$5.99 fee only if you reach your Service End Date.

30 Service Days \$5.99\*\* / as needed View Details



As a Value Plan member you can buy Minutes in bundles of 50 or 100 MINUTES whenever you want!



Compare the value plan benefits

\*Enroll the first TracFone for \$9.99/mo and each additional TracFones in the Family Value Plan (up to four) is just \$5.99 / mo.

\*\*With the TracFone Service Protection Plan, a 30 day service extension is granted every time a customer is Past Due. The \$5.99 fee for the service is only charged if the customer reaches the Service End Date. Customers already enrolled in Service Protection (previously called Lifeline Plan) will continue paying the original price of \$4.95/mo each time they are Past Due.

Terms and Conditions Value Plan FAQ



THE CELL PHONE THAT PUTS YOU IN CONTROL

my account register español

NO BILLS NO CONTRACTS NO SURPRISES YOU'RE IN CONTROL

ACTIVATE / REACTIVATE PHONE

BUY AIRTIME

ADD AIRTIME

BUY PHONES AND MORE

TRACFONE PROGRAMS

SERVICE & SUPPORT

BUY AIRTIME

Select Option

Check-Out

Transaction Summary

One Year and Double Minute Cards



Double Minutes for the Life of your TracFone  
365 Days of Service  
800 minutes

only **\$119.99**

Quantity

LIMITED TIME OFFER: Buy our Double Minute for Life + 1 Year Card for only \$119.99 (regular price \$ 139.99) and get Double Minutes on all future cards. These minutes have already been doubled for your convenience\*



400 Minutes &  
365 Days of Service

only **\$99.99**

Quantity



Double Minutes for Life Card  
0 Minutes & 0 Days of Service

only **\$19.99**

Quantity

LIMITED TIME OFFER: Buy our Double Minute for Life Card for only \$19.99 (regular price \$49.99) and get Double Minutes on all future Airtime Cards with the exception of our One year + Double Minutes Card\*

Pay As You Go



450 Minutes &  
90 Days of Service

only **\$79.99**

Quantity



200 Minutes &  
90 Days of Service

only **\$39.99**

Quantity



120 Minutes &  
90 Days of Service

only **\$29.99**

Quantity



60 Minutes &  
90 Days of Service

only **\$19.99**

Quantity

Web Exclusives



PowerPlus Card  
1500 MINUTES &  
365 DAYS OF SERVICE

only **\$199.99**  
Quantity

EXCLUSIVE



1000 Minutes &  
30 Days of Service

only **\$149.99**  
Quantity

EXCLUSIVE



30 Minutes &  
30 Days of Service

only **\$9.99**  
Quantity

EXCLUSIVE

Promotional Code (Optional)

Purchase Selection

If you have a Promotional Code code that you would like to use at this time, please enter it below. (OPTIONAL)

Minutes: 000

Price: \$0.00

[HELP](#)  
(Only one Promotional Code per transaction)

\*Eligible Promotional Minutes will be added at the end of this transaction.

Now, please enter the information requested below:

TracFone Telephone Number

[HELP](#)

OR

Serial Number (also called IMEI)

[HELP](#)

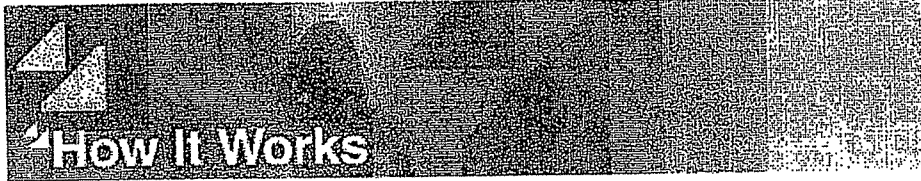


Purchase and use of TRACFONE Prepaid Wireless Airtime is subject to the [Terms and Conditions of Service](#). TRACFONE Prepaid Wireless Airtime cards have no cash redemption value. Airtime rate plans are subject to change without prior notice. All sales of airtime are final. No refunds will be given.

New Airtime card price reductions and extended days of service are currently being tested in order to deliver the combinations that best suit your needs. These offers are for a limited time and cannot be combined with any other offer or promotion.

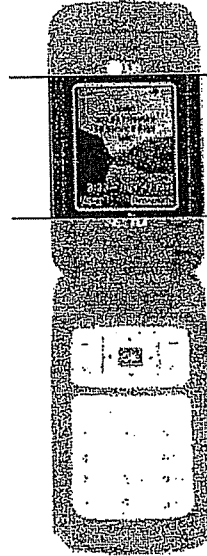
\*The Double Minute benefit does not apply to minutes that have not been purchased, such as bonus minutes provided with a special TracFone promotional code or bonus minutes automatically added to the TracFone. The 800 minutes included with the One Year + Double Minute card will not double. The Double Minute benefit may only be added once, only applies to one TracFone cell phone and may not be transferred to another TracFone.





### Let's get Started!

- 1** Buy and activate your NET10 phone.  
On the web or by calling 1-877-TEN-CENT (1-877-836-2368).
- 2** Buy Airtime as you need it.  
When you need more Minutes, you can buy Airtime Cards on the web, in one of our retail locations or by calling 1-877-TEN-CENT (1-877-836-2368).  
Buy and add an Airtime Card before the Service end Date displayed on your phone screen to keep your NET10 service active.
- 3** Call anywhere, anytime for only 10¢ per minute and text messaging is only 5¢ a message.



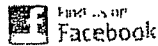
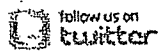
**Track your Minutes**

- Gives you the power, not the phone company.
- Displays exact airtime balance.
- Reminds you when a NET10 Airtime card must be added

---

- Minutes carry over with active service.
- Minutes expire with service deactivation.

[Privacy Policy](#) | [Terms & Conditions](#) | [Vendor Code of Conduct](#) | [About Us](#) | [Site Map](#) | [NET10 NewsCenter](#) | [NET10 Blog](#) | [Hearing Aid Compatibility](#)



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[My Account](#)

[Register](#)



[Español](#)

Please make your Monthly Plan selection, and then click on the Enroll button at the bottom right of the screen.

EASY MINUTES is the easy way to enjoy Automatic Monthly wireless service for 10¢ per minute, without signing an annual contract or paying hidden fees.

**150 Easy Minutes Plan**  
\$15 / month  
[View Details](#)

**250 Easy Minutes Plan**  
\$25 / month  
[View Details](#)

**400 Easy Minutes Plan**  
\$40 / month  
[View Details](#)

**ENROLL**

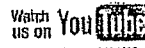
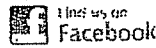
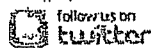
As an Easy Minutes member you can buy Minutes in bundles of 50, 100, or 150 MINUTES whenever you want! If you are a NET10 Unlimited member, you have the option of selecting a 50 or 100 UNLIMITED Minute Bundles.

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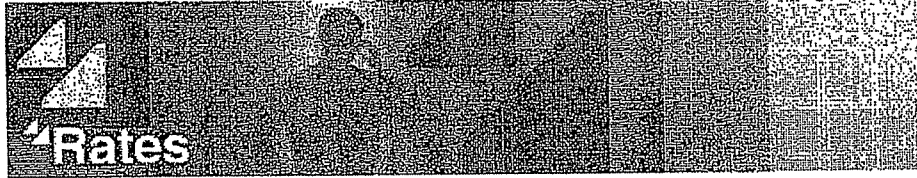


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200 minutes



This card adds 30 days of service to your service end date

Price:\$20



300 minutes



This card adds 60 days of service to your service end date

Price:\$30



600 minutes



This card adds 60 days of service to your service end date

Price:\$45



900 minutes



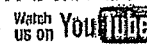
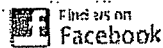
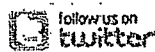
This card adds 90 days of service to your service end date

Price:\$60




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ACTIVATE/REGISTER
REFILL/ENROLL
HOW IT WORKS
SUPPORT 
LOG IN / MY ACCOUNT 
CHECK YOUR BALANCE 
SHARE / BOOKMARK

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## Service Plan

	ALL YOU NEED	UNLIMITED 1 MONTH	UNLIMITED 3 MONTHS	UNLIMITED 6 MONTHS	UNLIMITED 1 YEAR
PRICE	<b>\$30</b>	<b>\$45</b>	<b>\$135</b>	<b>\$270</b>	<b>\$540</b>
SERVICE DAYS	30 Days	30 Days	90 Days	180 Days	365 Days
MINUTES	1,000 Nationwide	Unlimited Nationwide	Unlimited Nationwide	Unlimited Nationwide	Unlimited Nationwide
TEXT OR PICTURE MESSAGES	1,000 Nationwide	Unlimited Nationwide	Unlimited Nationwide	Unlimited Nationwide	Unlimited Nationwide
MOBILE WEB ACCESS	30 MB	Unlimited	Unlimited	Unlimited	Unlimited
CALL TO 411	Included at no extra charge	Unlimited	Unlimited	Unlimited	Unlimited
CONTRACTS	No	No	No	No	No
AUTO REFILL OPTION	Yes	Yes	Yes	Yes	Yes



NEED TO ACTIVATE &  
PURCHASE A PLAN

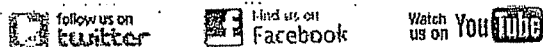
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CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 109**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**



**DR-88 Relative to TracFone's response to DR34, please supply the data that TracFone used to weight the individual SLCs to derive a weighted average SLC for Oregon. If no additional data was used for weighting, explain how TracFone performed the calculation to derive a \$6.40 average SLC.**

**Response**

TracFone objects to this request as not relevant because TracFone is not basing the Lifeline benefit in Oregon on a \$6.40 SLC. As stated in its response to DR-5, TracFone decided that it will contribute an additional \$0.10 to the Lifeline benefit so that the total Lifeline benefit to Oregon Lifeline customers will be \$13.50.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 110**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-28** Eligible residents of tribal lands can receive up to \$25.00 in additional federal Lifeline support per month. How many additional minutes will eligible residents of tribal lands in Oregon receive with the Safelink plan? How are the additional minutes computed?

**Response**

TracFone is currently not eligible to receive Tier IV support from the federal Universal Service Fund, the support tier that reimburses carriers for providing a higher level of benefits on tribal lands. TracFone's SafeLink Wireless® Lifeline plan will not vary for residents of tribal lands and residents of non-tribal lands in Oregon.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 111**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

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 )

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).<sup>1</sup> Due

<sup>1</sup> 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.<sup>2</sup> On September 8, 2005, the Commission conditionally granted TracFone's petition for forbearance from the facilities requirement of section 214(e)(1).<sup>3</sup> 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).<sup>4</sup> We also approve TracFone's plan for complying with the conditions imposed in the *Forbearance Order*.<sup>5</sup>

## 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."<sup>6</sup> 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.<sup>7</sup>

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.<sup>8</sup> 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."<sup>9</sup> 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).<sup>10</sup> Before

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<sup>2</sup> 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).

<sup>3</sup> *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).

<sup>4</sup> 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.

<sup>5</sup> *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).

<sup>6</sup> 47 U.S.C. § 254(e).

<sup>7</sup> 47 U.S.C. § 214(e)(1); *see also* 47 C.F.R. § 54.201(d).

<sup>8</sup> 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*).

<sup>9</sup> 47 U.S.C. § 214(e)(6).

<sup>10</sup> *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.<sup>11</sup>

### 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> These additional requirements are mandatory for all ETCs designated by the Commission.<sup>15</sup> 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.<sup>16</sup>

<sup>11</sup> *Id.*

<sup>12</sup> 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*).

<sup>13</sup> 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*).

<sup>14</sup> 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)).

<sup>15</sup> 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.

<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

### C. TracFone's Petitions

7. TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider that offers prepaid wireless telecommunications services.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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*.<sup>25</sup> TracFone filed its compliance plan on October 11, 2005.<sup>26</sup>

<sup>17</sup> 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.

<sup>18</sup> *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43.

<sup>19</sup> 47 C.F.R. § 54.202(c).

<sup>20</sup> *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.

<sup>21</sup> See, e.g., Massachusetts Petition at 2, 3.

<sup>22</sup> 47 U.S.C. § 214(e)(1).

<sup>23</sup> See *supra* notes 1 and 2.

<sup>24</sup> *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.

<sup>25</sup> *Id.* at 15105, para. 25.

<sup>26</sup> 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.<sup>27</sup> 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).<sup>28</sup>

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."<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

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."<sup>32</sup> TracFone has also stated that, in compliance with the

<sup>27</sup> E.g., New York Petition at 4 and Exhibit 2.

<sup>28</sup> 47 U.S.C. § 214(e)(6).

<sup>29</sup> *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).

<sup>30</sup> 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.

<sup>31</sup> *Forbearance Order*, 20 FCC Rcd at 15098, para. 6.

<sup>32</sup> 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.<sup>33</sup>

14. Additional Eligibility Requirements. TracFone either satisfies the applicable eligibility requirements set forth in the *ETC Designation Order*, described above,<sup>34</sup> or must make such showings in its first annual report under section 54.209 of the Commission's rules.<sup>35</sup>

### 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,<sup>36</sup> high-quality service offerings,<sup>37</sup> and mobility.<sup>38</sup> 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.<sup>39</sup> The National Emergency Numbers Association (NENA) further asserts that TracFone's actions in Pennsylvania reflect "patterns of behavior" evidenced "in several other states."<sup>40</sup> 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

<sup>33</sup> 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).

<sup>34</sup> *See supra* para. 5.

<sup>35</sup> *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.

<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> *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.*

<sup>39</sup> 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).

<sup>40</sup> *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.<sup>41</sup> 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.”<sup>42</sup>

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.<sup>43</sup> The Commission adopted these conditions because of the unique circumstances presented by TracFone’s petitions for limited ETC designation for Lifeline support.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

#### 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.<sup>48</sup> In designating TracFone as a limited ETC, we clarify that TracFone’s designated service areas do not encompass federally-recognized tribally-owned lands.<sup>49</sup>

<sup>41</sup> 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).

<sup>42</sup> *Id.* at 5-9.

<sup>43</sup> See *Forbearance Order*, 20 FCC Rcd at 15102, para 16; *infra* at paras. 20-22.

<sup>44</sup> 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.*

<sup>45</sup> *Id.* at 15105, para. 25.

<sup>46</sup> See NENA Keystone/PAOCA Joint Comments; NENA Apr. 3, 2008 *Ex Parte* Letter.

<sup>47</sup> 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.

<sup>48</sup> 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.

<sup>49</sup> 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.”<sup>50</sup> 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.<sup>51</sup> 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*.<sup>52</sup> 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.<sup>53</sup>

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*.<sup>54</sup> 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

<sup>50</sup> 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.

<sup>51</sup> See *Forbearance Order*, 20 FCC Rcd at 15105-06, para. 26.

<sup>52</sup> 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.

<sup>53</sup> 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.

<sup>54</sup> 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 (5<sup>th</sup> Cir. 1999) (*TOPUC*). Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.<sup>55</sup>

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.<sup>56</sup> Consequently, TracFone must obtain the required certification from each PSAP where it will provide Lifeline service.<sup>57</sup> Moreover, TracFone must continue to provide access to “basic and enhanced 911 service” as described in section 20.18(m) of our rules.<sup>58</sup> Finally, TracFone must “distribute its Lifeline service directly to its Lifeline customers.”<sup>59</sup>

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*.<sup>60</sup> We, therefore, approve the compliance plan as discussed in this Order.

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<sup>55</sup> *Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6.

<sup>56</sup> 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*.

<sup>57</sup> *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.

<sup>58</sup> 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).

<sup>59</sup> *Forbearance Order*, 20 FCC Rcd at 15104, para. 19.

<sup>60</sup> In particular, we disagree with USTelecom, who questions whether TracFone will receive 12 months of Lifeline support if a subscriber who chooses the annual prepaid plan uses all of the initial minutes in the first month or if a subscriber under the “NET10” plan redeems fewer than 12 monthly coupons. *See* Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Comments of the United States Telecom Association, at 3, 4 (filed Nov. 28, 2005) (USTelecom Compliance Plan Comments). We find that TracFone’s plans for seeking reimbursement are consistent with our Lifeline rules and procedures. Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at 6, 7 (filed Dec. 12, 2005). Moreover, despite comments to the contrary, we are satisfied that TracFone will pass through all Lifeline support as required by our rules. *See* USTelecom Compliance Plan Comments at 1-2. Finally, we find that we do not need to clarify how Lifeline support

(continued....)

24. Finally, we note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support an ETC receives is being used for the purpose for which it was intended.<sup>61</sup> 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.<sup>62</sup> The Commission may also assess forfeitures for violations of its rules and orders.<sup>63</sup>

#### 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.<sup>64</sup> TracFone has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>65</sup> 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.<sup>66</sup>

#### 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).

<sup>61</sup> 47 U.S.C. §§ 220, 403.

<sup>62</sup> *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.

<sup>63</sup> *See* 47 U.S.C. § 503(b).

<sup>64</sup> 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.

<sup>65</sup> *See e.g.*, New York Petition at Exhibit 1.

<sup>66</sup> 47 C.F.R. §§ 1.2001-2003.

service areas in New York, Virginia, Connecticut, Massachusetts, North Carolina, Alabama, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia to the extent described in this Order and subject to the conditions set forth herein.

27. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), TracFone Wireless, Inc.'s petition for eligible telecommunications carrier designation in the state of Florida IS DISMISSED WITHOUT PREJUDICE to the extent described herein.

28. IT IS FURTHER ORDERED that TracFone Wireless, Inc. WILL SUBMIT additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2008, as part of its annual reporting requirements.

29. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary



**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

For quite some time the public debate has centered on whether and how the Universal Service system's high-cost fund should support wireless CETCs. While an important policy discussion for sure, sometimes we lose sight of the fact that there is an entire segment of consumers who would lack a phone at all and would easily become disconnected from society were it not for the support of the Lifeline program. I am very pleased that today the Commission takes a moment to focus on making it easier for low-income consumers to receive wireless phone service. The Petitioner is now eligible for Lifeline support to provide wireless phone service in ten states and the District of Columbia. To some who own multiple phones of every size and shape, such a decision may seem inconsequential; but to the many working poor in this country phone service remains essential to staying connected with family, employers, and the communities in which they live. A wireless option will only make it easier for these consumers to stay connected. The Order recognizes both the importance of providing consumers with a wireless option and at the same time ensures that consumers have essential emergency services available to them. For these reasons, I am pleased to approve this item.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

For most of us, living without telephone service is almost unimaginable. It is a link to our jobs, to commerce, to healthcare and emergency services, not to mention friends and family. For that reason, Congress and the Commission have long recognized the importance of ensuring that consumers have affordable access to telecommunications services. We have succeeded through Federal universal service programs, including Lifeline and Link Up, in achieving extraordinarily high levels of telephone penetration in the U.S. Despite that progress, millions of consumers lack even the most basic connectivity. For many of these consumers, the cost of maintaining telephone service is prohibitively expensive, keeping even the most basic connections out of reach. This is particularly so for low-income consumers, who are much less likely to have access to telephone service.

Our Lifeline program forms the backbone of our efforts to reach low income consumers. Through this Order, the Commission takes a modest step to expand the options available for low income consumers. By designating a provider that actively targets low-income consumers for Lifeline support, this Order should expand choice for these consumers. This is particularly important, given the Commission's estimate that only about one third of households eligible for Lifeline support actually subscribe to the program. Greater competition for low-income customers should lead to better service offerings, lower costs, and, most importantly, greater participation.

I would like to thank the staff of the Wireline Competition Bureau for their hard work to address these petitions and the proposed compliance plan. Given the unique circumstances of designating a prepaid provider as eligible to receive universal service support, it is important that the Commission carefully monitor its implementation and I look forward to working with both the Bureau and my colleagues should any questions arise.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

Just as we improved utilization of the separate rural health care mechanism of the universal service program with our recent Rural Health Care Pilot Program, we now take action to enhance the Lifeline Program. The Lifeline program is a key component of the national universal service goal set out by Congress to ensure that consumers in all corners of the nation – no matter their economic status – have access to telecommunications services. Since its inception, Lifeline has provided support for millions of low-income consumers.

In our decision we grant a very narrow and limited Eligible Telecommunications Carrier (ETC) designation to TracFone's Lifeline program which provides eligible consumers increased choice and mobility, especially citizens in rural areas who often must drive significant distances for employment, education and healthcare. In addition the prepaid feature may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts.

Significantly, under this limited ETC designation, TracFone will not be eligible for support for Link Up or toll-limitation service under the low-income program, nor will it be eligible for high-cost support, or for schools and libraries and rural health care support. In addition, we impose additional requirements on TracFone that obligate it to implement certain 911 and E911 requirements, including administrative procedures to safeguard against waste, fraud, and abuse.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 112**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-85 In response to Staff DR28, TracFone states it “is currently not eligible to receive Tier IV support [Tribal] from the federal Universal Service Fund.” Please explain why TracFone is ineligible and provide a reference to the FCC document prohibiting TracFone from receiving such support.**

**Response**

TracFone is not precluded from receiving Tier IV support. Whether to designate TracFone as an ETC to serve tribal lands and to receive Tier IV support is a matter to be determined by state commissions for those states, including Oregon, which have jurisdiction to designate ETCs, pursuant to Section 214(e)(2) of the Communications Act. No provision of the Communications Act, the FCC’s rules or the rules of the PUC render TracFone ineligible for Tier IV support.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 113**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd  
J. Dennis O'Brien  
Thomas Pugh  
Phyllis A. Reha  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Petition of TracFone Wireless,  
Inc. for Designation as an Eligible  
Telecommunications Carrier (ETC) for the  
Limited Purpose of Offering Lifeline Service to  
Qualified Households

ISSUE DATE: June 9, 2010

DOCKET NO. P-6823/M-09-802

DOCKET NO. P-6823/CI-10-519

In the Matter of an Investigation into  
TracFone's Compliance with Remittance  
Responsibilities under Minn. Stat. §§ 403.11  
and 237.52

ORDER GRANTING ONE-YEAR,  
CONDITIONAL ETC DESIGNATION  
AND OPENING INVESTIGATION

**PROCEDURAL HISTORY**

**I. Introduction and Background**

Under the Federal Telecommunications Act of 1996, telecommunications carriers must be designated "eligible telecommunications carriers" (ETCs) to qualify for subsidies from the federal Universal Service Fund for serving high-cost geographical areas and low-income consumers.<sup>1</sup> To be designated an ETC, a carrier must offer and advertise throughout its designated service area nine basic services the Federal Communications Commission has determined merit support with universal service funding:<sup>2</sup>

- Voice grade access to the public switched network
- Local usage
- Touch-tone service or its functional equivalent
- Single-party service or its functional equivalent
- Access to emergency services, including 911 and enhanced 911
- Access to operator services
- Access to interexchange services
- Access to directory assistance
- Toll limitation for qualifying low-income customers

<sup>1</sup> 47 U.S.C. §§ 214 (e) (1); 254 (e).

<sup>2</sup> 47 U.S.C. § 214 (e).

These services must be provided using the carrier's own facilities or a combination of its own facilities and the resold services of other carriers.<sup>3</sup>

State regulatory commissions have primary responsibility for designating ETCs, but the Federal Communications Commission (FCC) acts on ETC applications when no state has jurisdiction.<sup>4</sup> In either case, the application must be consistent with the public interest, convenience, and necessity.<sup>5</sup> To implement this public interest standard, the FCC has adopted – and urged state commissions to adopt – five additional substantive requirements for ETC applicants, set forth in brief below:<sup>6</sup>

- Commitment to provide service throughout designated service area to all customers making reasonable requests for service and submission of periodic plans to upgrade infrastructure to improve service coverage, quality, and capacity
- Demonstrated ability to remain functional in emergency situations
- Demonstrated ability to satisfy consumer protection and service quality standards
- Demonstrated offering of a local usage plan comparable to the one offered by the incumbent LEC in the designated service area
- Certification that the applicant acknowledges that it may be required to provide equal access to long distance carriers if no other ETC is providing equal access within the designated service area

The FCC has also adopted – and urged state commissions to adopt – a public interest standard for evaluating ETC applications, under which the agency considers three factors:<sup>7</sup>

- The benefits of increased customer choice
- The unique advantages and disadvantages of the applicant's service offering
- If the applicant seeks a designated service area smaller than the study area of a rural telephone company, any "cream-skimming" that is likely to result

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<sup>3</sup> 47 U.S.C. § 214 (e) (1) (A).

<sup>4</sup> 47 U.S.C. § 214 (e) (6).

<sup>5</sup> 47 U.S.C. § 214 (e) (2) and (6).

<sup>6</sup> 47 C.F.R. § 54.202 (a).

<sup>7</sup> 47 C.F.R. § 54.202 (c).



This Commission has adopted the FCC's five additional substantive requirements, with minor variations, and has adopted the public interest standard without variation.<sup>8</sup>

## II. TracFone's Petition for ETC Designation and Proposal for Lifeline Service

On July 1, 2009, TracFone Wireless, Inc. (TracFone or the Company) filed a petition requesting ETC designation throughout the state for the limited purpose of qualifying for federal Universal Service Fund subsidies for serving customers enrolled in the federal Lifeline program.<sup>9</sup> Under that program, qualifying low-income households receive an approximately \$10 monthly credit to help meet basic telecommunications needs; the credit usually appears as a discount on the household's monthly telephone bill.

TracFone's proposal was unique – instead of converting this credit to a monthly discount, TracFone proposed to accept it as full payment for a form of prepaid monthly wireless service. The Company would provide Lifeline households with a basic wireless handset and a monthly usage allowance, which it proposed to set at 67 minutes.

All fractions of minutes used would be rounded up to a full minute of use, and any unused minutes of use would roll over to the next month. Service would be provided on a prepaid basis; once the monthly usage allowance had been exhausted, no service would be available unless the customer had purchased additional prepaid minutes of use, which the Company proposed to price at 20 cents per minute.

Service would be provided under the trade name SafeLink Wireless and could be obtained only through third-party retail outlets such as WalMart, Rent-a-Center, Dollar Stores, Walgreen's, and CVS Pharmacies.

TracFone has no facilities of its own, but operates entirely by reselling the wireless services of other carriers. Normally, that would make ETC designation impossible, since both the Telecommunications Act and FCC regulations require ETCs to provide service using at least some of their own facilities.<sup>10</sup> The FCC has, however, granted the Company forbearance under 47 U.S.C. § 160 from the application of that requirement.<sup>11</sup> Under 47 U.S.C. § 160 (e), the FCC's forbearance decision applies to state ETC applications as well.

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<sup>8</sup> *In the Matter of a Commission Investigation to Consider Adopting the Federal Communications Commission's Standards for Designating Eligible Telecommunications Carriers*, Docket No. P-999/M-05-1169, Order Adopting FCC Requirements for Designating Eligible Telecommunications Carriers, as Modified (October 31, 2005).

<sup>9</sup> Normally, ETC designation permits carriers to receive subsidies not just for serving low-income households, but also for serving qualifying rural, insular, and high cost areas.

<sup>10</sup> 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201 (i).

<sup>11</sup> *In the Matter of 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, FCC 05-165 (2005).

### **III. Subsequent Filings and Comments**

The following organizations filed formal comments on TracFone's application for ETC designation:

- Minnesota Department of Commerce
- Minnesota Telecom Alliance
- Minnesota Independent Coalition
- Twin Cities Community Voice Mail
- Legal Services Advocacy Project

The Commission also received public comments from the Jeremiah Program; Voices for Change; Stevie K. Nelson, a peer mentor and group facilitator for a stroke support group; and three Minnesota legislators: Representative Kurt Zellers, Representative Joe Atkins, and Senator Linda Higgins.

On April 22, 2010, the case came before the Commission for oral argument and deliberations.

## **FINDINGS AND CONCLUSIONS**

### **I. Summary of the Issues**

By the time this case was heard, numerous issues raised in early comments by other telecommunications carriers and by the Department of Commerce had been resolved through discussions between the parties. Most were logistical, technical, or administrative issues related to service quality and compliance with federal documentation and reporting requirements. The Commission concurs in the resolutions reached on these issues and will memorialize them in the ordering paragraphs of this order without addressing them here.

The two main issues that remained unresolved were whether TracFone's Lifeline proposal included an adequate local usage allowance and whether TracFone was correct in its claim that it need not collect or remit surcharges to help fund Minnesota's 911 emergency telecommunications program and its telecommunications access program for persons who are communication-impaired.

These issues will be addressed in turn.

### **II. Local Usage Allowance**

#### **A. The Company's Proposal**

TracFone proposes to provide its Lifeline customers with a monthly usage allowance of 67 minutes, calculated by rounding up to a full minute all fractions of minutes used. Additional minutes of use could be purchased at retail outlets, with per-minute prices capped at 20 cents. Any unused minutes of use would roll over to the next month.

Calls placed to emergency services by dialing 911 would go through even if the monthly usage allowance had been exhausted. At the hearing, the Company also agreed that calls to its customer service center would not be counted against the usage allowance, as long as those calls were placed to the 611 customer-service number. Calls relating to handset issues would have to be made on a different line to avoid local usage deductions.

## **B. Positions of the Parties**

Four community organizations commented on TracFone's proposed usage allowance:

- Twin Cities Community Voice Mail, which provides free voice mail service to very low-income people to help them maintain contact with health care providers, teachers, social service agencies, employers, potential employers, and support networks
- Voices for Change, an organization composed of and working in the interest of currently or previously homeless Minnesotans
- LIFT (Leading Individuals and Families Together to End Poverty), a national organization whose stated mission is combating poverty and expanding opportunity throughout the United States
- Legal Services Advocacy Project, a statewide division of Mid-Minnesota Legal Assistance specializing in legislative and administrative advocacy, research, and community education

All four organizations agreed that a wireless option would be a valuable addition to Minnesota's Lifeline program. They pointed out that wireless communication has become nearly essential for many people, especially working parents, and that wireless service is often the only workable telecommunications option for homeless people.

At the same time, however, all four maintained that TracFone's proposed 67-minute monthly usage allowance – with supplementary minutes available at 20 cents each – was inadequate. They recommended either rejecting the application or conditioning ETC designation upon a higher monthly usage allowance and lower-priced supplementary minutes (unless the need for supplementary minutes was eliminated by unlimited local usage).

Twin Cities Community Voice Mail stated that it has a longstanding interest in making wireless service available to its clients, some 65% of whom are homeless, and has conducted pilot projects in which it distributed free wireless phones with free local usage allowances. Based on that experience, the organization recommends a baseline usage allowance of at least 200 minutes, assuming the availability of supplementary minutes at ten cents each. The organization stated that waiting times when calling schools, health care providers, social service agencies, employers, and potential employers would quickly exceed the roughly 2.23 minutes per day provided by a 67-minute usage allowance.

Voices for Change and LIFT concurred with Twin Cities Community Voice Mail that the 67-minute usage allowance was inadequate, especially when combined with 20-cent per-minute supplementary minutes. They recommended a monthly usage allowance of 200 to 300 minutes, pointing out that 300 minutes translates into only ten minutes per day.

The Legal Services Advocacy Project concurred that 67 minutes was an inadequate local usage allowance and recommended conditioning ETC designation on TracFone offering a monthly usage allowance as high as any offered by any Lifeline wireless service in the United States. The Project also recommended limiting this conditional approval to one year, to ensure, on the basis of actual experience, that TracFone's service met Lifeline subscribers' basic telecommunications needs.

### C. The Legal Standard

Since the FCC first adopted regulations on ETCs, ETCs have been required to offer a minimum amount of free local usage as a condition of designation.<sup>12</sup> The FCC has the authority to specify what that minimum amount is, but it has chosen not to do so,<sup>13</sup> opting instead to examine usage issues on a case-by-case basis.<sup>14</sup> Nevertheless, the FCC has made it clear that state commissions are free to require specific amounts of free local usage:

In addition, although the [Federal Communications] Commission has not set a minimum local usage requirement, there is nothing in the Act, the Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.<sup>15</sup>

Further, whatever a hypothetically acceptable level of free local usage might be, all ETCs must offer "a local usage plan *comparable to the one offered by the incumbent LEC [local exchange carrier]* in the service areas for which it seeks designation" (emphasis added).<sup>16</sup> This comparability requirement is the touchstone for local usage analysis.

In Minnesota nearly all incumbent LECs – and most ETC applicants – are landline carriers offering unlimited free local usage; the comparability requirement is usually a non-issue. In some cases, though, ETC applicants propose to offer service packages or features (such as the mobile wireless feature in this case) that distinguish them from the incumbent LECs. In these cases, the

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<sup>12</sup> 47 C.F.R. § 54.201 (d) (1) requires ETCs to offer all services supported by federal universal service support mechanisms; 47 C.F.R. § 54.101 (a) (2) lists "local usage" as a supported service.

<sup>13</sup> 47 C.F.R. § 54.101 defines "local usage," as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users," emphasis added.

<sup>14</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-165 (2005), ¶¶ 33, 34.

<sup>15</sup> *Id.* at ¶ 34.

<sup>16</sup> 47 C.F.R. § 54.202 (a) (4), a state-optional requirement adopted by this Commission in docket P-999/M-05-1169, as explained in footnote 8.

comparability determination requires careful analysis. As the FCC observed in its order adopting the comparability requirement:

We believe the Commission should review an ETC applicant's local usage plans on a case-by-case basis. For example, an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area. We also can envision circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers. Case-by-case consideration of these factors is necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.<sup>17</sup>

#### **D. Commission Action**

In this case the Commission must determine whether TracFone's proposed 67 minutes of free local usage (calculated by treating all fractions of minutes used as full minutes), coupled with the availability of additional minutes at 20 cents each, is comparable to the unlimited free local usage offered by the incumbent LECs. This determination must take into account the differences between TracFone's service offering and the incumbents' service offerings and the relative value of those differences to Lifeline customers.

First, the Commission accepts, as the commenting parties clearly do, that the advantages of mobile telecommunications service can be significant enough to offset the disadvantages of a local usage plan with fewer than unlimited free minutes. The ability to place and receive calls from virtually any location can substantially increase the value of local usage.

It permits people to transact the business of their lives at the times and places that are most convenient and effective for them. It permits household members scattered throughout the day to maintain contact with one another. It may be the only effective telecommunications option for homeless people. Its flexibility and convenience can hardly be overstated.

The real issue, then, is whether 67 minutes of this valuable service (with all fractional minutes rounded up), coupled with the availability of additional minutes at 20 cents each, will meet the basic telecommunications needs of Lifeline households as effectively as the unlimited fixed-location local usage offered by the incumbent LECs. The Commission finds this unlikely.

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<sup>17</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-165 (2005), ¶ 33.

The community organizations who represent and serve low-income people have all stated that the 2.23-minute daily usage allowance will be inadequate for most households' needs and that the expense and inconvenience of acquiring additional minutes would prove onerous for many. They fear that TracFone's service offering will degrade the level of telecommunications service available to many low-income households and increase overall telecommunications costs for many more. This is a reasonable projection based on known facts, and it reveals a substantial and troubling lack of comparability between TracFone's local usage plan and those of the local LECs.

At the same time, mobile service offers real advantages for some Lifeline households and cannot be lightly dismissed. In fact, the community organizations that appeared in this case concurred that a modified version of TracFone's proposal would benefit low-income households. Further, expanding the availability of flexible and innovative service offerings is one of the main goals of the Telecommunications Act of 1996, and TracFone's proposal qualifies on both counts. A modified service offering, then, may well serve the public interest.

Further, modification seems feasible based on what is currently known. TracFone apparently offers higher-value usage plans in some jurisdictions, with higher monthly usage allowances and less expensive supplementary minutes (ten cents each). And TracFone states in its application that it "operates in accordance with the spirit of universal service," striving for uniform rates throughout the state and throughout the country.<sup>18</sup>

The Commission will therefore grant TracFone's application with the condition that it modify its service offering to include the highest-value local usage plan it offers in any other jurisdiction. The highest-value plan would consist of the highest number of free minutes offered anywhere and supplementary minutes at the ten-cent level, the lowest it offers anywhere. This modified local usage plan would be comparable in value to – although clearly different in form from – the unlimited local usage plans offered by the incumbent LECs.

Applying the public interest standard this Commission has adopted at the urging of the FCC<sup>19</sup> – which requires considering the benefits of increased customer choice and balancing the unique advantages and disadvantages of the applicant's service offering – the Commission concludes it is in the public interest to approve TracFone's universal service plan as modified. The first consideration – increasing customer choice – clearly favors TracFone's proposal. And the second consideration – weighing the unique advantages and disadvantages of the service offering – appears to favor the proposal as modified, too, since some households will consider less-than-unlimited local usage a fair tradeoff for the flexibility and convenience of mobile service.

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<sup>18</sup> TracFone's July 1, 2009 petition, page 4.

<sup>19</sup> *In the Matter of a Commission Investigation to Consider Adopting the Federal Communications Commission's Standards for Designating Eligible Telecommunications Carriers*, Docket No. P-999/M-05-1169, Order Adopting FCC Requirements for Designating Eligible Telecommunications Carriers, as Modified (October 31, 2005).

Finally, to ensure that TracFone's service offering meets universal service requirements, the Commission will limit TracFone's ETC designation to one year, with the right to reapply two months before the year ends. The Commission will then be in a position, based on actual experience and empirical evidence, to determine whether TracFone's local usage plan is sufficiently comparable to those of the local LECs to merit permanent approval.

### III. TracFone's Compliance with the 911 and TAM Surcharge Statutes

#### A. Introduction

Under Minn. Stat. §§ 403.11 and 237.52, wireless carriers, like all telecommunications service providers, must collect and remit monthly surcharges to fund two public programs – the 911 emergency telecommunications program and Telecommunications Access Minnesota (TAM), the state's access program for communication-impaired persons. These surcharges are assessed on a per-access-line basis, are collected by carriers from their customers, and are remitted to the Commissioner of Public Safety on a monthly basis.

Carriers offering prepaid service typically remit 911 and TAM surcharges for their prepaid customers based on the number of prepaid access lines with account balances exceeding the two programs' combined monthly surcharge of 81 cents on the date of assessment.<sup>20</sup> It appears that some prepaid carriers debit customers' accounts for the surcharges and others roll the surcharges into their rates as part of the cost of doing business.

TracFone apparently does not remit 911 or TAM surcharges for over 90% of its prepaid access lines and does not plan to remit these surcharges for any of its Lifeline access lines. Between August 2007 and September 2007, TracFone's 911 and TAM remittances to the Department of Public Safety dropped by some 96% and have remained at that level ever since.<sup>21</sup> The Company explained by letter that it was limiting its 911 and TAM remittances to access lines "where it has a direct financial relationship with the end user customer that provides the opportunity for collection. Remittance amounts will be based on a collection methodology practicable for prepaid wireless service. . . ."<sup>22</sup>

In other words, TracFone would remit no 911 or TAM surcharges for customers who purchased the Company's prepaid service from a third party – typically a retail outlet. This constitutes nearly all TracFone's current customers and would constitute all TracFone's Lifeline customers under the terms of its ETC application.

#### B. Positions of the Parties

TracFone argued that it complies with the 911 and TAM surcharge statutes "to the extent that they are applicable," pointed out the difficulties inherent in collecting surcharges from customers who buy prepaid service through retail outlets, argued that 911 and TAM compliance were not relevant

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<sup>20</sup> TracFone comments dated April 19, 2010 and April 20, 2010.

<sup>21</sup> Department of Commerce comments of January 15, 2010, pages 4 *et seq.*

<sup>22</sup> Department of Commerce comments of January 15, 2010, page 4.

to ETC designation, and expressed its willingness to work with the Department of Public Safety, the Department of Commerce, and other interested stakeholders to develop a legislative solution to the collection difficulties posed by third-party sale of prepaid service.

The Department of Commerce and the Minnesota Independent Coalition argued that TracFone was violating the 911 and TAM surcharge statutes by failing to remit monthly surcharges, should not be designated an ETC while out of compliance, and derived a significant competitive advantage from not having to make the 911 and TAM surcharge payments made by other prepaid carriers.

They also pointed out that the FCC had conditioned its ETC designation of the Company (applicable where no state has jurisdiction) on Company compliance with its state 911 funding obligations.<sup>23</sup>

### **C. Commission Action**

#### **1. TracFone's Compliance is Relevant to its ETC Application**

The Commission concurs with the Department of Commerce, the FCC, and the Minnesota Independent Coalition that the Company's compliance with the 911 and TAM surcharge statutes is relevant to its petition for ETC designation.

First, an ETC designation requires a finding that the designation is "consistent with the public interest, convenience, and necessity,"<sup>24</sup> which the FCC has found equates to an affirmative finding that designation is in the public interest.<sup>25</sup> It is clearly not in the public interest to grant ETC status to a carrier who does not meet assessment and remittance obligations imposed by law on all carriers for the good of the telecommunications network and the persons and communities the network serves.

Second, to the extent that TracFone does not incur the costs of assessing and remitting surcharges assessed and remitted by other carriers, it has an unfair competitive advantage over those carriers. Condoning that advantage would violate the Commission's duty under Minn. Stat. § 237.011 to ensure fair and reasonable competition in a competitively neutral regulatory manner.

For all these reasons, the Commission finds that TracFone's compliance with the 911 and TAM surcharge statutes is relevant to its request for designation as an ETC.

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<sup>23</sup> *In the Matter of Federal-State Board on Universal Service TracFone Wireless Petitions for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, FCC 08-100 (2008), ¶ 16.

<sup>24</sup> 47 U.S.C. § 214 (e) (2).

<sup>25</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-165 (2005), ¶ 42.



## 2. TracFone's Compliance is Required for ETC Designation

Obviously, a telecommunications service provider cannot be excused from the surcharge requirements of Minn. Stat. §§ 403.11 and 237.52 on grounds that its chosen business model (in this case, offering prepaid service through third-party retail outlets) makes collecting surcharges from customers difficult. Further, it appears that other carriers offering prepaid service through third-party retail outlets – including Verizon, AT&T, and T-Mobile, all cited in TracFone's comments – have found ways to accomplish this.

Nor does the Commission accept TracFone's claim that the failure of other prepaid carriers to collect surcharges from customers with account balances under the combined surcharge of 81 cents vitiates their compliance and demonstrates the futility of attempting compliance until the Legislature creates a more convenient collection mechanism for prepaid carriers. *De minimis* collection shortfalls exist in any collection regime and do not justify abandoning collection efforts or statutory responsibilities.

Finally, the Commission is clearly not free to permit TracFone a competitive cost advantage over prepaid carriers who are collecting and remitting 911 and TAM surcharges as the law requires; this would violate both state and federal policies promoting fair and reasonable competition in the local telecommunications market.

The Commission will therefore condition TracFone's ETC designation on its collection and remittance of 911 and TAM surcharges on the per customer/per-access-line basis required by statute. The Commission will ask the Department of Commerce and the Department of Public Safety to monitor the Company's compliance and to promptly bring to the Commission's attention any future compliance issues.

In recognition of its duty to ensure fair and reasonable competition under Minn. Stat. § 237.011 (4), the Commission will also open an investigation under Minn. Stat. § 237.081 to determine whether TracFone is currently violating or has in the past violated Minn. Stat. §§ 403.11 or 237.50 *et seq.*

## IV. Conclusion

The Commission will designate TracFone an Eligible Telecommunications Carrier for one year subject to the conditions set forth below for the limited purpose of providing federal Lifeline service to Minnesota households. The majority of the conditions set forth below were agreed to in the course of this proceeding and are therefore not addressed in detail above.

### ORDER

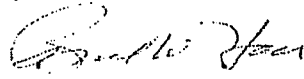
1. The Commission designates TracFone an Eligible Telecommunications Carrier under 47 U.S.C. § 214 for one year, with this designation limited to the provision of Lifeline service within the state of Minnesota and subject to the conditions set forth below.

2. TracFone may reapply for designation as an Eligible Telecommunications Carrier 60 days before the expiration of this one-year designation.
3. As a condition of being designated an Eligible Telecommunications Carrier, TracFone shall take the following actions as of the date it begins providing Lifeline service:
  - a) Provide its Lifeline customers with access to E911 service, regardless of activation status and availability of prepaid minutes.
  - b) Provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service.
  - c) Obtain a certification from each Public Safety Answering Point where TracFone provides Lifeline service confirming that TracFone complies with condition a). The Company may self-certify that it meets the basic and E911 requirements if the PSAP has not provided the certification and made affirmative findings within 90 days of TracFone's request.
4. TracFone shall require its customers to self-certify at the time of service activation and annually thereafter that the customer is the head of household and is receiving Lifeline-supported service only from TracFone. TracFone shall establish safeguards to prevent customers from receiving multiple TracFone Lifeline subsidies at the same address.
5. TracFone shall document its service area and coverage within the service area in a manner consistent with Minnesota rules.
6. TracFone shall submit to the Department of Commerce for its approval a plan listing the local and community newspapers and commercial broadcast stations in Minnesota through which it intends to advertise the availability of Lifeline and a proposed schedule or anticipated frequency of such advertising. TracFone shall post notice of the availability of Lifeline service on its website and shall submit an advertising plan for approval by the Department of Commerce.
7. TracFone shall revise its informational tariff and/or customer service agreement to address the concerns raised by the Department of Commerce as follows:
  - a) Revise policies regarding disconnection, de-enrollment, deactivation of handsets, and flagging of customers' personal information to thwart future Lifeline eligibility to comply with Minn. Rules 7810.1800 – 7810.2000, which allow disconnection only under certain defined circumstances and provide for appropriate notice to customers.
  - b) Include commitments to comply with the Commission's consumer protection and service quality standards codified in Minn. Rules Chapter 7810, including those relating to record keeping and reporting billing practices and complaint handling procedures.

- c) Clearly list and explain the pricing for the Lifeline offering.
  - d) Include a narrative description of the area in which TracFone proposes to offer service and explain the steps TracFone will take to provide service to customers within its proposed service area but outside its existing network coverage.
  - e) Provide clear notice that this Commission is available for assistance in resolving customer questions, concerns, comments, and complaints; provide contact information for the Commission; and eliminate the provision in the Terms and Conditions requiring binding arbitration.
8. TracFone shall comply with the collection and remittance provisions of Minn. Stat. §§ 403.11 and 237.52. The Commission respectfully requests that the Department of Commerce and the Department of Public Safety monitor TracFone's compliance with this requirement and promptly inform the Commission of any compliance issues.
  9. TracFone shall provide an annual 60-day inactivity report that reports on customers whose service is cancelled due to 60 days of non-usage and shall submit evidence that TracFone does not collect Universal Service Fund subsidies for those inactive phones.
  10. TracFone's Minnesota Lifeline service offering shall include the highest number of free minutes of usage offered in any jurisdiction and supplementary minutes priced at the ten-cent level offered in other jurisdictions.
  11. TracFone shall not subtract from the free-minutes allowance customer calls to its customer service center, providing those calls use the 611-customer-service number and that calls about handset issues are made from another line.
  12. TracFone shall assign its Lifeline customers only numbers that are local to their billing address, with "local" meaning that the TracFone customer will be assigned a number assigned to the free calling area for the local telephone exchange where the customer's billing address is located.
  13. TracFone shall comply with the same annual Lifeline verification procedures that apply to other Minnesota Eligible Telecommunications Carriers.
  14. TracFone shall promptly report any changes to its Lifeline service and shall promptly update its informational tariff or customer service agreement to reflect those changes.
  15. Within 30 days of the date of this order, TracFone shall make a filing demonstrating its compliance with all terms and conditions set forth above.
  16. The Commission hereby opens an investigation under Minn. Stat. § 237.081 to determine whether TracFone is currently violating or has in the past violated Minn. Stat. §§ 403.11 or 237.50 *et seq.*

17. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary



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STATE OF MINNESOTA)  
  )SS  
COUNTY OF RAMSEY )

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 9th day of June, 2010 she served the attached

ORDER GRANTING ONE-YEAR, CONDITIONAL ETC DESIGNATION AND OPENING INVESTIGATION.

MNPUC Docket Number: P-6823/M-09-802 & P-6823/CI-10-519

- XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid
- XX By personal service
- XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

- Commissioners
- Carol Casebolt
- Peter Brown
- Eric Witte
- Marcia Johnson
- Kate Kahlert
- Lillian Brion
- Mark Oberlander
- Mary Swoboda
- DOC Docketing
- AG - PUC
- Julia Anderson - OAG
- John Lindell - OAG

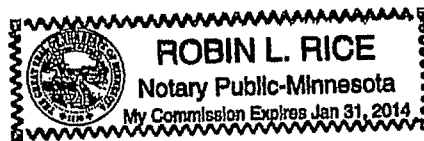
Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 9th day of

June, 2010

Robin L. Rice  
Notary Public



CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 114**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-31** What is TracFone's customer complaint process? Describe the various categories of the types of customer complaints that TracFone tracks on a regular basis.

**Response**

TracFone has a customer service department that responds to inquiries from consumers. TracFone's customers can contact the customer service department by calling a toll free number or by sending an electronic mail message through TracFone's website. There are 3 levels of escalation within TracFone to meet the customer's needs.

1. Contacting customer service. The majority of customer inquiries or complaints are resolved at this level. Most calls to customer service relate to the following issues: customer cannot activate his or her phone; prepaid minutes have not been added to a phone; customer upgraded his or her phone and minutes did not roll over. The customer service representative at this level has the level of authority necessary to address a customer's concerns and expedite the resolution of any issues.
2. If for some reason the customer service representative cannot satisfy customer's concern or if the individual wishes to speak to a manager or supervisor, the issue is escalated to this second level. The manager or supervisor has broad authority to resolve the customer's concerns and to facilitate service to the customer.
3. If a customer's needs remain unaddressed or unresolved, the customer is immediately transferred directly to TracFone's corporate office. The corporate office will respond to a customer's concerns within 24 hours.

TracFone keeps a log of all complaints which includes the type of complaint involved. TracFone does not track specific types of complaints.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 115**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**



BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF )

PETITION OF TRACFONE WIRELESS, INC. )  
FOR DESIGNATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER IN THE )  
STATE OF OKLAHOMA FOR THE LIMITED )  
PURPOSE OF OFFERING LIFELINE SERVICE )  
TO QUALIFIED HOUSEHOLDS )

CAUSE NO. PUD 200900132

ORDER NO. 575501

HEARING: April 28, 2010  
in Courtroom 301, 2010 N Lincoln Blvd, Oklahoma City, OK 73105  
Before the Commission *en banc*

APPEARANCES: Eric R. King and Mitchell Fredrick Brecher, Attorneys *representing*  
TracFone Wireless, Inc.;  
Mary Kathryn Kunc, Ron Comingdeer, and Kendall W. Parrish, Attorneys  
*representing* Rural Telephone Companies<sup>1</sup>  
Kimberly K. Argenbright, Attorney *representing* FairPoint  
Communications, Totah Communications, Pine Telephone Company,  
Inc., Grand Telephone Company, Inc., and Pine Cellular Phones, Inc.  
Lenora F. Burdine, Deputy General Counsel, and Don A. Schooler,  
Assistant General Counsel, *representing* Public Utility Division,  
Oklahoma Corporation Commission

**ORDER AFFIRMING  
ADMINISTRATIVE LAW JUDGE REPORT REGARDING FORBEARANCE**

This cause comes before the Oklahoma Corporation Commission (Commission) in consideration of the applicant, TracFone Wireless, Inc. (TracFone) April 1, 2010 appeal of the report of the Administrative Law Judge (ALJ) regarding forbearance.

TracFone initiated this cause through its June 9, 2009 filing of a petition seeking Commission designation as a wireless, competitive eligible telecommunications carrier (ETC or CETC). Respondent, Rural Telephone Companies, by and through their legal counsels, Ron Comingdeer and Associates, filed a collective entry of appearance on June 26, 2009 and June 30, 2009.<sup>2</sup> Respondents, FairPoint Communications, Totah Communications, Pine Telephone

<sup>1</sup> At las Telephone Company, Beggs Telephone Company, Bixby Telephone Company, Inc., Canadian Valley Telephone Company, Carnegie Telephone Company, Central Oklahoma Telephone Company, Central Oklahoma Telephone Company, Cherokee Telephone Company, Chickasaw Telephone Company, Cimarron Telephone Company, Cross Telephone Company, Dobson Telephone Company, Hinton Telephone Company, KanOkla Telephone Association, McLoud Telephone Company, Medicine Park Telephone Company, Oklahoma Telephone and Telegraph, Inc., Oklahoma Western Telephone Company, Panhandle Telephone Cooperative, Inc., Pinnacle Communications, Pioneer Telephone Cooperative, Inc., Pottawatomie Telephone Company, Santa Rosa Telephone Cooperative, Inc., Shidler Telephone Company, South Central Telephone Association, Southwest Oklahoma Telephone Company, and Valliant Telephone Company.

<sup>2</sup> Pinnacle Communications joined the Rural Telephone Companies by filing an appearance on June 30, 2009.

Company, Inc., Grand Telephone Company, Inc., and Pine Cellular Phones, Inc. (collectively, “Totah”), by and through their legal counsel, Kimberly K. Argenbright, filed a joint entry of appearance on July 30, 2009.

### SUMMARY OF PARTIES’ ALLEGATIONS

1. TracFone alleges in its June 9, 2009 petition, as well as subsequent pleadings, that on September 8, 2005, the Federal Communications Commission (FCC) issued an order<sup>3</sup> forbearing the enforcement of the facilities-based service requirement of Title 47, United States Code, Section 214(e)(1)(A), *i.e.*, the “FCC Forbearance Order.”<sup>4</sup>

2. Intervenors, Rural Telephone Companies and Totah, as well as Commission Staff, allege in their filings of November 4 and 24, 2009, that the FCC Forbearance Order is inapplicable because this Commission has exclusive jurisdiction to designate ETCs in Oklahoma pursuant to 47 U.S.C. § 214(e)(2)<sup>5</sup> and the FCC Forbearance Order is only binding on ETC applications over which the FCC has jurisdiction.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction. OKLA. CONST. Art. 9 § 18 and 47 U.S.C. § 214.

2. The Commission adopts the findings contained within the ALJ’s report regarding forbearance, which is attached hereto as Attachment A.

<sup>3</sup> Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd 15095 (2005).

<sup>4</sup> 47 U.S.C. § 241(e)(1)(A) A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier) [Emphasis added.]

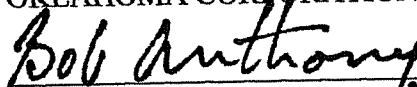
<sup>5</sup> 47 U.S.C. § 214(e)(2) A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.


**ORDER**

THE COMMISSION AFFIRMS the ALJ’s report regarding forbearance and encourages parties to establish a procedural schedule so this matter may proceed to an administrative hearing upon the merits as expeditiously as practical.

THIS ORDER SHALL BE EFFECTIVE immediately.

OKLAHOMA CORPORATION COMMISSION

  
\_\_\_\_\_  
BOB ANTHONY, Chairman

  
\_\_\_\_\_  
JEFF CLOUD, Vice Chairman

*STATEMENT ATTACHED*

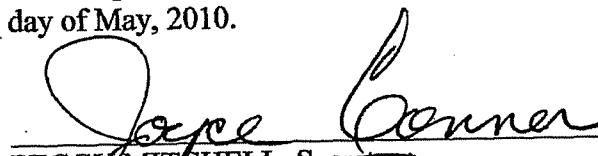
*AFFIRMING IN PART AND DISSENTING IN PART*

\_\_\_\_\_  
DANA L. MURPHY, Commissioner

**CERTIFICATION**

DONE AND PERFORMED by the Commissioners participating in the making of this order as shown by the signatures above this 13 day of May, 2010.

Seal

  
\_\_\_\_\_  
~~PEGGY MITCHELL, Secretary~~  
JOYCE CONNER, Assistant Secretary

**BEFORE THE CORPORATION COMMISSION OF OKLAHOMA**

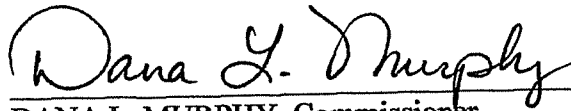
**IN THE MATTER OF**

**PETITION OF TRACFONE WIRELESS, INC.  
FOR DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER IN THE  
STATE OF OKLAHOMA FOR THE LIMITED  
PURPOSE OF OFFERING LIFELINE SERVICE  
TO QUALIFIED HOUSEHOLDS**

)  
)  
) **CAUSE NO. PUD 200900132**  
)  
)  
)  
)  
)

**STATEMENT OF COMMISSIONER DANA L. MURPHY  
AFFIRMING IN PART AND DISSENTING IN PART**

I respectfully affirm in part and dissent in part. I agree the parties should establish a procedural schedule so this case may proceed to a hearing on the merits as expeditiously as possible. I would, however, have reserved ruling on the forbearance issue until the entire record in the matter had been fully developed, a hearing on the merits held, and a final recommendation on all the issues had been submitted by the Administrative Law Judge for the Commission's consideration.

  
\_\_\_\_\_  
DANA L. MURPHY, Commissioner

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF )  
 )  
PETITION OF TRACFONE WIRELESS, INC. )  
FOR DESIGNATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER IN )  
THE STATE OF OKLAHOMA FOR THE )  
LIMITED PURPOSE OF OFFERING )  
LIFELINE SERVICE TO QUALIFIED )  
HOUSEHOLDS )

CAUSE NO PUD 200900132

**FILED**  
MAR 2 2 2010

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

HEARING: December 3, 2009  
Before Maribeth D. Snapp, Administrative Law Judge

APPEARANCES: Eric R. King and Mitchell Fredrick Brecher, Attorneys for TracFone  
Wireless, Inc.  
Ron Comingdeer, Mary Kathryn Kunc and Kendall W. Parrish, Attorneys  
for Independent Telephone Companies<sup>1</sup>  
Kimberly K. Argenbright, Attorney for FairPoint Communications, Totah  
Communications, Pine Telephone Company, Inc., Grand Telephone  
Company, Inc., and Pine Cellular Phones, Inc.  
Lenora F. Burdine, Deputy General Counsel and Don A. Schooler,  
Assistant General Counsel for Public Utility Division, Oklahoma  
Corporation Commission

**ADMINISTRATIVE LAW JUDGE REPORT REGARDING FORBEARANCE**

**Procedural History**

Applicant, TracFone Wireless, Inc. ("TracFone" or "Applicant") filed its Application in the above styled Cause on June 9, 2009. On August 28, 2009, TracFone filed a Motion to Establish Procedural Schedule, which was heard October 8, 2009, by the Administrative Law Judge ("ALJ"). Thereafter, Commission Order No. 570894 was issued, which established a briefing schedule in this Cause. Order No. 570894 established December 3, 2009, as the date for a hearing on the briefs before the ALJ, unless the parties were notified to the contrary by the ALJ. Prior to December 3, 2009, the ALJ advised counsel for the parties that the issue of

<sup>1</sup> Atlas Telephone Company, Beggs Telephone Company, Bixby Telephone Company, Inc., Canadian Valley Telephone Company, Carnegie Telephone Company, Central Oklahoma Telephone Company, Central Oklahoma Telephone Company, Cherokee Telephone Company, Chickasaw Telephone Company, Cimarron Telephone Company, Cross Telephone company, Dobson Telephone Company, Hinton Telephone Company, KanOkla Telephone Association, McLoud Telephone Company, Medicine Park Telephone Company, Oklahoma Telephone and Telegraph, Inc., Oklahoma Western Telephone Company, Panhandle Telephone Cooperative, Inc., Pinnacle Communications, Pioneer Telephone Cooperative, Inc., Pottawatomie Telephone Company, Santa Rosa Telephone Cooperative, Inc., Shidler Telephone Company, South Central Telephone Association, Southwest Oklahoma Telephone Company, and Valliant Telephone Company.

Forbearance would be considered solely on the basis of the filed briefs and that no oral arguments would be necessary on December 3, 2009.

This ALJ report is the recommendation of the ALJ regarding the issue of whether the Oklahoma Corporation Commission is precluded from requiring that TracFone be a facilities based provider of telecommunications services prior to designation of TracFone by the Corporation Commission as an ETC, for the sole purpose of receiving funding from the Federal Universal Service Fund for the provisioning of Lifeline service to qualified customers across the state of Oklahoma.

As stated in the Application filed in this Cause, “TracFone seeks ETC designation solely to provide Lifeline service, under the trade name SafeLink Wireless, to qualifying Oklahoma consumers; it will not seek access to funds from the federal Universal Service Fund (“USF”) or the Oklahoma USF for the purpose of providing service to high cost areas.” TracFone’s Application further states: “Given that TracFone only seeks Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to TracFone.” The Application explains:

TracFone provides service through a ‘virtual network’ consisting of services obtained from numerous licensed operators of wireless networks. TracFone has provided CMRS service throughout the State of Oklahoma continuously for the past ten years. In Oklahoma, TracFone obtains service from the following underlying carriers: AT&T Wireless, Pioneer Enid Cellular, T-Mobile, US Cellular, and Verizon Wireless. TracFone’s arrangements with these providers enable it to offer services wherever any of those providers offer service in the State of Oklahoma. Indeed, TracFone service is available wherever wireless service is available in Oklahoma.

The First Amendment to the Petition of TracFone Wireless was filed herein on October 19, 2009, and states:

By this amendment, TracFone clarifies that it will offer Lifeline service in all areas in Oklahoma that are served by AT&T Mobility and T-Mobile. In the second quarter of 2010, TracFone will expand Lifeline service area to include the areas in Oklahoma served by Verizon Wireless. TracFone requests ETC designation statewide in all exchanges to the extent that its underlying carriers, including Verizon Wireless, have facilities and coverage.

The Second Amendment to the Petition of TracFone Wireless filed herein on January 11, 2010, states:

Currently, TracFone is able to offer Lifeline service in areas in Oklahoma that are served by AT&T Mobility and T-Mobile. In the second quarter of 2010, TracFone will expand its Lifeline service area to include areas in Oklahoma served by Verizon Wireless. In accordance with the Federal Communication Commission’s Forbearance Order,<sup>2</sup> TracFone may only provide Lifeline service in areas in which basic and enhanced 911 service is available.

<sup>2</sup> In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al., 23 FCC Rcd 6206 (2008).

Therefore, TracFone's Lifeline service area does not include those areas in Oklahoma in which enhanced 911 service is not available. (emphasis added)

In its Application, TracFone states it recognizes that Section 214(e)(1)(A) of the 1996 Telecommunications Act requires that "ETCs shall offer services, at least in part, over their own facilities and that Section 54.201(i) of the FCC's Rules (47 C.F.R. § 54.20(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of other carrier's services." TracFone asserts that it is entitled to an exception to 47 C.F.R. § 54.20(i), because

on June 8, 2004, TracFone filed with the FCC a petition requesting that the FCC exercise its forbearance authority under Section 10 of the Communications Act (47 U.S.C. § 160) with respect to the facilities-based service requirement.<sup>3</sup> The FCC granted the petition for forbearance in an Order dated September 8, 2005.<sup>4</sup> In an Order dated April 11, 2008, the FCC granted all of TracFone's pending petitions for designation as an ETC, subject to the conditions set forth in the *TracFone Forbearance Order*.<sup>5</sup>

All parties agree that the Corporation Commission is authorized by Section 214(e)(2) of the Communications Act to designate eligible telecommunications carriers ("ETCs") for federal universal service purposes and that the Corporation Commission is authorized to designate wireless carriers as an ETC. The parties are in disagreement regarding the Corporation Commission's authority to designate a wireless carrier as an ETC, when the wireless carrier does not provide service using its own facilities or a combination of its own facilities and resale of another carrier's services.

TracFone argues that because the FCC decided to forbear from applying the facilities-based requirement for ETCs to TracFone, the Corporation Commission may not require that TracFone be facilities-based prior to designating TracFone as an ETC. TracFone's application states:

Section 10(e) of the Communications Act (47 U.S.C. §160(e)) provides '[a] State commission may not continue to apply or enforce any provision of this chapter the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.' As such, the Oklahoma Corporation Commission is required by Section 10(e) to act in accordance with the FCC's *TracFone Forbearance Order*, and therefore, may not apply the facilities-based requirement to TracFone.

<sup>3</sup> See *TracFone Wireless, Inc. Petition for Forbearance*, CC Docket No. 96-45, filed June 8, 2004, as amended by *TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida*, CC Docket No. 96-45, filed August 16, 2005, and *TracFone Wireless, Inc. Clarification of Petition for Forbearance*, CC Docket No. 96-45, filed September 24, 2004 ("*Petition for Forbearance*").

<sup>4</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 USC §214(e)(1)(A) and 47 CFR §54.201(i)*, 20 FCC Rcd 15095 (2005) ("*TracFone Forbearance Order*").

<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunication s Carrier in the State of New York et al.*, 23 FCC Rcd 6206 (2008) (granting TracFone's ETC Petitions for Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Virginia) ("*TracFone ETC Order*")

In the brief filed by TracFone on November 4, 2009, TracFone asserts that “FCC forbearance decisions are applicable to and binding on all states, and that states may not seek to reimpose statutory provisions which are subject to FCC forbearance.” Therefore, TracFone asserts “all State commissions, including this Commission, are required to act in Accordance with FCC forbearance decisions, including the *TracFone Forbearance Order*, and thus, this Commission may not impose upon TracFone the facilities-based requirement in order to be qualified for designation as an ETC.”

TracFone acknowledges that Section 214(e)(1) of the Communications Act requires that a carrier provide the services that are supported by the Federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier’s services. TracFone further points out that “Section 54.201(i) of the FCC’s rules provides: ‘A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier’s services.’” TracFone argues however that “where the FCC has exercised its statutory forbearance authority, no state may apply or enforce provisions of the Act in a manner which is contrary to the FCC’s exercise of that forbearance authority.”

The amended petition filed by TracFone at the FCC requested that the FCC exercise its forbearance authority under Section 10 of the Communications Act with regard to the facilities-based requirement in Section 214 (e)(1)(A) and that the FCC extend its forbearance to the facilities-based requirements in FCC Rule 54.201(i). Accordingly, TracFone argues that its amended forbearance petition “contemplated that any exercise of forbearance would be applicable to state commissions considering requests to designate TracFone as an ETC as well as to the FCC itself in its capacity as a designator of ETCs pursuant to Section 214(e)(6) of the Act.” In a Clarification of Petition for Forbearance, TracFone stated: “Grant of TracFone’s Petition for Forbearance will enable the [Federal Communications] Commission to designate TracFone as an ETC and will allow state commissions to act favorably on TracFone ETC requests in states which have the jurisdictional authority to make ETC designations.”

TracFone states that under Section 10(a) of the Act, the FCC was required to find that forbearance should be granted, provided the FCC found that:

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

TracFone argued to the FCC that forbearance of the facilities requirement for TracFone would be in the public interest because it would promote competition and the FCC found that “a facilities-based ETC requirement is not necessary for wireless resellers to offer high quality affordable telecommunications service to eligible low-income consumers who otherwise may not have access to mobile telecommunications service.” The FCC further found that, as a reseller, TracFone is “by definition subject to competition and that this competition ensures that its rates



are just and reasonable and not unjustly or unreasonably discriminatory.”<sup>6</sup> The FCC also found that allowing a wireless reseller to provide Lifeline service would benefit consumers by “offering Lifeline-eligible consumers a choice of providers not available to such consumers today for accessing telecommunications services.”<sup>7</sup> Further, the FCC found that “requiring TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live.”<sup>8</sup>

TracFone concludes that the FCC’s decision to forbear from requiring TracFone to have its own facilities prior to being designated by the FCC as an ETC is binding upon all States, regardless of whether the State has asserted jurisdiction to designate ETC providers within that state. Additionally, because the FCC imposed conditions upon TracFone as a condition of the forbearance, TracFone states that they are required to comply with those conditions in all states where they are designated an ETC.

A Joint Brief was filed November 4, 2009, by Atlas Telephone Company, *et al.* (“Atlas”), Totah Communications, Inc. *et al.* (“Totah”) and the Oklahoma Corporation Commission Public Utility Division Staff (“Staff”). The Joint Brief requested that the Commission deny TracFone’s request and dismiss the above styled application without prejudice.

The Joint Brief argued that State Commissions have primary jurisdiction to designate ETCs and that the Oklahoma Corporation Commission has exclusive jurisdiction to designate ETCs in Oklahoma. The Joint Brief also stated that the Corporation Commission has primary jurisdiction to either grant or deny TracFone’s request for ETC designation in the State of Oklahoma.

The Joint Brief argued that the FCC’s rules regarding the FCC’s consideration of ETC requests are not binding on the Oklahoma Commission. Citing *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service* Report and Order, CC Docket No. 96-45, Rel. March 17, 2005 at ¶17, the Joint Brief argues that the FCC’s order made guidelines that apply when the FCC designates an ETC, but which are only applicable as “permissive guidelines” when a State Commission is considering an application for ETC designation. The Joint Brief also cites *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir., 1999) as authority for the argument that the Oklahoma Commission is free to impose its own requirements for ETC designations and is not required to apply the FCC’s requirements.

The parties to the Joint Brief argued that the FCC’s Forbearance Order, issued in response to TracFone’s petition for forbearance is only binding on ETC applications over which the FCC has jurisdiction. Additionally, the parties to the Joint Brief argue that the TracFone Order limits the applicability of the order to the limited “purpose of considering [TracFone’s] Petitions for ETC Designation for Lifeline support only.”<sup>9</sup>

<sup>6</sup> FCC Forbearance Order, ¶ 13.

<sup>7</sup> *Id.* ¶15.

<sup>8</sup> *Id.* ¶23.

<sup>9</sup> *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. §214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, ¶6, (rel. Sep. 8, 2005) (*TracFone Order*).

At the time the *TracFone Order* was issued, there was an application for ETC designation for TracFone pending in Florida. The FCC did not mandate that Florida yield to the FCC's *TracFone Order*, but instead "encourage[ed]" the Florida Public Service Commission to require adherence to the plan adopted by the FCC with respect to TracFone's remaining ETC applications.<sup>10</sup> The Joint Brief further argues that the FCC is without authority to impose ETC designation requirements on states with jurisdiction and nothing in the *TracFone Order* requires all states to adhere to the FCC's order.

The Joint Brief further argues that the Oklahoma Commission has no discretion when applying the statutory requirements, such as the requirement an ETC be facilities based, when making an ETC designation.<sup>11</sup> The Joint Brief argues that the Act creates a distinction between the designation of ETCs under paragraph (2), which are granted pursuant to state authority, paragraph (3), which are granted with respect to unserved areas, and designations by the FCC acting on behalf of states pursuant to paragraph (6), and which is the authority relied upon by the FCC to grant TracFone's ETC requests.

The Joint Brief argues that the requirements contained in Sections 214(e)(1)(A) and (B), including the requirement that services be offered using the carrier's own facilities or a combination of its own facilities and resale of another carrier's facilities, are **mandatory federal requirements to be enforced by State commissions considering requests for ETC designations. Nothing in either subparagraphs (1) or (2) grants State commissions discretion over which requirements to apply.** (emphasis added)

47 U.S.C. §214 (e)(6) states:

In the case of a common carrier providing telephone exchange service and exchange access **that is not subject to the jurisdiction of a State Commission**, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law.... (emphasis added)

For TracFone, the FCC made a determination to forbear from enforcing the requirement set forth in § 214(e)(1) that a telecommunications carrier must offer the services that are supported by Federal universal service support mechanisms .... either using its own facilities or a combination of its own facilities and the resale of another carrier's services.... The ALJ finds that the Oklahoma Commission is not obligated to follow the FCC's forbearance order and find that in Oklahoma, TracFone does not need to have at least some of its own facilities prior to

<sup>10</sup> *In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al.*, CC Docket No. 96-45, Order, ¶10 (rel. Aug. 11, 2008) (*TracFone ETC Order*).

<sup>11</sup> 47 U.S.C. § 214(e)(1) states:

Eligible Telecommunications Carriers. A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and **shall** throughout the service areas for which the designation is received –

- (A) Offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) Advertise the availability of such services and the charges therefore using media of general distribution. (emphasis added).

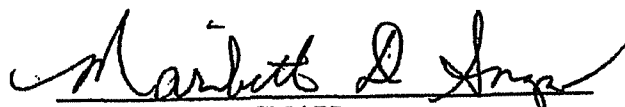
being designated as an ETC. The request by TracFone for ETC designation in Oklahoma was not pending at the time TracFone sought forbearance from the FCC. Oklahoma has always exercised the jurisdiction to designate the ETCs that will receive federal support for providing the services that are supported by Federal universal service support mechanisms, so the FCC has never had authority pursuant to 47 U.S.C. § 214(e)(6) to designate ETCs in Oklahoma. Since the FCC lacks the authority to designate an ETC in Oklahoma, it is illogical to draw the conclusion that the *Forbearance Order* must be construed to apply to the Oklahoma Commission's requirements for ETC designation.

TracFone makes much of the decision by the Florida Public Service Commission to acknowledge the FCC's *Forbearance Order* in designating TracFone as an ETC in Florida. The ALJ finds that the Oklahoma Commission is not bound by the decision of other states to follow the *Forbearance Order* nor should the actions of other states be deemed a determination that every state is obligated to follow the *Forbearance Order*.

TracFone states that if the Oklahoma Commission did not want to be bound by the FCC's *Forbearance Order*, the Oklahoma Commission had an obligation to make comment in the FCC's consideration of TracFone's request for forbearance, which was initially filed in 2004, many years before TracFone sought to become an ETC in Oklahoma. The ALJ finds this argument to be without merit in that the Oklahoma Commission has not sought to preclude TracFone from doing business in Oklahoma, but is merely contemplating whether the application of TracFone for designation as an ETC for the purpose of receiving Lifeline support should be granted.

The ALJ recommends that the Oklahoma Commission find that it is not obligated to follow the FCC's *Forbearance Order*, although the Oklahoma Commission may certainly take the *Forbearance Order* into consideration in determining whether to grant ETC status to TracFone.

Respectfully submitted this 22<sup>nd</sup> day of March, 2010.



MARIBETH D. SNAPP  
Administrative Law Judge

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 116**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-113 Provide a copy of the compliance plan referenced in item 23 on page 10 of the FCC Order 08-100 that was adopted on April 9, 2008.**

**Response**

A copy of the compliance plan is provided as Exhibit 113.

# **Exhibit 113**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition of TracFone Wireless, Inc. for	)	
Forbearance from 47 U.S.C. § 214(e)(1)(A) and	)	
47 C.F.R. § 54.201(i)	)	

TRACFONE WIRELESS, INC.'S COMPLIANCE PLAN

Mitchell F. Brecher  
Debra McGuire Mercer

GREENBERG TRAUIG, LLP  
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Suite 500  
Washington, DC 20006  
(202) 331-3100  
*Its Counsel*

October 11, 2005

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## SUMMARY

The Commission recently granted a petition for forbearance by TracFone Wireless, Inc. ("TracFone"), requesting forbearance from the requirements in 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i) that a carrier designated as an eligible telecommunications carrier for purposes of federal universal service support provide service at least in part over its own facilities. In the Commission's order ("Forbearance Order"), grant of TracFone's petition was subject to various conditions and a requirement that TracFone advise the Commission of its plan to implement those conditions.

In accordance with the conditions in the Forbearance Order, TracFone will provide Lifeline customers with access to basic and E911 services immediately upon activation of service and irrespective of whether TracFone handsets have remaining unexpired minutes of use. TracFone proposes that the Commission permit it to provide a direct certification from TracFone that it is providing service to Lifeline customers using a specific underlying carrier's network, and/or that it is providing E911-compliant handsets, and that the relevant underlying carrier has filed verified quarterly reports concerning E911 deployment with the Commission. TracFone's suggested certification process will provide greater assurance to the Commission and to the public that it will offer basic and E911 access to customers than would individual certifications from PSAPs that have no direct knowledge about TracFone's service. TracFone also commits to providing E911-complaint handsets to all new Lifeline customers. For existing customers who qualify for and enroll in TracFone's Lifeline program, but do not own an E911-compliant handset, TracFone will replace the handset with an E911-compliant handset free of charge.

TracFone also requests that it be permitted to offer Lifeline service in markets where basic 911 service is available, even if E911 service has not yet been deployed. When E911 service is not available, access to basic 911 is important to public safety and provides substantial

benefits to consumers seeking emergency assistance. Limiting TracFone's ability to offer Lifeline service to areas where there is E911 service unnecessarily denies consumers in such areas the option of choosing TracFone's wireless prepaid service. More importantly, as recent events have shown, in areas without E911, access to a wireless telephone to reach basic 911 is an important public safety benefit.

TracFone's procedures for certifying consumer eligibility for Lifeline service and for verifying their continuing eligibility will comply with all applicable state and federal requirements. TracFone customers will receive written information about TracFone's Lifeline program at the point of sale, but will apply for Lifeline service directly with TracFone. As part of the application process, and annually thereafter, Lifeline customers must self-certify under penalty of perjury that they are the heads of their households and only receive Lifeline-supported service from TracFone. The Lifeline enrollment form will require each applicant to list a primary residential address and a contact telephone number. TracFone's customer information data base will be amended to include an information field that identifies whether the customer receives Lifeline-supported service. When processing each Lifeline application, TracFone will search its customer records to determine whether the applicant is attempting to receive Lifeline-supported service for more than one handset associated with the address listed on the enrollment form.

TracFone's Compliance Plan will promote public safety by ensuring that Lifeline customers have access to basic and E911 service, will provide assurances to the Commission that Lifeline program requirements will be met, and will implement the conditions set forth in the Forbearance Order. Therefore, TracFone requests the Commission to approve its plan and grant its pending ETC Petitions.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Petition of TracFone Wireless, Inc. for	)	
Forbearance from 47 U.S.C. § 214(e)(1)(A) and	)	
47 C.F.R. § 54.201(i)	)	

**TRACFONE WIRELESS, INC.'S COMPLIANCE PLAN**

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby files its plan outlining the measures it will take to implement the conditions described in the Commission's Order, released September 8, 2005, in the above-captioned matter.<sup>1</sup>

**BACKGROUND**

TracFone, a non-facilities based Commercial Mobile Radio Services ("CMRS") provider, is the nation's leading provider of prepaid wireless telecommunications service. TracFone filed petitions for Eligible Telecommunications Carrier (ETC) designation in eight states ("ETC Petitions") and limited those petitions to seeking eligibility for federal universal service support for the Lifeline portion of the low-income program.<sup>2</sup> TracFone also filed a petition for forbearance, applicable to its eight ETC Petitions and any subsequently-filed ETC Petitions, requesting that the Commission forbear from the requirements of 47 U.S.C. § 214(e)(1)(A) and

<sup>1</sup> Federal-State Joint Board on Universal Service and Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), FCC 05-165, released September 8, 2005 ("Forbearance Order").

<sup>2</sup> See ETC Petitions for New York (filed June 8, 2004), Florida and Virginia (filed June 21, 2004), and Alabama, Connecticut, Massachusetts, North Carolina, Tennessee (filed November 9, 2004); TracFone Wireless Inc. Reply Comments (filed August 9, 2004 and Amendments to ETC Petitions for Florida, New York, and Virginia (filed August 16, 2004).

47 C.F.R. § 54.201(i) that a carrier designated as an ETC for purposes of federal universal service support provide services at least in part over its own facilities.<sup>3</sup>

In the Forbearance Order, the Commission granted TracFone's petition for forbearance subject to certain conditions. The Commission explained that requiring "TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live."<sup>4</sup> The Commission also stated that grant of TracFone's petition for forbearance "serves the public interest in that it should expand participation of qualifying consumers" in the under-utilized low-income program.<sup>5</sup> TracFone looks forward providing high quality and dependable service to consumers that qualify for Lifeline support and to expanding the level of participation in the federal Lifeline program. Upon grant of its ETC Petitions, TracFone will engage in various marketing and outreach efforts to ensure that as many eligible consumers as possible avail themselves of TracFone's prepaid wireless Lifeline offering.<sup>6</sup>

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

<sup>3</sup> See TracFone Wireless Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004.

<sup>4</sup> Forbearance Order, ¶ 23.

<sup>5</sup> Id., ¶ 24.

<sup>6</sup> TracFone's plans for marketing its Lifeline program and for reaching those consumers eligible for Lifeline were described in an Ex Parte Supplement to Petition for Forbearance and Petitions for Designation as an Eligible Telecommunications Carrier filed July 15, 2005.

TracFone complies with condition (a); (e) TracFone requiring its customers to self-certify at the time of service activation and annually thereafter that they are the heads of the households and receive Lifeline-supported service only from TracFone; and (f) TracFone establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address. The Commission required TracFone to submit a plan describing the measures it would take to implement each of these conditions.

As described below, TracFone's Compliance Plan suggests several slight modifications of the aforementioned conditions. First, TracFone notes that strict compliance with the condition that it obtain certification from every PSAP regarding 911 and E911 availability would be burdensome and, more importantly, would not provide any greater assurances of emergency service availability than would the approach described below. Second, TracFone requests that it be permitted to offer Lifeline in areas where E911 or 911 service is available. As described more fully in Section IV herein, TracFone believes that basic 911 provides important public safety benefits in areas where E911 has not yet been deployed and that Lifeline customers should be able to reach 911 operators from the wireless handsets when E911 is not available.

### **COMPLIANCE PLAN**

#### **I. Policy**

TracFone will comply with all conditions set forth in the Forbearance Order, the provisions of this Compliance Plan, and all laws and regulations governing its provision of Lifeline-supported prepaid wireless service to customers throughout the United States. TracFone will also ensure that all persons responsible for implementation of its Lifeline program will comply with the conditions set forth in the Forbearance Order, the provisions of this Compliance Plan, and all applicable laws and regulations.

## II. Unrestricted Access to Basic and E911 Services and Certification of Such Access

In the Forbearance Order, the Commission has required TracFone to provide its Lifeline customers with access to basic and E911 service immediately upon activation of service. The Commission also noted that this condition is consistent with TracFone's representation that its handsets will allow 911 emergency calling irrespective of whether the caller is an active customer and whether the customer has available prepaid minutes.<sup>7</sup> Moreover, under Section 20.18(b) of the Commission's Rules, TracFone and its underlying carriers must transmit all wireless 911 calls initiated from a TracFone handset even if there are no prepaid minutes remaining on the handset or TracFone's customer is not an active customer.<sup>8</sup> Although Commission rules do not impose an independent obligation on resellers to provide access to basic and E911 service to the extent that such service is available on its underlying carriers' facilities until December 31, 2006, TracFone will be required to provide access to 911 and E911 at the time it commences Lifeline service.<sup>9</sup> As stated in the Forbearance Order, to demonstrate compliance with the condition that basic and E911 service be available to Lifeline customers upon activation, "TracFone must obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service."<sup>10</sup> The Commission and consumers are hereby assured that all TracFone Lifeline customers will have available access to emergency calling services at the time that Lifeline service is initiated, and that such 911 and (where available) E911 access will be available from

<sup>7</sup> Forbearance Order, ¶ 16.

<sup>8</sup> 47 C.F.R. § 20.18(b) (CMRS providers must transmit "all wireless 911 calls" to a PSAP. "All wireless 911 calls" is defined as "any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier").

<sup>9</sup> Forbearance Order, ¶ 16 & n.41 (citing 47 C.F.R. § 20.18(m)).

<sup>10</sup> Id., ¶ 16.

TracFone handsets irrespective of whether those handsets have remaining unexpired minutes of use.

Relevant information about the availability of basic and E911 service to TracFone's Lifeline customers is publicly available in quarterly reports that TracFone's underlying carriers are required to file with the Commission.<sup>11</sup> The information contained in the underlying carriers' quarterly reports, together with additional certifications regarding TracFone's underlying carriers and/or its handset manufacturers, will enable TracFone to accurately certify to the Commission that it will provide its Lifeline customers with access to basic and E911 service at the time that its Lifeline service is commenced. The certifications TracFone will provide to the Commission will promote the public interest by ensuring access to emergency public safety resources and will provide verifiable assurance to the Commission that TracFone's Lifeline customers will at all times have access to emergency services.

The Commission maintains a PSAP Registry, which lists all PSAPs by name, state, county, and city, and a description of any changes to a PSAP's listing. The PSAP Registry also assigns a PSAP identification number to each PSAP.<sup>12</sup> Currently, the PSAP Registry lists over 6,700 operating PSAPs, including more than 1,700 PSAPs in the eight states for which TracFone has to date filed ETC Petitions.

The Commission requires all Tier I (i.e., nationwide) and Tier II (more than 500,000 subscribers as of year-end 2001) carriers to file quarterly reports with the Commission concerning E911 service. The reports assist the Commission and PSAPs in monitoring a

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<sup>11</sup> See Revision to the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Order, 17 FCC Rcd 14841 (2002); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17422 (2000).

<sup>12</sup> See <http://www.fcc.gov/911/enhanced/reports>.

carrier's compliance with Phase I deployment of E911 service and Phase II implementation of E911 service requirements set forth in the Commission's rules.<sup>13</sup> Beginning with the August 1, 2003 quarterly filings, Tier I and Tier II carriers are required to include as an attachment to their quarterly reports a spreadsheet in a format specified by the Commission detailing certain elements related to E911 implementation status.<sup>14</sup> The spreadsheet includes the following data elements: PSAP identification number; PSAP name; PSAP state; PSAP county; PSAP city; E911 implementation phase (i.e., Phase I or Phase II); air interface (i.e., CDMA, GSM, TDMA, TDMA/GSM, iDEN, or Other); date PSAP request made;<sup>15</sup> date PSAP withdrawn (if applicable); whether request is valid; whether requested E911 services were deployed; deployment date; projected deployment date (if not deployed); reasons why deployment will not occur within 6 months of PSAP request; and comments.<sup>16</sup> Each carrier's quarterly report must be supported by an affidavit from an officer or director of the carrier attesting to the truth and accuracy of the report.<sup>17</sup> Thus, the Commission has in its records publicly-available, verified information regarding the status of E911 deployment provided by each carrier which is updated quarterly.

<sup>13</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, Order to Stay, 17 FCC Rcd 14841, ¶ 31 (2002).

<sup>14</sup> See Public Notice - Wireless Telecommunications Bureau Standardizes Carrier Reporting on E911 Wireless Implementation, CC Docket No. 94-102, DA 03-1902 (June 6, 2003) ("E911 Public Notice").

<sup>15</sup> Commission Rule 20.18(j)(1) (47 C.F.R. § 20.18(j)) provides that E911 service requirements set forth in sub-sections (d) through (h) "are only applicable if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and the Public Safety Answering Point is capable of receiving and utilizing the data elements associated with the service and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place." The PSAP request date refers to the date the PSAP requested E911 services from the reporting carrier.

<sup>16</sup> See E911 Public Notice.

<sup>17</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, Order to Stay, 17 FCC Rcd 14841, ¶ 29 (2002).



As the Commission has recognized, TracFone is only able to provide its customers with access to basic and E911 service if its underlying carriers have deployed the facilities necessary to provide such service.<sup>18</sup> The carriers' quarterly reports, supported by affidavits, disclose whether E911 service has been deployed to each PSAP that has requested such service. TracFone will institute the following procedures to ensure that all Lifeline customers have access to basic and E911 service starting immediately upon activation of service and at all times that the customer owns a handset obtained from TracFone, including when the handset has no remaining prepaid minutes or when the customer is no longer considered to be an active customer. TracFone's proposal accounts for the fact that some of its underlying carriers use a network-based solution to provide E911 service while other underlying carriers use a handset-based solution.

**A. Underlying carrier uses a network-based solution to provide E911 service**

TracFone's underlying carriers that use GSM (Global System for Mobile Communications) technology to provide wireless service (e.g., Cingular Wireless LLC and T-Mobile USA, Inc.), tend to utilize network-based solutions to provide E911 service. In markets where TracFone utilizes the services of an underlying carrier which has deployed a network-based solution, it will do the following prior to offering Lifeline service:

1. TracFone will confirm that the underlying carrier has on file with the Commission a current verified quarterly carrier report that includes the data required by the E911 Public Notice;
2. TracFone will review the underlying carrier's most recent quarterly report to ascertain whether the underlying carrier has deployed basic and E911 service to the PSAPs located in that market;

<sup>18</sup> Forbearance Order, ¶ 16, n. 3.

3. TracFone will certify to the Commission that all Lifeline customers served in that market are being served over the network(s) of underlying carrier(s) who have on file current verified quarterly reports which indicate that 911 and E911 have been deployed.

**B. Underlying carrier uses a handset-based solution to provide E911 service**

TracFone's underlying carriers that use CDMA Code-Division Multiple Access technology to provide wireless service (e.g., Alltel Communications, Inc., United States Cellular Corporation, Verizon Wireless), tend to utilize handset-based solutions to provide E911 service. In those markets where TracFone offers service to Lifeline customers using the services of underlying carriers which have deployed handset-based E911 solutions, TracFone will do the following prior to offering Lifeline service:

1. TracFone will confirm that the carrier has on file with the Commission a current verified quarterly carrier report that includes the data required by the E911 Public Notice;
2. TracFone will review the underlying carrier's most recent quarterly report to ascertain whether the underlying carrier has deployed E911 service to the PSAPs located in that market;
3. TracFone will certify to the Commission that all Lifeline customers served in that market are being served over the network(s) of the underlying carrier(s) who have on file current verified reports which indicate that 911 and E911 service have been deployed;
4. TracFone will provide the Commission with a certification from the handset manufacturer (e.g., Nokia, Motorola, etc.) that the handsets used to provide Lifeline service contain GPS chips and are E911-compliant; and

5. TracFone will certify to the Commission that all Lifeline customers in markets served by such underlying carriers will be provided with E911-compliant handsets which have been certified as E911-compliant by the manufacturer. Existing TracFone customers who are eligible for Lifeline service and who choose to enroll in TracFone's Lifeline program will be provided with E911-compliant handsets at no additional charge if their existing handsets are not E911-compliant.

TracFone's plan will provide greater assurance to the Commission and to the public that it will offer basic and E911 access to customers than would certifications from PSAPs. A PSAP can only certify that TracFone's underlying carrier has deployed E911 in response to its request -- information that is readily available to the Commission and to the public in the underlying carriers' quarterly reports. A PSAP would have no direct knowledge about whether TracFone is providing service over a particular underlying carrier's network and would have to rely on TracFone's representation that it is utilizing a carrier's service. Under TracFone's certification proposal, the Commission would receive a direct certification from TracFone that it is providing service to Lifeline customers using a specific underlying carrier's network, and/or that it is providing E911-compliant handsets, and that the relevant underlying carrier has filed verified quarterly reports disclosing the status of E911 deployment for each PSAP that has requested E911 service. The Commission has determined that the best way for it and PSAPs to monitor carriers' compliance with E911 requirements is to require Tier I and Tier II carriers to file with the Commission verified quarterly reports. TracFone's plan to provide certifications to the Commission regarding its customers' access to basic and E911 service based upon those Commission-required verified quarterly reports of those underlying carriers and TracFone's certified commitment to provide Lifeline service using those carriers' services, will not

compromise public safety or the deployment of E911 service. Indeed, it will provide the Commission and, more importantly, TracFone's Lifeline customers, with assurances that Basic 911 and E911 service will be available to those customers:

### III. E911-Compliant Handsets

The Commission also conditioned its forbearance determination on TracFone providing only E911-compliant handsets to its Lifeline customers and replacing any non-compliant handsets owned by existing customers who obtain Lifeline-supported service from TracFone with an E911-compliant handset, at no charge to the customer.<sup>19</sup> Although Commission rules do not impose an independent obligation on resellers to ensure that all handsets are capable of transmitting E911 information to the appropriate PSAP until December 31, 2006, TracFone will be required to meet the obligation at the time it commences Lifeline service.<sup>20</sup> As explained in Section II of this Compliance Plan, prior to offering Lifeline service in a particular market TracFone will provide the Commission with (1) a certification from the handset manufacturer that the handset used to provide Lifeline service contains a GPS chip and is E911-compliant, and (2) a certification that all Lifeline customers in the market served by such underlying carrier will be provided with E911-compliant handsets which have been certified as E911-compliant by the manufacturer, including existing Lifeline customers. If an existing TracFone customer is Lifeline-eligible and elects to participate in TracFone's Lifeline program, that customer will be provided by TracFone with an E911-compliant handset at no additional charge if its current TracFone handset is not E911 compliant. TracFone knows which handsets have been provided to each of its customers. Any TracFone customer whose existing handset is not E911-compliant

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<sup>19</sup> *Id.*, ¶ 16.

<sup>20</sup> *Id.*, ¶ 16 & n.41 (citing 47 C.F.R. § 20.18(m)).

will receive a replacement phone which is E-911 compliant at the time of enrollment in the Lifeline program.

For new customers, TracFone will make available only E911-compliant handsets in markets where TracFone offers service through underlying carriers which have deployed handset-based technology. Under this plan, all TracFone Lifeline customers will be provided with handsets which enable them to use E911 service where E911 is available.<sup>21</sup>

**IV. TracFone Seeks Permission to Offer Lifeline Service Wherever 911 Service is Available, Irrespective of Deployment of E911 by PSAPs**

TracFone's plan for compliance with the condition that TracFone's Lifeline customers have access both to 911 and to E911 service is described above. However, TracFone believes that its Lifeline program will offer significant public safety benefits even in markets where only basic 911 service is available. For that reason, TracFone respectfully proposes that it be allowed to offer Lifeline service conditioned on making available basic 911 service in markets where PSAPs have not yet deployed E911. In the Forbearance Order, the Commission stated that if "TracFone's underlying facilities-based licensee has not deployed the facilities necessary to deliver E911 information to the appropriate PSAP, TracFone will not be able to offer Lifeline-supported services to customers residing in that area."<sup>22</sup> For the reasons described herein, availability of E911 should not be a condition precedent to the availability of TracFone's Lifeline service.

TracFone's existing customers that use their handsets in areas in which E911 service is not available have access to basic 911 service. All of TracFone's existing and potential

<sup>21</sup> Recently, several facilities-based wireless carriers (Sprint Nextel and Alltel) petitioned the Commission for waiver of the requirement that 95 percent of handsets be E911-compliant by December 31, 2005. TracFone takes no position on the merits of those waiver requests. However, it hastens to note that under its Compliance Plan, 100 percent of TracFone handsets will be E911 compliant on the date that it commences offering Lifeline service.

<sup>22</sup> Forbearance Order, ¶ 16 n.43.

customers, including those that qualify for Lifeline support, should have the ability to access basic 911 when E911 service is not available. Access to basic 911 provides substantial benefits to an individual seeking emergency assistance. If an individual dials 911 in a location which has basic 911 service (but not E911 service), the individual will have the call answered by a PSAP and can inform the PSAP attendant of his or her location and can request emergency assistance.

"Congress . . . established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911."<sup>23</sup> Limiting TracFone's ability to offer Lifeline supported service only in areas with E911 service unnecessarily will deny consumers in such areas the option of choosing TracFone's wireless prepaid service.<sup>24</sup> Moreover, TracFone's proposal to allow it to offer Lifeline service in areas with basic 911 service is consistent with the Commission's mandate from Congress to "promot[e] safety of life and property through the use of wire and radio communications"<sup>25</sup> and with what TracFone believes to be the purpose underlying the Commission's condition in the Forbearance Order that TracFone provide its Lifeline customers with basic and E911 service.<sup>26</sup>

The recent devastation caused by Hurricanes Katrina and Rita demonstrate why TracFone believes that its service should be available to qualified Lifeline customers in areas where 911 is available, but where E911 service has not yet been deployed. During the hurricanes, many consumers had no sources of emergency communication other than their wireless phones. For

<sup>23</sup> IP-Enabled Services, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36, 05-196, FCC 05-116, ¶ 4 (released June 3, 2005) (citing 47 U.S.C. § 251(e)).

<sup>24</sup> As the Commission noted, "the prepaid feature may be an attractive alternative for such customers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts." Forbearance Order, ¶ 15.

<sup>25</sup> 47 U.S.C. § 151.

<sup>26</sup> See Forbearance Order, ¶ 6.

those many consumers who lost their homes or who had to abandon their homes, the wireline phones in their homes (if they had wireline telephone service) provided no assistance at all. If such consumers had wireless phones, they could have dialed 911, identified where they were and sought help. Whether or not basic 911 provides the same level of public safety as E911 service (clearly it does not), the availability of basic 911 service to persons with wireless phones who are displaced from their homes is a far superior option to having no 911 service at all in emergency situations. Many years ago, the United States Court of Appeals for the District of Columbia Circuit, in an entirely different context, stated that "[t]he best must not become the enemy of the good."<sup>27</sup> So it is with emergency communications. In requesting Commission approval to offer Lifeline service where E911 or basic 911 service is available, TracFone does not seek to weaken or relax the emergency service condition set forth in the Forbearance Order. Rather, it seeks to make its Lifeline service available to consumers who would benefit from the additional protection afforded by basic 911 in areas where E911 has not yet been deployed.

In the Forbearance Order, the Commission quite properly noted that for those Lifeline customers who select TracFone service, that service will be the customer's only means of accessing emergency personnel.<sup>28</sup> In areas where PSAPs are not yet E911-capable and where consumers for whatever reason are unable to utilize wireline phones (even if wireline E911 is available), those customers would not have E911 access irrespective of whether they obtain service from a wireline or wireless provider, or whether their wireless provider is facilities-based or, like TracFone, provides service via resale. As recent events have shown, while availability of E911 service is important to public safety, in the absence of E911, the ability to dial 911 and reach a PSAP provides a measure of protection that is itself highly important. For that reason,

<sup>27</sup> MCI Telecommunications Corporation v. FCC, 627 F.2d 322, 341 (D.C. Cir. 1980).

<sup>28</sup> Forbearance Order, ¶ 16.

TracFone respectfully urges the Commission to allow it to offer Lifeline service wherever its service can be used to reach a 911 responder.

**V. Certification and Verification of Lifeline Customers' Eligibility.**

In the Forbearance Order, the Commission directed TracFone to require its Lifeline customers to self-certify under penalty of perjury upon service activation and annually thereafter that they are the heads of their households and only receive Lifeline-supported service from TracFone.<sup>29</sup> The Commission also required TracFone to track each Lifeline customer's primary address and prohibit more than one supported TracFone service at each residential address. TracFone proposes the following plan to implement these certification and verification conditions:

**A. Policy**

TracFone will comply with all certification and verification requirements for Lifeline eligibility established by states where it is designated as an ETC. In states where there are no state-imposed requirements (e.g., Florida), TracFone will comply with the certification and verification procedures in effect in that state as reflected on the website of the Universal Service Administrative Company. However, for any states which do not mandate Lifeline support and/or which do not have established rules or procedures in place, TracFone will certify at the outset and will verify annually consumers' Lifeline eligibility in accordance with the Commission's requirements.

**B. Certification Procedures**

TracFone will implement certification procedures that enable consumers to demonstrate their eligibility for Lifeline assistance by contacting TracFone via telephone, facsimile, or the Internet. At the point of sale, consumers will be provided with printed information describing

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<sup>29</sup> *Id.*, ¶ 18.



TracFone's Lifeline program, including eligibility requirements, and with instructions for enrolling. Consumers will be directed to toll-free telephone numbers and to TracFone's Internet website ([www.tracfone.com](http://www.tracfone.com)) which will contain a link to the Lifeline program. The Lifeline link will describe the program in detail for each state, including state-specific eligibility criteria, and will contain all enrollment forms. In the Forbearance Order, the Commission expressly rejected the proposal that TracFone retail outlets receive Lifeline qualifying information from customers.<sup>30</sup> TracFone understands and accepts the Commission's requirement that TracFone have direct contact with all customers applying for participation in the Lifeline program. As described more fully below, all Lifeline applications will be processed by TracFone. Retailers will have no role in the Lifeline application process other than to provide customers with printed information regarding the program.

Consumers accessing the program through the Internet will be able to access the Lifeline application for their state. Applicants for enrollment in TracFone's Lifeline program will be required to provide proof of residence in that state, including specific residential address information. Consumers may either complete the form "on-line" or print out the form, complete it, and fax it to a toll-free fax number provided by TracFone. Those consumers who prefer to submit the enrollment materials to TracFone via U.S. mail will be allowed to do so. However, that will delay completion of the enrollment process. In states where documentation is required to prove eligibility, either under program-based eligibility or income-based eligibility, applicants will be encouraged to return the completed forms and documentation to TracFone via fax. Processing of consumers' applications, including review of all application forms and relevant

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<sup>30</sup> Id., ¶ 19.

documentation, will be performed by TracFone personnel under the immediate supervision of managers specially trained in the Lifeline program.

The enrollment form will include a place where the applicant must certify by his/her signature under penalty of perjury that the applicant meets the relevant criteria. For program-based eligibility, the form will list each of the qualifying programs, and the applicant will be required to check off the program(s) in which he/she participates. For income-based eligibility, the applicant will be required to certify under penalty of perjury that his/her household income does not exceed the relevant threshold (e.g., 135% of the Federal Poverty Guidelines for federal default states) and will be required to provide proof of income-based eligibility.<sup>31</sup> In addition, each applicant will be required to certify under penalty of perjury that he or she is the head of the household and that he or she receives Lifeline-supported service only from TracFone. As required by the Forbearance Order, the penalties for perjury will be clearly stated on the certification form.<sup>32</sup>

Finally, the enrollment form will require each applicant to list a primary residential address and a contact telephone number. TracFone's customer information data base contains information about each of its customers, including name, contact telephone number, and address. Prior to offering Lifeline service, TracFone will add an information field in its data base that identifies whether the customer receives Lifeline-supported service. When a consumer submits a Lifeline service enrollment form, the TracFone employee responsible for processing that application will search TracFone's customer records for the address listed on the form. If the

---

<sup>31</sup> For each state with its own Lifeline/Link-Up program where TracFone has been designated an ETC, an appropriate officer of TracFone will certify under penalty of perjury that TracFone is in compliance with each state's income certification procedures and that, to the best of that officer's knowledge, documentation of income for all enrolled Lifeline customers was presented. See Lifeline Order, ¶ 31.

<sup>32</sup> Forbearance Order, ¶ 18.

address is already in TracFone's data base, the TracFone employee will review the name, telephone number and service plan associated with the address to determine whether the applicant is attempting to receive Lifeline-supported service for more than one handset associated with the address. If an address submitted by a Lifeline applicant is associated with a customer that already receives Lifeline service, TracFone will deny the Lifeline application and advise the applicant of the basis for the denial. TracFone shares the Commission's stated concern about abuse of the Lifeline program and that the potential for multiple Lifeline-supported services per consumer is an industry-wide problem.<sup>33</sup> However, TracFone believes that the procedures which it will implement as described herein will prevent TracFone customers from engaging in such abuse of the program. In this regard, it is important to recognize that no applicant for TracFone's Lifeline program will receive Lifeline-supported service until the certification process has been completed and the consumer's eligibility for participation in Lifeline has been confirmed by TracFone using the processes described above.

### **C. Verification Procedures**

TracFone will require every consumer enrolled in its Lifeline program to verify his/her continued eligibility on an annual basis, or more frequently if required by the applicable state. In states where verification more often than annually is not required, TracFone will notify each participating Lifeline consumer on the anniversary of his/her enrollment that the consumer must confirm his or her continued eligibility in accordance with the state's requirements. In addition, TracFone will send mailings to Lifeline participants notifying them of the need to verify their continued eligibility. Such verification will be required in order for the consumer to continue to purchase prepaid airtime from TracFone at the discounted rates only available to those customers who are enrolled in its Lifeline program.

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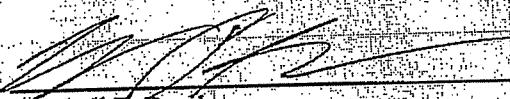
<sup>33</sup> Id.

**CONCLUSION**

TracFone's Compliance Plan plans meets the conditions set forth in the Forbearance Order and promotes public safety by ensuring that Lifeline customers have access to 911 service and, if required, access to E911 service. TracFone requests that the Commission approve TracFone's Compliance Plan and grant its pending ETC Petitions so that TracFone may begin providing the benefits of Lifeline service to qualifying low-income consumers.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



Mitchell F. Brecher  
Debra McGuire Mercer

**GREENBERG TRAUIG, LLP**  
800 Connecticut Avenue, NW  
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(202) 331-3100  
*Its Counsel*

October 11, 2005

**CERTIFICATE OF SERVICE**

I, Michelle D. Guynn, a Legal Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that a true and correct copy of the foregoing Tracfone Wireless, Inc.'s Compliance Plan has been served via electronic mail, on the following:

**COPY** of the foregoing served via electronic mail to the FCC's **Electronic Comment File Submission** on this 11th day of October, 2005 to:

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**COPY** of the foregoing served via **Electronic Mail** this 11th day of October, 2005 to:

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Office of Chairman Kevin Martin  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. Russell Hanser  
Office of Commissioner Kathleen  
Abernathy  
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Ms. Jessica Rosenworcel  
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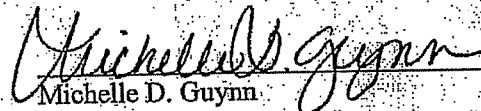
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Jeffrey S. Lanning, Esquire  
Associate General Counsel  
USTelecom  
607 14th Street, NW  
Suite 400  
Washington, D.C. 20005

  
Michelle D. Guynn

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45  
 )  
Petition of TracFone Wireless, Inc. for )  
Forbearance from 47 U.S.C. § 214(e)(1)(A) and )  
47 C.F.R. § 54.201(i) )

**ERRATUM TO**  
**TRACFONE WIRELESS, INC.'S COMPLIANCE PLAN**

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby submits an erratum to its Compliance Plan filed October 11, 2005 in accordance with the Commission's Order, released September 8, 2005, in the above-captioned matter.<sup>1</sup> In the Compliance Plan, at page 14, in the second sentence of the Policy section, TracFone incorrectly identifies Florida as a state with no state-imposed certification and verification requirements for Lifeline eligibility. Florida has implemented certification and verification requirements for Lifeline eligibility. Upon grant of TracFone's petition for designation as an eligible telecommunications carrier in Florida, TracFone will comply with all Florida laws, regulations, and requirements concerning Lifeline eligibility.

<sup>1</sup> Federal-State Joint Board on Universal Service and Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), FCC 05-165, released September 8, 2005.



Respectfully submitted,

TRACFONE WIRELESS, INC.



Mitchell F. Brecher  
Debra McGuire Mercer

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*Its Counsel*

October 17, 2005

**CERTIFICATE OF SERVICE**

I, Michelle D. Gynn, a Legal Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that a true and correct copy of the foregoing Erratum to TracFone Wireless, Inc.'s Compliance Plan has been served via electronic mail, on the following:

**COPY** of the foregoing served via electronic mail to the **FCC's Electronic Comment File Submission** on this 17th day of October, 2005 to:

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Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

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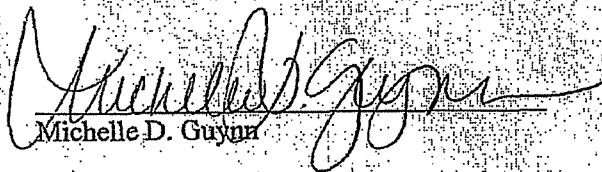
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Michelle D. Guyon

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 117**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-33** In its response to Staff DR3, TracFone states it will be able to compile all listed statistics required for annual reports. Please identify, for each item that must be quantified and included in ETC annual reports, how TracFone will be able to compile the required data given that it does not own the underlying network.

**Response**

TracFone understands that ETCs in Oregon are required to file an annual report regarding the following (per Docket No. UM 1217, Order No. 06-292):

- (1) Certification that the ETC will use universal service support for intended purpose;
- (2) Certification that the ETC is complying with applicable service standards and consumer protection rules;
- (3) Certification that the ETC is able to function in emergency situations;
- (4) Certification that the ETC is offering a local usage plan comparable that offered by the ILEC in the relevant service area;
- (5) An annual outage report;
- (6) An annual report on the number of requests for service that were unfulfilled;
- (7) An annual report on the number of "trouble reports" per 1,000 handsets or lines by switch or wire center; and
- (8) A progress report and update on the ETC build-out plan.

TracFone is required to file a similar report with the FCC and in certain states in which it has been designated as an ETC. Some of the items listed are not applicable to TracFone because it is not seeking high-cost support and it does not have its own facilities, such as item 8 which seeks a progress report on a build-out plan. Items 5 and 7 require TracFone to obtain statistics from its underlying carriers. TracFone has obtained these statistics for other states and does not foresee any obstacle in getting similar statistics for Oregon.

**DR-87 Relative to TracFone's response to Staff DR33, how can TracFone obtain trouble report statistics from its underlying carriers that are specific to TracFone customers by switch or wire center?**

**Response**

TracFone initially understood that it was able to obtain trouble reports from its underlying carriers by wire center. TracFone has since determined that it does not have access to trouble reports by wire center. Therefore, TracFone will request a waiver of this requirement.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 118**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**





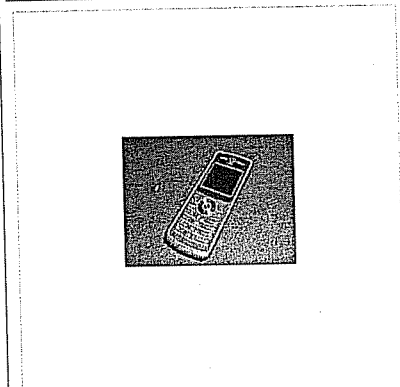
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**(TracFone) with free minutes for 2 yrs. NOT a Joke,read**

Item condition: **Used**  
 Time left: 3d 05h (Apr 17, 2010 22:39:50 PDT)  
 Bid history: 1 bid

Current bid: **US \$45.00**  
 Your max bid: **US \$**  **Place bid**  
(Enter US \$46.00 or more)

Price: **US \$100.00** **Buy It Now**

Shipping: **\$11.00** US Postal Service Priority Mail Medium Flat Rate Box See more services | See all details  
Estimated delivery within 12-13 business days.

Returns: 7 day money back, buyer pays return shipping |  
[Read details](#)



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**Seller info**  
 jondoe1313 (21 ☆)  
 92% Positive feedback  
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**Other item info**  
 Item number: 200460151099  
 Item location: fall river, MA, United States  
 Ships to: Worldwide  
 Payments: PayPal  
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**Description Shipping and payments**

Seller assumes all responsibility for this listing.

Last updated on 06:33:23 AM PDT, Apr 11, 2010 [View all revisions](#)

**Item specifics - Cell Phones & Smartphones**

Carrier: TracFone  
 Contract: Prepaid  
 Brand: Motorola

Cellular Band: Not a Joke,Just ask me,call me this is real  
 Camera: None  
 Features: Calendar, SMS-Text Messaging, MMS Enabled, Speakerphone, Global Ready, Color Screen, Bluetooth Enabled

Model: W175g  
 Style: Bar

Condition: Used  
 Color: Black

[See reviews](#)

**Detailed item info**

**Product Description**  
 My phone, my way Convenient extras Fun Messages

**Details**  
 Weight: 84 g  
 Phone Book Capacity: 500

Vibrating Alert: Yes  
Ring Tones: 35

**Battery**

Battery: Lithium ion  
Talk Time: 390 min

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This is NOT a joke,I am serious.I need money and this is what I am doing. This is a excellent condition tracfone w175g..standard model,nothing special. But ..this comes with my sim card which is registered to me paul somers and I have government assistance which allowed me to get this phone for free for next 30 months..2 1/2 years,I have used it so there's about 24-26 months left. With this phone comes 80 mins every month on the 1st of the month,free. You never once have to pay for anything or talk to a stranger on the phone,just simply have the phone powered on anytime between the 1st and the 3rd(in case people forget) of every month and you will automatically receive 80 minutes. Yes this may be a little bit wrong but I am in such a struggle, This is not a joke or a scam either You can call me or look up anything you want. It come with charger phone sim card,if you have any questions at all please feel free to ask. Thank You. God Bless,Hope This works I sure need this to sell good


00099

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## Tracfone- Come with free minutes every month - \$100 (Williamsburg)

Date: 2010-05-21, 1:44AM EDT

Reply to: [sale-ecxjd-1751744421@craigslist.org](mailto:sale-ecxjd-1751744421@craigslist.org) [Errors when replying to ads?]

I got one of those safe-link free phones.

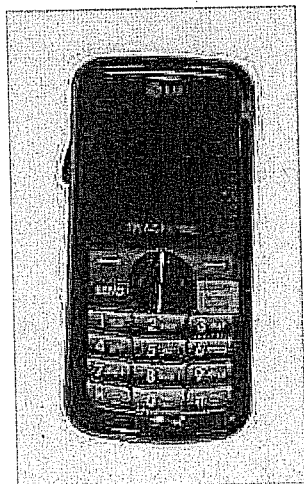
Its a small LG phone and gets free minutes every month. There is 355 of service left, almost a year if you dont know.

"SafeLink Wireless service provides a 68 minute plan on a monthly basis at NO COST to the customer... That is right, 68..."

I never used the phone, it has an 804 area code.

Summary, for \$100.00 you have a phone for a year.

- Location: Williamsburg
- it's NOT ok to contact this poster with services or other commercial interests



PostingID: 1751744421

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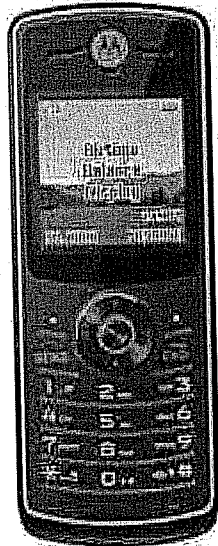
## Tracfone w/ 68 min. every month - \$30 (Reading, PA)

Date: 2010-05-16, 9:54PM EDT

Reply to: [sale-3zpx-1743968664@craigslist.org](mailto:sale-3zpx-1743968664@craigslist.org) [Errors when replying to ads?]

Hi i am selling a Tracfone that comes w/ 68 min.every month.I will trade it for a at&t prepaid phone.If you have a tracfone u can switch the sim into your tracfone.Plz email me at [dininomattew@yahoo.com](mailto:dininomattew@yahoo.com). THANK YOU!

- Location: Reading, PA
- it's NOT ok to contact this poster with services or other commercial interests



PostingID: 1743968664

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## Tracfone with 80 monthly minutes every month - \$10 (Nashua,NH)

Date: 2010-05-24, 2:09PM EDT

Reply to: [sale-mzdcu-1757158451@craigslist.org](mailto:sale-mzdcu-1757158451@craigslist.org) [Errors when replying to ads?]

Anyone need a tracfone that gives you free monthly minutes every month? I had got this for emergencies only but got put on a relatives plan so I will be no longer needing this phone. Every month you get 80 minutes for free. Yes I know some people aren't qualified for these phones but for 10 bucks it's not a bad phone. I bought the phone from a store and then signed it up for the free monthly minutes so if your in need and want the free minutes it's only 10 bucks. 80 minutes will be put back on the phone in about a week. The phone is clean no numbers on it and no one knows the number. Like I said it was for emergencies so youll have a good phone with free minutes every month. Let me know thanks.

- Location: Nashua,NH
- it's NOT ok to contact this poster with services or other commercial interests

PostingID: 1757158451

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Hello I am selling my tracfone. It currently has 200 mins on it and will update with an additional 81. mins for the next 3 months. I do not have a charger for it due to the fact that I actually haven't a job right now so can't afford to buy one from Family Dollar Store. If you really want it I am willing to knock off the 10.00 for the charger from Family Dollar Store. You can call me @ 919-803-7805 or on the Actual Phone @ 919-381-0259

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CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 119**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

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
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	

**ORDER**

**Adopted: April 28, 2010**

**Released: May 4, 2010**

By the Commission:

**I. INTRODUCTION**

1. In this Order, we ask the Federal-State Joint Board on Universal Service (Joint Board) to review the Commission's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs, which currently provide discounts on telephone service for low-income customers. Specifically, we ask the Joint Board to recommend any changes to these aspects of the Lifeline and Link Up programs that may be necessary, given significant technological and marketplace changes since the current rules were adopted, based on consideration of: (1) the combination of federal and state rules that govern which customers are eligible to receive discounts through the Lifeline and Link Up programs; (2) best practices among states for effective and efficient verification of customer eligibility, both at initial customer sign-up and periodically thereafter; (3) appropriateness of various outreach and enrollment programs; and (4) the potential expansion of the low-income program to broadband, as recommended in the National Broadband Plan.<sup>1</sup> We request that the Joint Board prepare a recommended decision regarding these issues and submit its decision to the Commission within six months of the release of this order.

**II. BACKGROUND**

2. In 1996, Congress articulated a national goal that consumers in all regions of the nation, including low-income consumers, have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>2</sup> The Commission's low-income universal service support programs advance this goal. The Lifeline program provides low-income consumers with discounts on the monthly cost of telephone service for a single telephone line in their principal residence.<sup>3</sup> The Link Up program provides low-income consumers with discounts on the initial costs of installing telephone service for a single telephone line in their primary residence.<sup>4</sup>

<sup>1</sup> See Connecting America: The National Broadband Plan at 172-173 (rel. Mar. 16, 2010) (National Broadband Plan).

<sup>2</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act); see also 47 U.S.C. § 254(b)(3).

<sup>3</sup> See 47 C.F.R. § 54.401(a)(2); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957, para. 341 (1997) (*Universal Service First Report and Order*), *aff'd in part, rev'd in part, remanded in part sub nom, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. (continued....)



3. Support for low-income consumers has long been a priority for states as well as the federal government, and the Commission has worked in tandem with states to ensure that support is available to eligible participants. More than 40 states have established their own low-income universal service support programs,<sup>5</sup> through which they provide consumers with state-supported discounts in addition to the federal discounts available under Lifeline and Link Up.<sup>6</sup> States with their own low-income programs may elect to establish the criteria regarding consumer eligibility, certification of consumer eligibility, and carrier verification of continued consumer eligibility that would apply to both the state and federal support programs.<sup>7</sup> For example, in Wisconsin, customers are eligible for state and federal Lifeline and Link Up if they receive the Wisconsin homestead tax credit, an income tax credit for those in households earning below a certain threshold of annual income.<sup>8</sup>

4. In states that do not maintain their own low-income support programs, consumers must comply with the eligibility and eligibility certification criteria specified in the Commission's rules to qualify for low-income support.<sup>9</sup> The Commission's eligibility criteria include income at or below 135 percent of the federal poverty guidelines, and participation in various income-based public-assistance programs, such as Medicaid, Food Stamps, and Federal Public Housing Assistance.<sup>10</sup> If a consumer's

(...continued from previous page)

1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000). Under the Commission's rules, there are four tiers of federal Lifeline support, each of which must be passed directly from the eligible telecommunications carrier (ETC) to the qualifying low-income consumer in the form of discounts. All eligible subscribers receive Tier 1 support, which provides a discount equal to the ETC's subscriber line charge. Tier 2 support provides an additional \$1.75 per month in federal support, available if all relevant state regulatory authorities approve such a reduction. Tier 3 support provides one half of the subscriber's state Lifeline support, up to a maximum of \$1.75. Only subscribers residing in a state that has established its own Lifeline program or in which the ETC provides additional Lifeline support may receive Tier 3 support, and only if the ETC has all necessary approvals to pass on the full amount of this total support in discounts to subscribers. Tier 4 support provides eligible subscribers living on tribal lands up to an additional \$25 per month towards reducing basic local service rates, but this discount cannot bring the subscriber's cost for basic local service to less than one dollar. *See* 47 C.F.R. § 54.403.

<sup>4</sup> *See* 47 C.F.R. § 54.411. Link Up provides a discount of one-half the cost of installation of telephone service or \$30, whichever is less. 47 C.F.R. § 54.411(a)(1). In addition, eligible low-income consumers residing on tribal lands are eligible for an additional discount of up to \$70. 47 C.F.R. § 54.411(a)(3).

<sup>5</sup> States that do not maintain their own low-income programs and states that choose to follow the federal low-income requirements are known as federal default states. These states must comply with the Commission's low-income eligibility, certification, and verification rules. The current federal default states are Delaware, Hawaii, Indiana, Iowa, Louisiana, New Hampshire, North Dakota, South Dakota, American Samoa, and the Northern Mariana Islands. *See* Universal Service Administrative Company (USAC) website, Low Income, Frequently Asked Questions, <http://www.universalservice.org/li/tools/frequently-asked-questions/faq-lifeline-linkup-order.aspx#q1> (last visited May 4, 2010). All other states have established their own requirements for customer eligibility, certification, and verification.

<sup>6</sup> 47 C.F.R. § 54.403(a)(3).

<sup>7</sup> *See, e.g.*, 47 C.F.R. §§ 54.409 (consumer qualification for Lifeline), 54.410 (certification and verification of consumer qualification for Lifeline), 54.415 (consumer qualification for Link Up), 54.416 (certification of consumer qualification for Link Up). States must base eligibility criteria solely on income or factors directly related to income. 47 C.F.R. §§ 54.409(a), 54.415(a).

<sup>8</sup> *See* WIS. ADMIN. CODE PSC § 160.061 (Link-Up America program); WIS. ADMIN. CODE PSC § 160.062 (Lifeline program). The Wisconsin homestead credit is available to Wisconsin residents who, among other things, have an annual household income of less than \$24,500 (for 2009). *See* WIS. STAT. §§ 71.51-55 (West 2009).

<sup>9</sup> 47 C.F.R. § 54.409(b), (c).

<sup>10</sup> 47 C.F.R. § 54.409(b).

eligibility is based on income, the consumer must provide acceptable documentation of income eligibility including, among other things, the prior year's state, federal, or tribal tax return and a current income statement from an employer.<sup>11</sup>

5. Carriers offering Lifeline services in states that do not maintain their own low-income programs must verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers.<sup>12</sup> States that have their own Lifeline programs may implement their own procedures for ETCs to follow when verifying continued eligibility of their Lifeline customers.<sup>13</sup>

6. In the 1996 Act, Congress directed the Commission to establish a Federal-State Joint Board on Universal Service to make recommendations to implement the universal service provisions of the Act.<sup>14</sup> The Commission then sought Joint Board comment on numerous universal service issues including, among other things, how to implement the requirement of section 254(b)(3) that low-income consumers have access to "reasonably comparable" telecommunications and information services.<sup>15</sup> The Commission also sought comment on whether services in addition to those supported for consumers in rural, high-cost, and insular areas would be specifically appropriate for low-income users, and whether "changes to the level of support or other changes to our Lifeline and Link Up programs should be made as part of an overall mechanism to ensure that quality services are available at just, reasonable, and affordable rates for low-income subscribers."<sup>16</sup>

7. In response, on November 7, 1996, the Joint Board adopted a Recommended Decision in which it made various universal service recommendations to the Commission.<sup>17</sup> In its *Universal Service First Report and Order*, the Commission adopted the Joint Board's recommendation that Lifeline service be made available to low-income consumers nationwide, even in states that did not participate in Lifeline at that time.<sup>18</sup> The Commission also agreed with the Joint Board's recommendation to increase the federal Lifeline support amount, but conditioned such an increase on the state permitting its carriers to reduce intrastate charges paid by the end user.<sup>19</sup> As the Joint Board recommended, the Commission found that Lifeline service should include single-party service, voice grade access to the public switched telephone network, dual-tone multi-frequency signaling or its functional digital equivalent, access to emergency

<sup>11</sup> *Id.*; 47 C.F.R. §§ 54.410(a)(2); 54.416.

<sup>12</sup> 47 C.F.R. § 54.410(c)(2).

<sup>13</sup> 47 C.F.R. § 54.410(a)(1). In a February 2010 declaratory ruling, the Commission found that when a state commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes. *Lifeline and Link Up; Petitions for Declaratory Ruling and Requests for Waiver by US Cellular Corporation, et al.*, WC Docket No. 03-109, Order and Declaratory Ruling, 25 FCC Rcd 1641, 1645, para. 9 (2010) (*Lifeline Declaratory Ruling*).

<sup>14</sup> 47 U.S.C. §§ 254(a)(1), 410(c). The Joint Board is comprised of FCC commissioners, state utility commissioners, and a consumer advocate representative. *Id.*

<sup>15</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 11 FCC Rcd 18092, 18907, para. 6 (1996) (*1996 Universal Service NPRM*); see also 47 U.S.C. §§ 254(b)(3).

<sup>16</sup> See *1996 Universal Service NPRM*, 11 FCC Rcd at 18116, 18123, paras. 50, 64.

<sup>17</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87 (1996).

<sup>18</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8952, para. 326.

<sup>19</sup> *Id.*

services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation service.<sup>20</sup>

8. In 2000, the Commission most recently referred questions about the Lifeline and Link Up programs to the Joint Board, with a particular focus on review of income eligibility criteria.<sup>21</sup> In its 2003 recommended decision, the Joint Board made specific recommendations on eligibility, verification, outreach, and related issues.<sup>22</sup> In 2004, the Commission released an order in which it adopted most of the Joint Board's recommendations.<sup>23</sup> Specifically, the Commission: (1) added an income-based criterion to the federal default eligibility criteria; (2) added two additional programs to the list of federal default eligibility criteria; (3) adopted certain certification requirements for consumers qualifying based on income; (4) adopted procedures regarding verification of consumers' continued eligibility; (5) adopted implementation and recordkeeping requirements for ETCs receiving federal low-income support; and (6) adopted advertising guidelines.<sup>24</sup> The Commission also released an accompanying notice of proposed rulemaking.<sup>25</sup>

9. In the *2004 Lifeline and Link Up Order*, the Commission, consistent with the Joint Board's recommendations, also declined to take certain actions. For example, the Commission declined to require all states to adopt an automatic enrollment process, opting instead to encourage all states to adopt such an approach.<sup>26</sup> The Commission also declined to change the certification procedures associated with program-based eligibility and declined to adopt mandatory advertising requirements for ETCs receiving federal low-income support.<sup>27</sup> Notably, the Commission opted to continue the bifurcated approach discussed above, which permits states that maintain their own low-income programs to dictate the procedures associated with, for example, consumer eligibility and verification for the federal program.<sup>28</sup>

10. Several developments prompt us to seek the Joint Board's guidance on our low-income universal service programs at this time. First, there have been tremendous changes to telephone service since 2000, when the Commission last referred questions about Lifeline and Link Up to the Joint Board.

<sup>20</sup> *Id.* at 8952, para. 328.

<sup>21</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 25257, 25258, para. 4 (2000) (*2000 Referral Order*).

<sup>22</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 18 FCC Rcd 6589 (Jt. Bd. 2003) (*2003 Recommended Decision*).

<sup>23</sup> See *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004) (*2004 Lifeline and Link Up Order*).

<sup>24</sup> *Id.* The two federal programs added were Temporary Assistance to Needy Families program (TANF) and the National School Lunch's free lunch program (NSL). See *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8312, para. 13.

<sup>25</sup> See *id.* The Commission sought comment on whether the income-based criterion should be increased to 150% of the Federal Poverty Guidelines and whether it should adopt advertising requirements. *Id.* at 8331-33, paras. 56-58.

<sup>26</sup> *Id.* at 8318-19, paras. 25-26.

<sup>27</sup> *Id.* at 8319, 8326, paras. 27, 44.

<sup>28</sup> See, e.g., 47 C.F.R. §§ 54.409 (consumer qualification for Lifeline), 54.410 (certification and verification of consumer qualification for Lifeline), 54.415 (consumer qualification for Link Up), 54.416 (certification of consumer qualification for Link Up); see also *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Inquiry, 23 FCC Rcd 13583, 13594, para. 35 (2008) (noting the ongoing bifurcated federal-state approach to low-income eligibility, certification, and verification procedures, and seeking comment on ways to modify the low-income program's certification and verification requirements to prevent waste, fraud, and abuse).

CTIA-The Wireless Association reports a 55 percent increase in the penetration of mobile phones in the United States between June 2000 and June 2009, with wireless services now reaching 89 percent of the population and approximately 22 percent of the population now relying exclusively on a mobile phone for telephone service.<sup>29</sup> Additionally, competition has increased significantly in the residential telecommunications marketplace since 2000. Competitive local exchange carriers (CLECs) served approximately 4.6 million residential lines in June 2000, as compared to approximately 12.4 million residential lines in June 2008.<sup>30</sup> Also, according to the National Cable and Telecommunications Association, approximately one million telephone customers were served via cable in 2000, as compared to approximately 22.2 million in 2009.<sup>31</sup>

11. Second, since the Commission last received Joint Board guidance on low-income issues in 2004, both low-income support specifically, and Universal Service Fund support overall, have increased significantly.<sup>32</sup> The universe of carriers participating in the low-income programs has expanded greatly, with the recent addition of competitive wireless providers as ETCs resulting in growth in the low-income programs.<sup>33</sup> These changes have meant that low-income consumers have more options to meet their communications needs. With greater participation in the low-income programs, it is an opportune time to revisit the programs to ensure that they are effectively reaching eligible consumers, and that our oversight continues to be appropriately structured to minimize waste, fraud, and abuse.<sup>34</sup>

12. Third, high-speed broadband service has become an essential mode of communication for many Americans in the last decade. Low-income consumers' adoption of broadband services, however, lags significantly behind the rest of the population. In 2009, for example, approximately 40 percent of those with household incomes of \$20,000 per year or less had broadband at home, while 91 percent of

<sup>29</sup> See CTIA-The Wireless Association®, CTIA Media, Wireless Quick Facts, <http://www.ctia.org/media/index.cfm/AID/10323> (last visited May 4, 2010); see also Centers for Disease Control and Prevention, WIRELESS SUBSTITUTION, EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY 2 (2009), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200912.pdf>.

<sup>30</sup> FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, LOCAL TELEPHONE COMPETITION: STATUS AS OF JUNE 30, 2008, at Table 2 (2009), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-292193A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf).

<sup>31</sup> National Cable and Telecommunications Association, Cable Phone Customers 1998 – 2009, available at <http://www.ncta.com/Stats/CablePhoneSubscribers.aspx> (2010).

<sup>32</sup> See, e.g., Universal Service Administrative Company (USAC), Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2010 app. LI06, available at <http://usac.org/about/governance/fcc-filings/2010/quarter-2.aspx> (2010) (support amounts claimed by ETCs each month, January 1998 through December 2009).

<sup>33</sup> See, e.g., *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*); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009).

<sup>34</sup> In 2004, the low income program disbursed \$763 million. See FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE IN CC DOCKET NO. 98-45, UNIVERSAL SERVICE MONITORING REPORT, CC DOCKET NO. 98-202, 2-2, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295442A4.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A4.pdf) (2009). According to preliminary USAC disbursement figures, low-income Support total outlays were \$930 million in FY 2009. Based on USAC's most recent quarterly filing, total outlays for the low-income programs are forecast to be approximately \$1.4 billion in calendar year 2010. See USAC, FEDERAL UNIVERSAL SERVICE SUPPORT MECHANISMS FUND SIZE PROJECTIONS FOR SECOND QUARTER 2010, at 15-17, app. LI06, available at <http://usac.org/about/governance/fcc-filings/2010/quarter-2.aspx> (2010) (USAC SECOND QUARTER 2010 LOW-INCOME PROJECTIONS) (support amounts claimed by ETCs each month, January 1998 through December 2009).

those with household incomes above \$75,000 per year had broadband at home.<sup>35</sup> The National Broadband Plan thus recommends that the Commission should expand the Lifeline and Link Up program to make broadband more affordable for low-income households.<sup>36</sup> This would be a significant modification to the existing low-income programs, and we want to benefit from the experience and views of the Joint Board as we consider the recommendations of the National Broadband Plan.

13. Finally, the Joint Board's input will be invaluable in considering the effectiveness of the existing partnership between the states and the Commission in the administration of the low-income universal service programs. The National Broadband Plan recommends that the Commission integrate the expanded Lifeline and Link Up programs with other state and local e-government efforts.<sup>37</sup> Joint Board input on potential ways to implement that recommendation in partnership with other governmental bodies would be particularly valuable.

### III. DISCUSSION

#### A. Consumer Eligibility

14. Eligibility requirements. The Commission's rules regarding consumer qualification for the low-income programs depend on whether a state maintains its own low-income program. States maintaining their own low-income programs may establish the eligibility criteria and certification requirements with which consumers must comply in order to qualify for both state and federal support, as long as the eligibility criteria are based solely on income or factors directly related to income.<sup>38</sup> In federal default states, consumers must comply with the eligibility criteria specified in the Commission's rules in order to qualify for low-income support,<sup>39</sup> and ETCs must comply with the Commission's certification requirements to demonstrate program participants' eligibility.<sup>40</sup>

15. We ask the Joint Board to undertake a thorough review of the existing consumer eligibility requirements, as well as the certification and documentation requirements imposed on ETCs. First, we ask the Joint Board to consider whether any changes should be made to the existing eligibility criteria in the Commission's rules. For example, we ask the Joint Board to consider whether customers qualifying for low-income support based on income should be eligible to receive support if their income is at or below a percentage of the federal poverty guidelines different than the current 135 percent threshold. Should the eligibility criteria depend on whether the program supports broadband services, and if so, how? In addition, we ask the Joint Board to consider whether certain classes of individuals, such as residents of homeless shelters, should be automatically eligible for participation in the low-income programs.<sup>41</sup> We also seek input from the Joint Board on whether a consumer should have to provide

<sup>35</sup> John B. Horrigan, Ph.D., *Broadband Adoption and Use in America: OBI Working Paper Series No. 1*, 34 (2010), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296442A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf).

<sup>36</sup> See National Broadband Plan at 172-173.

<sup>37</sup> *Id.*

<sup>38</sup> 47 C.F.R. § 54.409(a); 47 C.F.R. § 54.410(a)(1). See also *Lifeline Declaratory Ruling*, 25 FCC Rcd at 1645, para. 9 (finding that, when a state commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes).

<sup>39</sup> 47 C.F.R. § 54.409(b), (c).

<sup>40</sup> 47 C.F.R. § 54.409(d).

<sup>41</sup> Cf. *Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program "One-Per-Household" Rule as Applied to Group Living Facilities*, Public Notice, 24 FCC Rcd 12788 (Wireline Comp. Bur. 2009) (*TracFone Public Notice*).

additional documentation – beyond that provided to the state – to prove eligibility for federal low-income programs.<sup>42</sup> This documentation could provide an additional check against abuse, but it could increase administrative burdens and costs. We ask the Joint Board for its recommendations about how to balance the desire for consistency and the need to ensure program integrity with the benefits of relying on state eligibility determinations. We also ask the Joint Board to recommend ways in which the Commission can make the Commission's rules work more efficiently and effectively.

16. We further ask the Joint Board to consider whether eligibility and certification requirements should be more consistent across the states.<sup>43</sup> For example, the Commission could establish a consistent set of eligibility and certification rules that apply for consumers to participate in the federal low-income programs. We seek input on this and other possible ways to increase consistency, and ask the Joint Board to address the costs as well as the benefits of any such approach.

17. Best practices. Given the large number of states that maintain and administer their own low-income programs and the resulting high level of interest in the federal low-income programs on the part of the states, we know that the states are well-versed in the issues surrounding consumer eligibility. We therefore ask the Joint Board to provide the Commission with information on best practices at the state level. We encourage the Joint Board to share the states' experiences with issues related to consumer eligibility and we also ask the Joint Board to consider which of the best practices should be applicable at the federal level. In addition, we urge the Joint Board to offer information about whether any states support broadband services through their low-income programs, and if so, the nature and level of that support.

18. Automatic enrollment. Some states employ "automatic enrollment" whereby an "electronic interface between a state agency and the carrier . . . allows low-income individuals to automatically enroll in Lifeline/Link-Up following enrollment in a qualifying public assistance program."<sup>44</sup> Several states have reported that automatic enrollment is an efficient and effective means of increasing participation in the Lifeline and Link Up programs.<sup>45</sup> In 2004, the Commission agreed with the Joint Board's recommendation and declined to require all states to adopt automatic enrollment, instead encouraging all states to adopt such an approach.<sup>46</sup> In so doing, the Commission agreed with the Joint Board's concern that automatic enrollment could impose significant administrative, technological, and financial burdens on states and ETCs.<sup>47</sup>

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<sup>42</sup> Currently, the Commission's rules require a consumer to show documentation only when relying on their income for eligibility. 47 C.F.R. § 409(d)(2).

<sup>43</sup> In the National Broadband Plan proceeding, some commenters recommended a national set of eligibility standards. See, e.g., National Association of State Utility Consumer Advocates (NASUCA) Comments in re NBP PN #19 (*Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, GN Docket No. 09-47, et al., Public Notice, 24 FCC Rcd 13757 (Wireline Comp. Bur. 2009) (NBP PN #19)), filed Dec. 7, 2009, at 34 ("a single nationwide set of eligibility standards that could be modified in a few years, after experience is gained, would be helpful").

<sup>44</sup> See *2003 Recommended Decision*, 18 FCC Rcd at 6608, para. 38; see also LIFELINE ACROSS AMERICA WORKING GROUP, REPORT OF THE FCC/NARUC/NASUCA WORKING GROUP ON LIFELINE AND LINK-UP: "LIFELINE ACROSS AMERICA" 6 (2007), <http://www.lifeline.gov/LLLURreport.pdf> (WORKING GROUP REPORT). In its Report, the Working Group cited Iowa, New Mexico, New Jersey, New York, North Dakota, and Washington as states utilizing automatic enrollment in some fashion. WORKING GROUP REPORT at 6, 10.

<sup>45</sup> See *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8318, para. 25; see also WORKING GROUP REPORT at 9-10.

<sup>46</sup> See *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8318, para. 25.

<sup>47</sup> *Id.*; see also *2003 Recommended Decision*, 18 FCC Rcd at 6608, para. 40.

19. We ask the Joint Board to revisit the issue of whether the Commission should require automatic enrollment in all states in order to participate in the federal low-income programs.<sup>48</sup> Should the Joint Board recommend such an approach, we further ask how the resulting administrative, technological, and financial challenges could be addressed. For example, would the benefits to the low-income programs exceed the costs associated with mandatory automatic enrollment?

20. Electronic certification and verification of consumer eligibility. Given the widespread transition from paper-based environments to those effectively managed with electronic systems, we ask the Joint Board to review online mechanisms that would allow carriers to automate their interactions with states and the federal government to certify a customer's initial and ongoing eligibility for program discounts. The National Broadband Plan suggests that the Commission should consider a centralized database for online certification and verification, based on numerous such proposals in the record.<sup>49</sup> We ask the Joint Board to address how any state databases for qualifying needs-based programs might interface with a centralized database for Lifeline and Link Up eligibility. Other architectures are also possible. For example, one commenter in the National Broadband Plan proceeding suggested that "agencies that determine eligibility could provide qualifying customers with a USAC-generated personal identification number (PIN). Those consumers could then provide this PIN to any voice and/or broadband service provider and automatically obtain the discount to which they are entitled."<sup>50</sup> The National Association of Regulatory Utility Commissioners (NARUC) recently adopted a resolution calling for the Commission and the states to review existing low-income customer eligibility verification processes and to develop and implement as necessary best practices, including real-time verification of customer eligibility.<sup>51</sup> With or without a national database, an electronic query service could be provided to "automate eligibility verification" against records of the state and federal programs in which participation automatically qualifies consumers for the low-income programs.<sup>52</sup> We ask the Joint Board to review alternatives and recommend mechanisms that are reasonably practical, efficient, accurate, secure, and respectful of customer privacy.

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<sup>48</sup> In the National Broadband Plan proceeding, commenters suggested automatic enrollment would be beneficial. See The Benton Foundation Comments in re NBP PN #19, filed Dec. 7, 2009, at 16 (citing Comments of the National Consumer Law Center, (Aug. 18, 2003), *Lifeline and Link-Up*, WC Docket No. 03-109, available at [http://www.consumerlaw.org/initiatives/energy\\_and\\_utility/ch081803.shtml](http://www.consumerlaw.org/initiatives/energy_and_utility/ch081803.shtml)) (noting that participation rates are highest in states with automatic enrollment and urging the Commission to "work closely with other federal and state low-income programs in both making eligible households aware of the Broadband Lifeline/Link Up program and automatically enrolling them in it."); Yourtel America, Inc. Comments in re NBP PN #19, filed Dec. 7, 2009, at 6 (suggesting that the benefits of a proposed automated customer qualification database could be "funded either by audit savings and/or a per query transaction fee").

<sup>49</sup> See National Broadband Plan at 173; see also Nebraska Public Service Commission Comments in re NBP PN #19 at 9 (suggesting "the Commission should work with states to develop an accurate system that could be administered either at a central location or as a cooperative arrangement between states and the Universal Service Administrative Company for eligibility and verification of low-income participants"); NASUCA Comments in re NBP PN #19 at 35 (suggesting that "a universal database could be created to trap 'double-dippers'" who seek to obtain Lifeline-supported service from two different providers).

<sup>50</sup> See Letter from Jaime M. Tan, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-109, GN Docket Nos. 09-47, 09-51, 09-137 (Dec. 22, 2009).

<sup>51</sup> See Resolution on Lifeline Service Verification, National Association of Regulatory Utility Commissioners (Nov. 18, 2009) (NARUC Verification Resolution), available at <http://www.naruc.org/Resolutions/Resolution%20on%20Lifeline%20Service%20Verification.pdf>.

<sup>52</sup> See Yourtel America, Inc. Comments in re NBP PN #19 at 4 ("A national database to automate verification against the records of the proxy programs would make the process consumer friendly, quicker, and reduce any possible fraud").

21. Duplicate claims for Lifeline support. The Commission provides low-income support for “a single telephone line in a Lifeline subscriber’s principal residence.”<sup>53</sup> In the past, Lifeline consumers received telephone service solely from wireline carriers, which made the Commission’s “one-per-household” rule relatively straightforward to enforce with respect to customer and carrier compliance. Since that rule was adopted, there has been a surge in wireless phone usage among consumers<sup>54</sup> and many consumers use mobile wireless service as a complement to a residential wireline connection.<sup>55</sup> These market changes create the potential for the duplication of Lifeline support. Because customers may have both a wireline and a wireless connection and could potentially seek Lifeline support for each, it has become more challenging to ensure compliance with the Commission’s “one-per-household” rule.

22. Considering these changes in the marketplace and the greater potential for duplicate support, we ask the Joint Board to consider how to ensure compliance with the Commission’s “one-per-household” rule to guard against waste, fraud, and abuse.<sup>56</sup> We also ask the Joint Board to consider what steps the Commission and the states should take to ensure that a low-income consumer is not receiving supported service from multiple ETCs. Many carriers require consumers, upon signing up for Lifeline service, to certify under penalty of perjury that they are not receiving Lifeline service from another carrier. We ask the Joint Board to consider whether a carrier can reasonably rely on this type of certification when assessing a consumer’s eligibility for Lifeline. Is a self-certification requirement the best way to deter consumers from filing duplicate claims for Lifeline-supported services? Furthermore, what role should carriers play in ensuring the validity of a consumer’s self-certification that he or she is not currently receiving Lifeline-supported services from another carrier? Additionally, we ask the Joint Board to consider what an appropriate remedy would be if a consumer files duplicate claims, and how the Commission could enforce that penalty.

23. Carrier documentation retention requirements. All ETCs must maintain records documenting their compliance with federal and state low-income program requirements for the three full preceding calendar years and must provide that documentation to the Commission or USAC upon request.<sup>57</sup> ETCs in federal default states face an additional obligation which requires them to maintain the documentation required by Commission rules for as long as the customer receives Lifeline service from that ETC.<sup>58</sup> We ask the Joint Board to consider whether the Commission should adopt a consistent set of document retention rules for all ETCs, whether operating in states maintaining their own low-income programs or in federal default states. If so, we ask the Joint Board to consider what those document retention rules should require.

<sup>53</sup> 2004 *Lifeline and Link Up Order*, 19 FCC Rcd at 8306, para. 4; see also *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341. A similar requirement applies to Link Up. See 47 C.F.R. § 54.411(a)(1).

<sup>54</sup> The Commission’s TRENDS IN TELEPHONE SERVICE Report indicates that the number of mobile wireless telephone subscribers increased from approximately 92,000 in December 1984 to approximately 240 million as of June 30, 2007. FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TRENDS IN TELEPHONE SERVICE at Table 11-1 (2008), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-284932A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf).

<sup>55</sup> A 2009 survey performed by the Centers for Disease Control and Prevention (CDC), for example, found that nearly 60% of households have both a landline and a wireless telephone. CDC, WIRELESS SUBSTITUTION, EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY 6 (2009), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200912.pdf>.

<sup>56</sup> On October 21, 2009, the Commission sought comment on a letter from TracFone Wireless, which requested clarification on how the “one-per-household” rule may be applied to residents of group living facilities. See *TracFone Public Notice*. Because the Commission already sought comment on the issues raised by TracFone in the *TracFone Public Notice*, we will not seek the Joint Board’s comment on them at this time.

<sup>57</sup> See 47 C.F.R. § 54.417(a).

<sup>58</sup> *Id.*



24. Potential application to broadband. Finally, as the Commission considers the recommendations of the National Broadband Plan, we ask the Joint Board to consider how the potential expansion of the low-income program to broadband would affect any of its recommendations. We ask the Joint Board to articulate precisely how and why the inclusion of broadband would affect those recommendations.

## B. Verification

25. The Commission's rules governing ongoing verification of consumers' continued eligibility for low-income support are bifurcated in a manner similar to the rules associated with initial eligibility and certification. Verification rules are important to ensure the integrity of the program. There are limited universal service funds and support should not be provided for consumers who are not eligible under program rules.<sup>59</sup> The Commission's rules require ETCs in states that have their own Lifeline programs to comply with state verification procedures.<sup>60</sup> ETCs in federal default states are required to implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline consumers and provide results of that sample to USAC.<sup>61</sup> As a result, consumers qualifying for Lifeline benefits in federal default states may be required to verify with their ETC, on an annual basis, their continued eligibility to receive Lifeline support.<sup>62</sup>

26. As noted above, there have been significant developments since we last received Joint Board guidance on low-income issues in 2004. The growth of federal low-income support reflects that the programs are offering greater benefits and meeting the needs of more low-income consumers. The recent growth in federal low-income support and expansion of participating carriers convinces us that it is an appropriate time for the Commission to reevaluate whether it is taking all appropriate steps to ensure program integrity.<sup>63</sup>

27. Because of our concerns about the continued eligibility of Lifeline customers, we ask the Joint Board to undertake a thorough review of the existing low-income verification requirements contained in the Commission's rules. First, we ask the Joint Board to consider whether any changes should be made to the existing verification procedures in the Commission's rules. As it does so, we ask the Joint Board to recommend ways in which the Commission can make the Commission's rules work more efficiently and effectively. We also ask the Joint Board to consider whether the Commission should modify the nature of the annual verification data that federal default ETCs are required to submit. For example, we ask the Joint Board to consider whether the Commission should require that a higher percentage of customers be sampled than is required under the current rules. Alternatively, we ask the Joint Board to consider whether the Commission should require all federal default ETCs to verify the

<sup>59</sup> See, e.g., USAC, SECOND QUARTER APPENDICES - 2010, available at <http://usac.org/about/governance/fcc-filings/2010/quarter-2.aspx> (2010).

<sup>60</sup> See 47 C.F.R. § 54.410(c)(1). As explained above, the Commission recently concluded that when a state commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes. See *Lifeline Declaratory Ruling*, 25 FCC Rcd at 1641, 1645, paras. 1, 9.

<sup>61</sup> See 47 C.F.R. § 54.410(c)(2).

<sup>62</sup> See 47 C.F.R. § 54.410(c). For example, as a condition of designating TracFone Wireless as an ETC eligible to receive Lifeline support, the Commission requires TracFone's subscribers to self-certify at the time of service activation and annually thereafter that they are the head of household and that they receive Lifeline-supported service only from TracFone. 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, Order, 20 FCC Rcd 15095, 15098-99, para. 6 (2005) (*TracFone Forbearance Order*); see also *TracFone ETC Designation Order*, 23 FCC Rcd at 6214-15, para. 21.

<sup>63</sup> See, e.g., USAC SECOND QUARTER 2010 LOW-INCOME PROJECTIONS.

eligibility of all of their low-income customers on an annual basis. We also ask the Joint Board to consider whether there might be other ways to improve the statistical sampling process and to articulate the costs and benefits associated with any such approaches.

28. Second, we ask the Joint Board to consider whether verification procedures should be more consistent across the states. Under such an approach, there would be a consistent set of verification requirements with which consumers and ETCs across all states would be required to comply. At a minimum, we ask the Joint Board to consider whether all ETCs should be required to conduct an annual verification of some percentage of their low-income consumers and submit that information to USAC, as ETCs in federal default states currently are required to do. Under the current rules, the Commission only has access to verification results from the federal default states and an additional handful of states that require ETCs to submit information annually to USAC, giving the Commission a less than comprehensive view of the effectiveness of verification associated with federal low-income support. We ask the Joint Board to identify best practices in state verification requirements as it considers this issue. We also ask the Joint Board to address the costs as well as the benefits of any approach.

29. Third, NARUC recently adopted a resolution calling for the Commission and the states to review existing low-income customer eligibility verification processes and to develop and implement best practices as necessary, including real-time verification of customer eligibility.<sup>64</sup> We ask the Joint Board to consider whether the Commission should adopt an approach to verification of consumer eligibility consistent with NARUC's proposal and/or whether the Commission should create a national database of Lifeline participants.<sup>65</sup> We ask the Joint Board to address legal and administrative issues if it recommends developing such a database.

30. Finally, as the Commission considers the recommendations of the National Broadband Plan, we ask the Joint Board to consider how the potential expansion of the low-income program to broadband would affect any of its recommendations. We ask the Joint Board to articulate precisely how and why the inclusion of broadband would affect those recommendations.

### C. Outreach

31. Section 214(e)(1)(B) of the Act requires all ETCs to advertise the availability of services supported by universal service funds and the charges for such services "using media of general distribution."<sup>66</sup> In the *Universal Service First Report and Order*, the Commission clarified that "eligible telecommunications carriers will be required to advertise the availability of, and charges for, Lifeline pursuant to their obligations under section 214(e)(1)."<sup>67</sup> Recognizing the critical importance of effectively publicizing the Lifeline and Link Up programs to low-income consumers and the resulting effect on the telephone penetration rate, the Commission took several opportunities over the years to highlight the importance of outreach. For example, in the June 2000 *Tribal Order*, the Commission amended sections 54.405 and 54.411 of the rules to require that ETCs publicize the availability of Lifeline and Link Up "in a manner reasonably designed to reach those likely to qualify for the service."<sup>68</sup> The

<sup>64</sup> See NARUC Verification Resolution.

<sup>65</sup> See *id.*; see also *supra* n.49 and accompanying text.

<sup>66</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>67</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8993, para. 407.

<sup>68</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Western Wireless Corporation, Crow Reservation in Montana, Smith Bagley, Inc., Cheyenne River Sioux Tribe Telephone Authority, Western Wireless Corporation, Wyoming Cellco Partnership d/b/a Atlantic Mobile, Inc. Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, CC Docket No. 96-45, Twelfth (continued....)

Commission chose not to prescribe specific, uniform methods for ETCs to follow in publicizing their low-income programs; rather, the Commission gave carriers the discretion to determine how best to reach qualifying low-income subscribers within their respective service areas.<sup>69</sup>

32. In the April 2004 *Lifeline and Link Up Order*, the Commission implemented more detailed guidelines to assist states and carriers in performing outreach to potential Lifeline and Link-Up customers.<sup>70</sup> Based on the recommendation of the Joint Board,<sup>71</sup> the Commission adopted the following outreach guidelines: (1) states and carriers should utilize outreach materials and methods designed to reach households that do not currently have telephone service; (2) states and carriers should develop outreach advertising that can be read or accessed by any sizeable non-English speaking populations within a carrier's service area; and (3) states and carriers should coordinate their outreach efforts with governmental agencies/tribes that administer any of the relevant government assistance programs.<sup>72</sup> The Commission emphasized the importance of outreach programs, noting that effective outreach programs had been shown to improve Lifeline and Link Up participation in several instances.<sup>73</sup> Additionally, the Commission sought comment on whether to prescribe rules to govern advertisement of the Lifeline and Link Up programs.<sup>74</sup>

33. In July 2005, the Lifeline Across America initiative was created as a nationwide effort to increase consumer awareness of the federal and state Lifeline and Link Up programs.<sup>75</sup> As part of this initiative, staff from the Commission, NARUC, and NASUCA formed a working group to further outreach efforts and increase Lifeline and Link Up subscribership.<sup>76</sup> In 2006, the working group helped to enact joint resolutions concerning Lifeline and Link Up carrier outreach and best practices at the NARUC and NASUCA annual conventions.<sup>77</sup> Additionally, in 2007, the working group published a report detailing its observations and recommendations as to best practices for Lifeline and Link Up

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Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12250, para. 78 (2000) (*Tribal Order*).

<sup>69</sup> *Id.* at 12250, para. 79. The Commission did require that ETCs “identify communities with the lowest subscribership levels within its service territories and make appropriate efforts to reach qualifying individuals within those communities.” *Id.*

<sup>70</sup> *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8326, para. 45.

<sup>71</sup> *2003 Recommended Decision*, 18 FCC Rcd at 6612, para. 51.

<sup>72</sup> *2004 Lifeline and Link Up Order*, 19 FCC at 8326-28, paras. 45-48.

<sup>73</sup> *Id.* at 8325, para. 42. An August 2000 report by the Telecommunications Industries Analysis Project demonstrated that “the Lifeline/Link-Up take rate almost tripled from 13.1% to 39.6% when states implemented outreach initiatives designed to increase telephone penetration and participation.” *Id.* In Maine, for example, successful and aggressive outreach helped the telephone penetration rate among low-income households to increase from 90.5% in March 1997 to 96.5% in March 2002. *Id.*

<sup>74</sup> *Id.* at 8333, para. 58.

<sup>75</sup> WORKING GROUP REPORT at 1.

<sup>76</sup> *Id.*

<sup>77</sup> Lifeline Across America, About Us, <http://www.lifeline.gov/aboutus.html> (last visited May 3, 2010); see CA-1 Resolution on Furthering Lifeline Participation Through Outreach, NARUC (Nov. 15, 2006), available at [http://www.naruc.org/Resolutions/ca1\\_res\\_furthering\\_lifeline\\_participation\\_through\\_outreach.pdf](http://www.naruc.org/Resolutions/ca1_res_furthering_lifeline_participation_through_outreach.pdf); Resolution 2006-01: Increasing Participation in Lifeline and Link-Up Telephone Assistance Programs Through Additional and More Effective Public Outreach, NASUCA (Nov. 2006), available at [http://www.nasuca.org/archive/Resolutions/NASUCA\\_Lifeline-Resolution\\_2006-01.doc](http://www.nasuca.org/archive/Resolutions/NASUCA_Lifeline-Resolution_2006-01.doc).

outreach.<sup>78</sup> More recently, the National Broadband Plan suggested that the Commission should encourage state social service agencies to take a more active role in consumer outreach and provide such agencies with educational materials that could be used in such efforts.<sup>79</sup>

34. Given the passage of time since either the Joint Board or the Commission formally reviewed the approach to outreach associated with the low-income programs, we ask the Joint Board to evaluate the effectiveness of the current outreach requirements. The positive impact of effective advertising on telephone subscribership in the low-income community is well-documented.<sup>80</sup> The Commission's and the states' shared interest in ensuring that eligible consumers are well-informed about the availability and benefits of the low-income programs is even more critical in these challenging economic times. The Commission's ability to audit and enforce compliance with our advertising requirement is hampered, however, by the lack of specificity in our rules. The Commission, therefore, would benefit from Joint Board review of whether the existing guidelines are sufficient to promote consumer awareness of the low-income programs. We also ask the Joint Board to consider whether the Commission should adopt mandatory outreach requirements with which all ETCs must comply. If the Joint Board believes that such an approach is appropriate at this time, we ask the Joint Board to articulate what the outreach requirements would include.

35. Finally, as the Commission considers the recommendations of the National Broadband Plan, we ask the Joint Board to consider how the potential expansion of the low-income program to broadband would affect any of its recommendations. We ask the Joint Board to articulate precisely how and why the inclusion of broadband would affect those recommendations.

#### IV. ORDERING CLAUSES

36. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(j), 214(e), 254, and 410, that this Order is adopted.

37. IT IS FURTHER ADOPTED, pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(j), 214(e), 254, and 410, that the Federal-State Joint Board on Universal Service is requested to review the Commission's rules relating to the low-income universal service support programs and the related issues described herein and provide recommendations to the Commission within six (6) months of the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>78</sup> See generally WORKING GROUP REPORT.

<sup>79</sup> See National Broadband Plan at 172-173.

<sup>80</sup> See, e.g., *supra* n.73.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 120**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-44 On page 32 of his testimony, Mr. Fuentes alludes to a third-party vendor that TracFone relies on to validate the identity and addresses of SafeLink Wireless Lifeline service applications. Please name this vendor and describe its business relationship with TracFone. What methods does this third-party vendor use to validate the identity and addresses of SafeLink applicants?**

**Response**

As stated in Mr. Fuentes' testimony, TracFone relies on a third-party vendor to validate addresses included on SafeLink Wireless® Lifeline service applications. TracFone contracts with LexisNexis so that it can have access to a database to verify the identities of Lifeline applicants. TracFone's business relationship with LexisNexis is as a customer of its database product. The database uses various public records to enable TracFone to verify that a person with the applicant's name and Social Security Number lives at the address listed on the application and to confirm that the address is associated with a residential dwelling.

CASE: UM 1437  
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**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 121**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-56 How many personnel in the TracFone Loss Prevention department are dedicated to monitoring classified postings and web blogs and establishing informational alerts in web search engines to ensure that SafeLink Wireless brand name and products are not used for resale or for fraudulent purposes? Is this department monitoring on a daily basis? When was the Loss Prevention department established? How many cases of resale or fraud has this department detected since its inception?**

**Response**

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). TracFone further objects that the information sought by this data request is highly confidential and commercially sensitive. TracFone's decisions regarding the amount of resources it believes is necessary to prevent fraud relates to its business strategy and assessment of the risks of fraud. Without waiving its objection, TracFone states that during the past year it has become aware of only a few instances of fraud related to the use of the SafeLink Wireless® brand name or resale of SafeLink Wireless® products out of its more than three million Lifeline customers.



CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 122**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-51 Where is the TracFone Lifeline operations department located? Is it centralized or located throughout the U.S. or other countries? How many personnel are in the TracFone Lifeline operations department? What are the business days and hours of operation?**

**Response**

The TracFone Lifeline operations department is located in Miami, Florida. There are approximately fourteen employees in this department. The Lifeline operations department's business hours are Monday through Friday, 9:00 a.m. to 6:00 p.m.

**DR-55 What is the role of the TracFone Lifeline operations team when the Loss Prevention department reports its findings?**

**Response**

The TracFone Lifeline operations department uses the findings provided by the Loss Prevention department to investigate the status of the relevant customers and to de-enroll customers from Lifeline and deactivate the handset when necessary.

**DR-57 Has TracFone ever conducted internal audits on its Lifeline enrollment, customer self-certification or annual verification? Has TracFone ever been audited by the Universal Service Administrative Company or any other entity? Please explain.**

**Response**

TracFone has not conducted any internal audits of its Lifeline operations. However, TracFone has complied with federal and state requirements that it annually verify the continued eligibility of a statistically-valid sample of its Lifeline customers. In addition, pursuant to the FCC's order granting TracFone forbearance from the facilities requirement for ETCs, TracFone requires all of its Lifeline customers to self-certify under penalty of perjury at enrollment and annually that they are the head of household and only receive Lifeline-supported service from TracFone. TracFone, like many ETCs, is being audited by USAC. However, TracFone has not received the results of that audit.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 123**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

DATE MAILED

MAY 21 2009

Public Service Commission of Wisconsin  
RECEIVED: 05/27/09, 9:07:14 AMBEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSINPetition of TracFone Wireless, Inc., for Designation as an Eligible  
Telecommunications Carrier in the State of Wisconsin

9385-TI-100

**FINAL DECISION**

This is the Final Decision in the investigation to determine whether to designate TracFone Wireless, Inc. (TracFone), as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Admin. Code § PSC 160.13. Designation as an ETC makes a provider eligible to receive Federal Universal Service Fund (USF) monies.

**Introduction**

TracFone Wireless, Inc. (TracFone), filed a petition for designation as an ETC on September 18, 2008. The Commission issued a Notice of Investigation and Request for Comments on October 30, 2008, with comments due on or before November 20, 2008. No comments were filed. TracFone's ETC request presents issues not previously seen in ETC dockets. Consequently, Commission staff made several information requests to the applicant, both while the Notice was pending and afterward. Staff also had numerous contacts with the Universal Service Administrative Company (USAC), the administrator of the Federal USF, and the Federal Communications Commission (FCC) regarding the applicant's compliance with FCC rules on Lifeline. In addition, staff contacted other state commissions to inquire about their experiences with TracFone's Lifeline program.

The Commission discussed this matter at its April 16, 2009, open meeting. A list of parties to the docket is shown in Appendix A.

**Findings of Fact**

1. TracFone is a wireless reseller and owns no facilities in Wisconsin. It serves statewide.
2. TracFone has committed to providing service to all requesting customers, and to advertising the availability of its service, throughout the exchanges in which it provides service, as required under 47 U.S.C. § 214(e) and Wis. Admin. Code § PSC 160.13.
3. TracFone has committed to providing service which meets the requirements set forth in Wis. Admin. Code § PSC 160.13, including the essential service definition set forth in Wis. Admin. Code § PSC 160.03, with the exception of the requirement that an ETC provide a pay phone in each municipality, as set forth in Wis. Admin. Code § PSC 160.13(1)(d), the requirement to charge a minimum monthly fee, as set forth in Wis. Admin. Code § PSC 160.062(2)(c), and the requirement to provide a monetary discount. TracFone has requested waivers of those requirements.
4. It is reasonable and in the public interest to grant ETC status to TracFone in the areas indicated in its application, conditioned on TracFone providing a plan acceptable to the Administrator of the Telecommunications Division for monitoring use of its service, by Lifeline customers and preventing Lifeline benefits from being paid for handsets no longer in use.
5. The pendency of a rule change and the redundancy of any pay phones that TracFone would provide create an unusual circumstance. It is reasonable to adopt a requirement concerning pay phones other than the one set forth in Wis. Admin. Code § PSC 160.13(1)(d).

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It is reasonable to require TracFone to work with other providers to ensure that there is at least one pay phone in each municipality.

6. TracFone's business plan and the administrative difficulty involved in having a minimum monthly charge and the standard Lifeline monthly discount, when the ETC is a prepaid provider, create an unusual circumstance that justifies adopting different requirements concerning these items.

7. It is reasonable to require TracFone to provide a monthly credit in the form of minutes, in lieu of the dollar discounts set forth in Wis. Admin. Code § PSC 160.062(2)(b).

8. It is reasonable to *not* require TracFone to charge a minimum monthly fee, as set forth in Wis. Admin. Code § PSC 160.062(2)(c).

9. It is reasonable to require providers that service the market niche TracFone intends to serve to demonstrate that adequate procedures to ensure compliance with state and federal ETC requirements are in place before granting such certification. It is also reasonable to require such providers to keep records that allow verification as to whether the procedures are being followed.

#### **Conclusions of Law**

1. The Commission has jurisdiction and authority under Wis. Stat. §§ 196.02 and 196.218; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of the Telecommunications Act of 1996 to make the above Findings of Fact and to issue this Final Decision.

2. The Commission has the authority to adopt different ETC requirements under Wis. Admin. Code § PSC 160.01(2)(b).



**Opinion**

ETC status was created by the 1996 Telecommunications Act and codified in 47 U.S.C. § 214(e)(2). Under FCC rules, 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201(b), state commissions are allowed to designate providers as ETCs. Designation as an ETC is required if a provider is to receive federal universal service funding. ETC designation is also required to receive funding from the state universal service High Rate Assistance Credit program.

The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules. 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101(a). The 1996 Telecommunications Act states that: "States may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." 47 U.S.C. § 254(f). The United States Court of Appeals for the Fifth Circuit upheld the states' right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir. 1999).

In the year 2000, the Commission promulgated Wis. Admin. Code § PSC 160.13 to govern ETC designations and requirements in Wisconsin. Those rules established the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission.

In evaluating requests for ETC designation, the Commission must balance the needs of the providers, the needs of the recipients of the various universal service programs and the preservation of the programs and industry as a whole. In this specific case, it is clear from the experience of other states that TracFone's business model is quite successful. This business model has the potential of providing access to telephone service to a possibly large market of

Docket 9385-TI-100

underserved customers in Wisconsin, but presents issues not previously seen in earlier ETC dockets. Consequently, staff made several information requests to the applicant and had numerous contacts with the USAC, the administrator of the Federal USF, and the FCC regarding the applicant's compliance with FCC rules on Lifeline. In addition, staff contacted other state commissions to inquire about their experiences with TracFone's Lifeline program.

TracFone is a wireless reseller and owns no facilities in Wisconsin. In its original order relative to ETC issues, the FCC limited ETC status to carriers using a combination of their own facilities, resale and unbundled network elements: companies without any facilities could not be ETCs.<sup>1</sup> However, the FCC subsequently granted TracFone a waiver of that requirement.<sup>2</sup> No comments were filed expressing concerns about TracFone's lack of facilities in Wisconsin, and Wisconsin rules regarding ETC status do not include a requirement that the provider own its own facilities.

TracFone offers only pre-paid wireless service. Customers purchase a TracFone instrument initially, and then buy minutes of use as needed. TracFone does not charge monthly rates or fees. When a customer uses all of the previously purchased minutes, the phone cannot be used until the customer buys additional minutes.

Most of the significant issues in this case relate to how TracFone intends to offer Lifeline and LinkUp to low-income eligible customers.<sup>3</sup> If it is designated as an ETC, TracFone will be required to provide Lifeline and Link-Up to its customers. In fact, the primary focus of the

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<sup>1</sup> Universal Service Report and Order, released May 8, 1997, FCC docket 97-197. Although the ETC concept arises in federal law, the states are responsible for the ETC designation. Consequently, the Commission's USF rules have provisions on ETC matters.

<sup>2</sup> Order, Petition of TracFone Wireless, Inc., for Forbearance released September 8, 2005, CC Docket 96-45.

<sup>3</sup> The state USF administrative rules in Wis. Adm. Code §§ PSC 160.061(1) and PSC 160.062(1) require TracFone to offer Lifeline and Link-up.

applicant in becoming an ETC is to be able to provide Lifeline and Link-Up service to low-income customers, and to be reimbursed for doing so. TracFone has stated that it does not intend to request Lifeline or Link-Up reimbursement from the state USF.

TracFone has stated that it will provide its handset and account activation services without charge to low-income customers. This more than fulfills the requirements of the state Link-Up service, which requires only the waiver of nonrecurring charges.

The Lifeline program provides a monthly discount to eligible low-income customers to make essential telephone service more affordable. TracFone has requested that the requirement that a provider offering Lifeline service provide a monthly discount to all qualified customers, as set forth in Wis. Admin. Code § PSC 160.062(2)(b), not be applied to TracFone. Instead, TracFone wants to provide a monthly discount in the form of free minutes of use to such customers. As a prepaid wireless provider, TracFone does not charge a monthly fee for service, but charges only for minutes of use and those minutes are purchased in advance. TracFone's proposed Lifeline service would provide to eligible low-income customers a monthly amount of free minutes that is comparable in retail value to the monthly Lifeline credit issued by providers with monthly rates. TracFone has proposed providing Lifeline customers with 61 monthly minutes of "free" service (worth \$12.20 at TracFone's retail rates) as a Lifeline credit.

Providing free monthly minutes of service in lieu of a monthly discount is a new approach to Lifeline service. It is an attempt to mesh TracFone's business model with the goals of the Lifeline program, and it appears to do so. The facts that TracFone provides prepaid phone service, that it does not bill customers, and that there are administrative difficulties of TracFone trying to administer Lifeline in the customary way combine to create an unusual situation.

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The Commission is authorized under Wis. Admin. Code § PSC 160.01(2)(b),<sup>4</sup> to adopt different requirements for individual providers in unusual or exceptional circumstances. It is reasonable to adopt this different approach for this provider. The Commission delegates to the Administrator of the Telecommunications Division the authority to approve future revisions of the number of free minutes provided per month, when necessary, due to changes in the prices of telecommunications services or the Lifeline program itself or other factors. It is not reasonable to require a reopening of this docket, nor formal notice and opportunity for comments, when processing such changes.

Wisconsin's Lifeline program rules include a requirement that the Lifeline rate not be less than \$3.00 per month.<sup>5</sup> Wis. Admin. Code § PSC 160.062(2)(c).<sup>6</sup> TracFone has requested that this requirement not be applied to TracFone.

TracFone does not charge monthly rates for its phones, only per minute charges. It does not bill customers. TracFone's business plan is predicated on having no monthly fee for Lifeline service, and it argues that having no monthly fee is in the public interest in this particular case. As noted above, the facts that TracFone provides prepaid phone service, does not bill customers, and faces administrative difficulties of trying to administer Lifeline in the customary way combine to create an unusual situation. The Commission is authorized under Wis. Admin. Code § PSC 160.01(2)(b), to adopt different requirements for individual providers in unusual or

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<sup>4</sup> Wis. Admin. Code § PSC 160.01(2)(b) states, "Nothing in this charter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter."

<sup>5</sup> A minimal monthly rate was established as a means to give (even low-income) customers some responsibility for service that would not be there if service were free or close to free.

<sup>6</sup> Wis. Admin. Code § PSC 160.062(2)(c) states, "Notwithstanding par. (b), in no case shall the Lifeline monthly rate be less than \$3 or more than \$15."

Docket 9385-TI-100

exceptional circumstances. It is reasonable in this circumstance to not require a minimum monthly charge.

The lack of a monthly charge for TracFone service creates a potential problem if a customer loses or abandons a TracFone phone without notifying TracFone. With no monthly bill, the service would not be terminated for non-payment as would happen with more traditional telephone service payment structures. This could result in continuing Lifeline reimbursements to TracFone when no customer is "receiving" the Lifeline benefit. Staff has had extensive discussions with the company about this issue. TracFone stated that it found a requirement for a minimum monthly rate burdensome and in conflict with its business models. Various methods and models for ensuring that Lifeline monies would not be used to reimburse the company for credits provided to accounts which were no longer active were discussed, but no consensus was reached.

To preserve the long-term viability of the federal universal service funds, and to protect the customers served by those funds, the Commission needs to ensure that monies paid out by those funds are not wasted. It needs to ensure that fund payments end up benefitting customers, rather than going to inactive accounts or out-of-service phones. If an account has been abandoned, Lifeline subsidy payments to that account need to cease in a timely manner. It is reasonable to require providers that service the market niche TracFone intends to serve to demonstrate that procedures to ensure this are in place before granting ETC certification. It is also reasonable to require such companies to keep records which can verify that the procedure is being followed.

Staff has identified several methods by which such providers could accomplish that goal. The provider could track usage, and act rapidly to verify whether a customer was still actually a customer whenever usage ceases. The provider could stop applying USF credits to any account that had no usage in a previous month, or take any one of a number of other actions. The Commission does not wish to limit these options at this time, especially for future providers that may offer services similar to those offered by TracFone; therefore, the Commission chooses not to mandate a single approach. Instead, it directs TracFone to explain how it will meet this requirement, and delegates to the Administrator of the Telecommunications Division authority to review, request modifications to and ultimately approve such plans. Future providers will be required to do the same.

The Commission's grant of ETC status to TracFone is conditioned on the company submitting a plan which meets these requirements. The company must file an initial plan within 60 days of the date of this Final Decision. If the company's plan is not acceptable to the Administrator, the company may file revisions or modifications to its plan both before and beyond the 60-day period, but ETC designation will not be effective until such a plan is approved.

TracFone is required to maintain records and data that will allow the Commission to monitor, review, audit or otherwise ensure that the plan approved by the Administrator is being implemented and is effective. The Commission delegates to the Administrator of the Telecommunications Division the authority to determine what such records will contain, and how long they must be retained.

Docket 9385-TI-100

The Commission finds that TracFone meets the requirements for ETC designation. TracFone is a cellular mobile radio reseller. As such, it does not require certification by the Commission. TracFone has agreed to meet all of the requirements for ETC designation with the exception of the pay telephone requirement that is discussed below.

TracFone has requested that the requirement that an ETC provide a pay telephone in each municipality, as set forth in Wis. Admin. Code § PSC 160.13(1)(d), not be applied to TracFone. The Commission is authorized under Wis. Admin. Code §§ PSC 160.01(2) and PSC 165.01(3) to adopt different requirements for individual providers in unusual or exceptional circumstances, as the Commission did in docket 7184-TI-102, in which Midwestern Telecommunications, Inc. (MTI), was designated as an ETC. In that docket, MTI noted that the Commission has a pending rulemaking, docket 1-AC-198, which proposes substantial revisions to that requirement. MTI noted that it would be burdensome to meet the existing requirements and that any pay telephones it provided would be redundant; therefore, MTI requested that the Commission not apply that requirement. MTI stated its willingness to meet the requirement proposed in docket 1-AC-198. The Commission determined, in that docket, that pendency of the rule change and the redundancy of any pay phones MTI would provide created an unusual circumstance. It was therefore reasonable for the Commission to forgo applying the pay phone provision to MTI and to instead adopt a different requirement. MTI and other ETCs since then were required to work with the other providers in their service areas to jointly ensure that pay phones are available. It is reasonable to apply the same alternative requirement to TracFone.

The FCC has determined that an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural provider.<sup>7</sup> The Commission finds that it is in the public interest to designate TracFone as an ETC in the areas for which TracFone requests such designation. The Commission is guided by the factors set forth in Wis. Stat. § 196.03(6) when making a public interest determination. The Commission finds that although there are other ETCs in the areas at issue, designating TracFone as an ETC will nonetheless increase competition in those areas and consequently, will increase consumer choice. The Commission also notes that the prepaid wireless offering, especially TracFone's innovative Lifeline offering, will likely make service available to customers that would not otherwise be served.

In making its public interest determination, the Commission also considers whether cream-skimming is occurring. Since TracFone has requested ETC status for the entire state, the Commission finds no evidence of cream-skimming in this docket.

### **Order**

1. TracFone is granted ETC status statewide, effective once the Administrator of the Telecommunications Division approves the plan described in order point 4.
2. TracFone is an ETC within the meaning of 47 U.S.C. § 214(c), and is eligible to receive federal USF funding pursuant to 47 U.S.C. § 254(2). This Final Decision constitutes the Commission's certification to that effect, subject to order point 1.
3. Within sixty days, TracFone must file a plan describing how it will prevent reimbursement for Lifeline credits being paid to inactive customers or accounts. That plan may

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<sup>7</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 20 F.C.C.R. 6371, 6373, ¶ 3 (2005).



be revised as necessary. The Commission delegates to the Administrator of the Telecommunications Division authority to request modifications in, and to approve, the plan.

4. TracFone shall collect and maintain records necessary to ensure that the company is abiding by the plan described above, and that the plan is effective. The Commission delegates to the Administrator of the Telecommunications Division authority to determine what records may be necessary for such a determination, and to designate how long those records must be maintained.

5. TracFone does not have to meet the requirement under Wis. Admin. Code § PSC 165.088 that it provide a pay telephone in each incorporated municipality, but TracFone is instead required to meet the requirement that it work with other providers in its service territory to jointly ensure that pay telephones are available.

6. TracFone does not have to meet the monetary discount or minimum charge requirements under Wis. Admin. Code § PSC 160.062(2), but TracFone is instead required to provide 61 minutes of free service per month to Lifeline customers. The Commission delegates to the Administrator of the Telecommunications Division authority to approve changes to that number of minutes, and to determine similar minute credits for ETCs with similar waivers of this provision. Changes to the number of minutes may be approved without reopening the docket, issuing a notice or providing opportunity for comment.

7. Jurisdiction is maintained.

Docket 9385-TI-100

8. This Final Decision is effective the date after mailing.

Dated at Madison, Wisconsin, May 20, 2009

By the Commission:

  
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Sandra J. Paske  
Secretary to the Commission

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See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
610 North Whitney Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.<sup>8</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

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<sup>8</sup> See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

Docket 9385-TI-100

APPENDIX A

This docket proceeding is not a contested case under Wis. Stat. ch. 227, therefore there are no parties as defined in Wis. Stat. § 227.01(8), to be listed or certified under Wis. Stat. § 227.47. However, the persons listed below are defined by Wis. Admin. Code § PSC 2.02(7), (10), and (12) as parties in the docket and participated therein.

Public Service Commission of Wisconsin  
(Not a party but must be served)  
610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

GREENBERG TRAURIG, LLP  
Debra McGuire Mercer  
Counsel for TracFone Wireless, Inc.  
21101 L Street NW Suite 1000  
Washington, DC 20037

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 124**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-19 What measures will be taken to ensure that each SafeLink customer still possesses the free SafeLink handset in any given month and has not lost or sold it?**

**Response**

TracFone has a non-usage policy for its SafeLink Wireless® customers that was developed in consultation with state commissions to ensure that TracFone would not continue to receive Lifeline support for a phone that was lost or for a phone that was turned off for a prolonged period of time. The non-usage policy was developed by TracFone in consultation with several state commissions which had the same concern as this Commission regarding the potential for customers to remain enrolled in TracFone's Lifeline program after they lost a phone or ceased using the service. TracFone has also thoroughly discussed the policy with the Federal Communications Commission. Under the policy which has been implemented in every jurisdiction where TracFone offers Lifeline service as an ETC, if SafeLink Wireless® customers go two months without any usage independent of the service end date, they will be de-enrolled from Lifeline. The SafeLink Wireless® terms and conditions currently encompass this policy under the "Service End Date and Deactivation" heading.

TracFone has become aware from its own investigation, as well as from the FCC and state utility commissions that a limited number of its handsets have been made available for resale on Internet sites, including [www.eBay.com](http://www.eBay.com) and [www.craigslist.org](http://www.craigslist.org). TracFone has immediately investigated each situation, taken appropriate action, and notified the FCC and appropriate state utility commissions of the outcome of its investigations. TracFone's Loss Prevention department monitors and searches classified postings and web blogs and establishes informational alerts in web search engines to ensure that the SafeLink Wireless® brand name and products are not used for resale or for fraudulent purposes. The Loss Prevention department investigates any potentially improper or fraudulent activities and reports its findings to the

Lifeline operations team. Following an investigation, the Loss Prevention department will deactivate the phone of any Lifeline customer who has engaged in such activities.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 125**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**



**DR-82 In response to Staff DR19, TracFone discusses its new practice of monitoring non-usage of SafeLink customers and de-enrollment of customers who do not use their phones for two months.**

- a. What event prompted TracFone's adoption of this practice? Was it required to implement this practice by either the FCC or a state commission?**
- b. When was this practice implemented and for which states?**
- c. How did TracFone notify all states and the FCC regarding its adoption of this practice?**
- d. When was this practice discussed with the FCC and where are the specifics of the discussion documented? Please provide any documents provided to the FCC regarding this matter.**

**Response**

The non-usage plan was established to address a concern expressed by the Wisconsin Public Service Commission Staff that TracFone could be receiving funds from the federal Universal Service Fund for providing Lifeline service to a phone that was not being used at all. The non-usage policy was developed to ensure that TracFone would not continue to receive Lifeline support for a phone that was lost or for a phone that was turned off for a prolonged period of time. The non-usage policy is effective in all states in which TracFone provides Lifeline service. TracFone's Lifeline customers in all states are notified of this policy through various means of communications in which they were advised that they needed to use their handsets or risk de-enrollment from Lifeline. The non-usage policy is also contained in the SafeLink Wireless® terms and conditions. The FCC is aware of the non-usage policy. A copy of a letter provided to the FCC Staff regarding the policy is provided as Exhibit 82.

# Greenberg Traurig

Mitchell F. Brecher  
(202) 331-3152  
BrecherM@gtlaw.com

February 4, 2010

**VIA HAND DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

FILED/ACCEPTED

FEB - 4 2010

Federal Communications Commission  
Office of the Secretary

Re: Public Notice, DA-09-1272, June 5, 2009 - CC Docket No. 96-45

Dear Ms. Dortch:

Enclosed, please find an original and four copies of information requested by the Wireline Competition Bureau. In 2005, the Commission conditionally granted a petition for forbearance filed by TracFone so that TracFone could seek designation as an eligible telecommunications carrier under 47 U.S.C. § 214(e) for the purpose of offering Lifeline service without providing service in part over its own facilities. Under one of the conditions of the order granting forbearance, TracFone was ordered to require each of its Lifeline customers to annually self-certify that the customer is head of household and receives Lifeline-supported service only from TracFone.<sup>1</sup> On April 27, 2009, TracFone filed a petition to modify that condition such that TracFone would only be required to comply with the annual verification requirement for a statistically valid sample of its Lifeline customers.

The Commission's Wireline Competition Bureau requested that TracFone provide certain data to assist in its analysis of TracFone's petition to modify the annual verification condition. In particular, the Wireline Competition Bureau requested TracFone to provide a description of its

<sup>1</sup> See *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098, ¶ 6 (2005).

Ms. Dortch  
February 4, 2010  
Page 2

non-usage policy, which is a policy that ensures that TracFone's Lifeline customers are using their Lifeline benefits. A description of this policy is attached.

The Wireline Competition Bureau also sought data regarding the number and percentage of Lifeline customers who do not use their phones in a month, the number of Lifeline customers who were de-enrolled from Lifeline under TracFone's non-usage policy, and the number of Lifeline customers who were subsequently re-enrolled in Lifeline. This information is confidential commercial information concerning TracFone's customers. Therefore, TracFone has filed the requested customer data separately with a request for confidential treatment.

Please direct any inquiries regarding this request to undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

Enclosures

cc via electronic mail: Elizabeth McCarthy  
Gina Spade  
Jamie Susskind

## TRACFONE WIRELESS, INC.'S NON-USAGE POLICY

TracFone has implemented a policy that covers inactive handsets assigned to customers that are enrolled in its Lifeline program. Under the policy, if SafeLink Wireless® customers go two months without any usage independent of the service end date, their service will be deactivated and they will be given a 30 day grace period to reactivate. Usage includes, but is not limited to, making calls, receiving calls, sending text messages, receiving text messages, or adding airtime. TracFone has the ability to monitor call activity, including the number of minutes used, through call detail record reporting platforms.

During the 30 day grace period, if the customer tries to use his or her handset, the call will be intercepted and routed to an IVR system that will advise the customer that the handset is not active. The customer will also be advised that if the call is an emergency, the customer should hang up and dial 911 from the handset. The IVR also will prompt the customer to contact a TracFone customer service agent if the customer desires to change his or her status so as to become an active SafeLink Wireless® Lifeline customer. If a customer does not use the handset during the 30 day grace period, any subsequent attempts to place a call from the handset will not be intercepted by IVR and the handset may only be used to dial 911.

Customers who have been deactivated following 60 days of non-usage may participate in the Lifeline program in the future. Customers who advise TracFone during the 30 day grace period following 60 days of non-usage that they wish to continue to receive Lifeline service will be reinstated as a Lifeline customer. Customers who advise TracFone after the 30 day grace period following 60 days of non-usage that they want to receive Lifeline service will be re-enrolled as a Lifeline customer, assuming that such customers remain qualified for Lifeline benefits. When a customer is reinstated (during the 30 day grace period) or re-enrolled (after the

30 day grace period), that customer's handset will receive any unused minutes that accrued during the 60 day non-usage period and the 30 day grace period. In addition, after a customer is reinstated or re-enrolled as a Lifeline customer, TracFone will recommence its provision of monthly allotments of minutes to the customer's handset.

Once a customer has been deactivated after 60 days of non-usage, TracFone will cease seeking reimbursement from the federal USF for that customer. However, if a customer is reinstated as a Lifeline customer during the 30 day grace period following 60 days of non-usage, TracFone will seek reimbursement from the federal USF for the Lifeline benefits that accrued during the 30 day grace period. If a customer is re-enrolled as a Lifeline customer after the 30 day grace period following 60 days of non-usage, TracFone will resume seeking reimbursement from the federal USF following such customer's re-enrollment.

## CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of July, 2010, served the foregoing TRACFONE WIRELESS, INC.'S RESPONSE COMMISSION STAFF'S THIRD, FOURTH, AND FIFTH SETS OF DATA REQUESTS upon all parties of record in this proceeding by causing a copy to be sent by electronic mail and U.S. mail to the following addresses (as indicated below):

Public Utility Commission of Oregon  
Attn: Vikie Bailey-Goggins  
PUC.datarequests@state.or.us  
PO Box 2148  
Salem OR 97308-2148

Mitchell F. Brecher  
brecherm@gtlaw.com  
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Greenberg Traurig, LLP  
2101 L Street NW, Suite 1000  
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Assistant Attorney  
Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096

Kay Marinos  
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Salem, OR 97308-2148

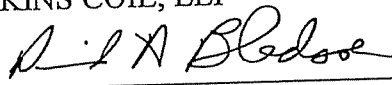
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1162 Court Street NE  
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PERKINS COIE, LLP

By   
Lawrence H. Reichman, OSB No. 860836  
Attorneys for TracFone Wireless, Inc.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 126**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-67 Please list the states where TracFone is required to report and contact Lifeline customers after a given number of days (e.g., 60 days, 90 days) of inactivity on their SafeLink Wireless service. For each state, by quarter, please identify:**

- a. The number of total SafeLink customers**
- b. The number of customers with inactivity during the test period, and**
- c. The number of customers deactivated for inactivity.**

**Response**

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). TracFone further objects that the information sought by this data request is highly confidential and commercially sensitive. Without waiving its objection, TracFone states that it is required to submit quarterly reports to the Ohio Public Utilities Commission and the Wisconsin Public Service Commission based on the application of its non-usage policy to TracFone's Lifeline customers in Ohio and Wisconsin.



CASE: UM 1437

WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 127**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

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***Consumer Issues***  
***&***  
***ETC Designation***

***NARUC Summer Committee Meeting***  
***Sacramento, Ca. – July 20, 2010***

*Bob Casey, Florida Public Service Commission*

# ***Disclaimer***

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- *Statements or Opinions expressed by me may or may not reflect positions of the Florida Public Service Commission.*
- *Only the Florida Public Service Commission can reflect official policy and statements on behalf of Florida.*

# Prepaid Wireless Verifications

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- 2<sup>nd</sup> Quarter 2009 - Customer base 390,674
  - 21,444 removed due to 60-day inactivity (5.49%)
- 3<sup>rd</sup> Quarter 2009 - Customer base 413,913
  - 33,055 removed due to 60-day inactivity (7.99%)
  - 12,730 removed due to annual verification (3.08%)
  - 4,294 voluntarily removed (1.04%)
- Total removed for 2 quarters – 71,523 customers x \$10 = \$715,230/month x 12 = \$8,582,760 in USF funds saved over a six-month period.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 128**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

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VP Virgin Mobile USA  
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MGR, Virgin Mobile USA  
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## Free Cellphone Service Just Got Cheaper

### Assurance Wireless Reduces Cost to Supplement Lifeline Service for Customers in New York and Virginia

#### FREE CELLPHONE SERVICE JUST GOT CHEAPER

Assurance Wireless Reduces Cost to Supplement Lifeline Service for Customers in New York, North Carolina, and Virginia

WARREN, NJ - FEBRUARY 3, 2010- Assurance Wireless is reducing the cost to supplement minutes for its Lifeline service. 200 minutes of free wireless local and long-distance calling within the United States every month. Subscribers qualifying customers in New York, Virginia, North Carolina and Tennessee, will now pay only 10 cents for each per additional minute after exceeding the 200 minutes included with the plan.

Assurance Wireless, from Virgin Mobile USA, includes 200 minutes of airtime at no cost to eligible lower-income customers. The amount of minutes is more than of the other leading national no-contract Lifeline wireless service. The reduced rate of service is more economical for those needing more. "It's hard to beat the free 200 minutes, but we want to maximize the need of additional airtime during these challenging times," said Gary Carter, national manager of partnerships.

Since Assurance Wireless's additional minutes are only available on a prepaid basis, customers will never get over their minutes. Assurance Wireless also provides customers with free voicemail, call waiting, and caller ID. Less than one quarter of current additional minutes beyond the 200 free minutes offered per month.

Beyond the free 200 minutes, customers can choose to add money to their account to purchase extras including additional minutes at competitive rates, 15-cent text, email or instant messages and more.

Assurance Wireless customers can also purchase messaging "bundles" that offer 1000 text, IM or email messages for \$10 per month\*. "For job-seekers, mobile communication is a valuable resource and can truly be a lifeline to help find work," said Gary Carter.

Customers eligible for Assurance Wireless include those eligible for or receiving Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Federal Public Housing Assistance (FPHA), Low Income Home Energy Assistance (LIHEAP) or the National School Lunch Program's Free Lunch Program if the household income is at or below the federal poverty level.

#### About Assurance Wireless

To learn more about Assurance Wireless, including eligibility requirements, please call 1-888-898-4888, or visit [www.assurancewireless.com](#) available in English and Spanish.

Assurance Wireless is supported by the Lifeline Assistance program, part of the Low Income Program of the Lifeline program administered by the Universal Service Administrative Company (USAC), and designed to ensure that quality telephony services are available to low-income customers at reasonable and affordable rates.

About Virgin Mobile USA

Virgin Mobile USA, part of the new Prepaid group of Sprint Nextel [NYSE:S], offers millions of customers control, flexibility and connectivity through Virgin Mobile's Plans Without Annual Contracts for cell phone service and prepaid Broadband2Go high-speed Web access. Virgin Mobile USA also offers Pir Protection\*\*, which provides eligible monthly customers who lose their jobs free service for up to three months. Virgin Mobile Top-Up cards are available at almost 150,000 locations nationwide and can be used for Assurance Wireless and Broadband2Go. For more information, visit [www.virginmobileusa.com](http://www.virginmobileusa.com).

MEDIA CONTACTS:

Corinne.Nosal@virginmobileusa.com 908-607-4235

Jai.kensey@boostmobile.com 949-748-3299

\*Monthly rates exclude taxes and surcharges

\*\*Subject to certain terms and conditions

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CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 129**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**



June 25, 2010

**VIA OVERNIGHT DELIVERY**

Mr. Bob Casey  
Public Utilities Supervisor  
Division of Regulatory Analysis  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL. 32399-0850

RECEIVED  
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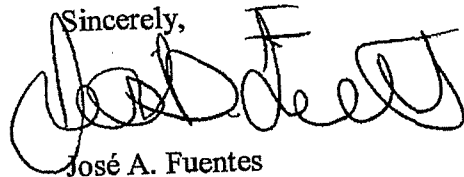
Re: TracFone Wireless, Inc., Docket No. 070586-TP

Dear Mr. Casey:

By this letter, TracFone Wireless, Inc. ("TracFone"), a wireless Lifeline provider in Florida, notifies the Commission that it will temporarily change its SafeLink Wireless® Lifeline offering. Commencing on June 1, 2010, TracFone's SafeLink Wireless® Lifeline customers in Florida received 150 minutes of airtime each month at no charge, instead of the 68 minutes of airtime currently being provided. All of TracFone's SafeLink Wireless® Lifeline customers in Florida will be eligible to receive the increased number of minutes. TracFone will advertise the increased number of airtime minutes and advise current Lifeline customers in Florida of the increased number of airtime minutes through all available means of communication, including e-mail, voicemail, text messages, and direct mail.

TracFone will be offering increased airtime minutes to its Lifeline customers in Florida for a period of three months. Therefore, this offering will terminate on August 31, 2010. This revised offering is being provided in Florida as a market test. The purpose of this temporary offering is assess customer reaction and to test the financial and marketing feasibility of offering additional minutes each month. An additional copy of this letter is included to be date-stamped and returned in the enclosed envelope. Please contact me if you have any questions about this submission.

Sincerely,



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

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 130**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-94 List the states where TracFone offers or is testing more than 68 free minutes (e.g. 150 minutes) in its SafeLink Wireless service offering. What are the total free minutes for each respective state? If applicable, please explain why the free minutes differ (e.g. 150 vs. 200) among the states. Please explain the basis for determining the amount of free minutes offered. How does the federal reimbursement of \$10.00 factor into this calculation for the monthly free minutes (e.g. 150 minutes)?**

**Response**

TracFone objects to the portion of this data request that seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier in Oregon. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). The portion of DR-94 that asks how the federal reimbursement of \$10.00 factored into this calculation for the monthly free minutes is not relevant to this proceeding. TracFone further objects that the information sought by this data request is highly confidential and commercially sensitive. The basis for TracFone's decisions regarding the amount of service it can provide given a certain amount of reimbursement from the universal service fund relates to its costs and business strategy, both of which are highly confidential and competitively sensitive and neither of which relevant to this proceeding.

Without waiving its objection, Tracfone states that it is testing different amounts of airtime minutes in four states to monitor Lifeline customers' usage and determine whether any changes will be made in the SafeLink Wireless® Lifeline plan. TracFone is currently offering the following number of minutes to Lifeline customers on a promotional basis: Alabama - 120 minutes; Florida - 150 minutes; Illinois - 200 minutes; and Louisiana - 250 minutes. The amount of minutes was chosen to provide a range of airtime minutes. None of these offerings were required by any state commission. TracFone has not altered the amount of reimbursement it seeks from USAC for Lifeline customers in the states in which the marketing tests are being conducted. TracFone constantly evaluates its offerings in light of marketplace and other

developments and makes such changes as appropriate. If TracFone decides to modify its SafeLink Wireless® offering in Oregon, either by increasing the amount of usage provided, or in other respects, TracFone will notify the Commission prior to implementing such changes.

CASE: UM 1437  
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**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 131**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-23 Please identify all contacts that TracFone's employees, consultants, or representatives have made with legislators, Native American tribes, special interest groups, government agencies, or other entities regarding support for TracFone's ETC application in Oregon. Please specify the individual or group contacted, the TracFone representative involved, and the date of such contact. Also provide a short summary of the information conveyed as well as a copy of any written material shared with the entity.**

**Supplemental Response**

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Without waiving its objection, TracFone provides a copy of the written information provided to the individuals and organizations who filed letters in support of TracFone's ETC petition. See Exhibit 23.



## SAFELINK WIRELESS AND THE LIFELINE PROGRAM OREGON FACT SHEET

- SafeLink Wireless was created by TracFone Wireless, Inc. (TracFone) when the Federal Communications Commission (FCC) approved the company to offer Lifeline - a public assistance program that ensures telephone service is available and affordable for low-income subscribers.
- The Low Income Program of the Universal Service Fund, which is administered by the Universal Service Administrative Company (USAC), is designed to ensure that quality telecommunications services are available to low-income customers at just, reasonable, and affordable rates. The Low Income Program includes three components Lifeline, Link Up, and Toll Limitation Service (TLS).
- In 2004, the FCC expanded the eligibility criteria to include an income-based criterion. The FCC estimated that 1.17 million to 1.29 million additional households that do not participate in the program-based criteria would enroll in Lifeline based on the new criteria. The same order also adopted certification and validation procedures that are designed to minimize potential abuse of the Low Income Program.
- In April 2008, the FCC approved TracFone to serve 10 states and the District of Columbia initially. TracFone is now operating in the District and 24 states including: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Tennessee, Texas, Virginia, West Virginia and Wisconsin. Nevada and South Carolina were recently approved and service will commence in those states soon.
- TracFone has invested over \$100 million and is servicing over 2.8 million households.
- Since TracFone launched the SafeLink Lifeline program in August 2008, TracFone has increased the overall Lifeline participation rate in the 24 states and the District over 86%.
- TracFone applied for Eligible Telecommunications Carrier (ETC) status for the purpose of offering Lifeline in the State of Oregon in August 7, 2009. According to PSC Staff, the petition has been moved to an administrative law judge due the "unique nature of the TracFone proposal."
- In 2009, only 14% (58,346 households) of the estimated 374,135 low-income households had Lifeline service in the State of Oregon. The low penetration rate is due in part to telecommunications carriers' refusal to adequately inform the low-income segment that this program exists.
- SafeLink service provides eligible households with:
  - A free cell phone
  - Free 67 minutes of service every month which carry over if unused for one year
  - Mobile access to emergency services

- Eligibility guidelines for Oregon are as follows:
  - Certain state medical programs or Medicaid
  - Supplemental Assistance Nutrition Program – SNAP (formerly known as Food Stamps)
  - Supplemental Security Income
  - Temporary Assistance to Needy Families

## LOW-INCOME COMMUNITIES AND CELL PHONES

An April 2008 study (“Cell Phones Provide Significant Economic Gains for Low-Income American Households,”) revealed cell phones can significantly boost the earning potential of low-income communities, and are a critical component for personal safety and access to emergency services:

- Mobile connectivity vastly encourages opportunities for low-income families, and remains central to their everyday survival.
  - 48% have used their phone to call or text during an emergency situation.
  - 20% have received an emergency call or text on their cell phone.
  - 32% have purchased a cell phone for a relative to use in emergency situations.
  - 40% in blue-collar jobs say their cell phone has provided the opportunity to gain employment or make money.
- By more than a 3-1 ratio, Americans say they prefer a cell phone to a landline phone for emergency use.
  - The same study showed that if the 38% of the 45.2 million low-income households that do not now have cell phones were to start using them, and earn money at the same rate as those households that do own cell phones—it would add \$2.9 billion to household incomes.
  - Prepaid users, who are typically less educated and from lower income households, and who use far fewer minutes (209) than average, overwhelmingly cite monthly cost savings compared to contract cell phones.
  - 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.
  - In low-income segments of the population, particularly Hispanics and households with less than \$35,000 income, large numbers are turning to the prepaid phone as their only phone.
  - The primary benefit of cell phones is as a security blanket in case of emergency and a major secondary benefit is economic.
  - One of the drivers behind universal service is importance of communications for health and safety concerns, especially for people living in rural or remote areas.
  - The study concluded that the cell phone is extremely important to Americans for personal safety, and a huge boon to an individual’s economic productivity and earning power. The cell phone is particularly important to blue collar, less educated and low-income segments, even though those groups are far less likely to own cell phones.



CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 132**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Federal-State Joint Board on Universal Service</b>	)	<b>CC Docket No. 96-45</b>
	)	
<b>Lifeline and Link-Up</b>	)	<b>WC Docket No. 03-109</b>

**REPLY COMMENTS OF**

**ADVOCATES FOR BASIC LEGAL EQUALITY, INC.,  
COMMUNITY VOICE MAIL NATIONAL  
CROSSROADS URBAN CENTER  
DISABILITY RIGHTS ADVOCATES  
THE LOW INCOME UTILITY ADVOCACY PROJECT  
MINNESOTA LEGAL SERVICES ADVOCACY PROJECT  
THE NATIONAL CONSUMER LAW CENTER, ON BEHALF OF OUR LOW-  
INCOME CLIENTS  
NEW JERSEY SHARES  
OHIO POVERTY LAW CENTER  
PRO SENIORS  
SALT LAKE COMMUNITY ACTION PROGRAM  
TEXAS LEGAL SERVICES CENTER  
THE UTILITY REFORM NETWORK  
TWIN CITIES COMMUNITY VOICEMAIL  
("CONSUMER GROUPS")**

**IN RESPONSE TO THE FEDERAL-STATE JOINT BOARD REQUEST FOR  
COMMENT**

Olivia Wein  
Staff Attorney  
National Consumer Law Center, Inc.  
1001 Connecticut Avenue, NW, Suite 510  
Washington, DC 20036-5528  
(202)452-6252, ext. 103  
[owein@nclcdc.org](mailto:owein@nclcdc.org)

Christine Mailloux  
Telecommunications Attorney  
The Utility Reform Network  
115 Sansome Street, Suite 900  
San Francisco, CA 94104  
(415) 929-8876, ext. 353  
[cmailloux@turn.org](mailto:cmailloux@turn.org)

July 30, 2010

are indeed comparable to local usage plans.<sup>4</sup> Consumer Groups support the recommendation by National Association of State Utility Consumer Advocates ("NASUCA"), Community Voice Mail *et al* (CVM) and Twin Cities Community Voice Mail *et al* (TCCVM) that urge the establishment of minimum standards for prepaid wireless Lifeline, which includes a minimum number of monthly minutes and a maximum price for additional minutes, consistent with NASUCA's recommendations.<sup>5</sup>

TCCVM captures the sentiment of many frontline groups serving some of the most fragile the low-income populations, "Although we are excited about the prospect of a Lifeline program that provides cell phones to low-income people, we are disappointed by many of the shortcomings of current wireless Lifeline providers."<sup>6</sup> The opening comments of TCCVM and CVM provide insight on how their clients use communications services to get by. CVM's survey of their clients found that a substantial portion relied on community voice mail as a strategy to preserve their wireless minutes.<sup>7</sup> Consumer Groups support NASUCA's recommendation to expand Lifeline by funding voice-mail programs for persons in distress.<sup>8</sup>

TCCVM's findings from its focus groups research of their low-income clients include, "[m]ost participants have had cell phones, but many could only afford a small amount of minutes and quickly would run out of minutes."<sup>9</sup> TCCVM's description of their clients' communications needs provides a sharp contrast to the prepaid Lifeline products available today. TCCVM gathered data through focus groups composed of their clients.

In these focus groups, participants stated the need of at least 300 minutes per month (10 minutes a day) to perform routine activities such as applying for jobs and completing lengthy job interviews, keeping in touch with employers, scheduling medical appointments, obtaining housing and contacting landlords, paying bills, reaching out to family members, and obtaining help in an emergency. Participants also noted that it often took a large number of minutes to perform routine tasks. When scheduling a

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<sup>4</sup> "In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must: . . . (4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation. (47 CFR § 54.202(a)(4)).

<sup>5</sup> NASUCA at 5, TCCVM at 4-7, CVM at 2-3.

<sup>6</sup> TCCVM at 8.

<sup>7</sup> TCCVM at 2-4, CVM at 2.

<sup>8</sup> NASUCA at 7.

<sup>9</sup> TCCVM at 3.

doctor appointment, for example, it would not be uncommon to be on hold for over 10 minutes at a time.<sup>10</sup>

TCCVM also raises concerns about the cost for adding additional minutes to a prepaid wireless phone and that the additional air time cards use a volume discount structure which unfairly disadvantages their low-income clients, as they would be unlikely to afford the more expensive airtime cards which provided the lowest rates.<sup>11</sup> Consumer Groups support TCCVM's recommendation that customer service and 911 should not count against the prepaid minutes provided under the Lifeline benefit.<sup>12</sup> TCCVM also raises concerns about one wireless carriers' service activation fee of \$72 for Lifeline customers.<sup>13</sup> Consumer Groups believe that this type of charge would also be an appropriate element for a set of minimum standards.

The Joint Board should be asking the same questions as TCCVM and CVM about low-income consumer use of wireless to determine what constitutes adequate wireless Lifeline service. As noted in the opening comments, some states have already gathered data on how pre-paid wireless consumers are faring, so this would be a logical starting point in the analysis.<sup>14</sup> This analysis and reflection is critical for ensuring that the Low Income universal service funds are being spent carefully and responsibly.

### **III. SEVERAL UNIQUE ISSUES REGARDING THE PROVISION OF LIFELINE TO RESIDENTS OF GROUP HOUSING AND THE HOMELESS**

#### **A. How the One-Per-Household Rule Has Been a Barrier to Lifeline for Those in Group Housing Situation**

As discussed below, some comments have focused on whether it is still sound policy to limit the Lifeline benefit to one account per household. In this section, Consumer Groups address issues raised in opening comments concerning

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<sup>10</sup> TCCVM at 3.

<sup>11</sup> TCCVM at 6.

<sup>12</sup> TCCVM at 6-7.

<sup>13</sup> TCCVM at 7.

<sup>14</sup> Consumer Groups at 40-41.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 133**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**THE NATIONAL ASSOCIATION OF  
STATE UTILITY CONSUMER ADVOCATES**

**RESOLUTION 2010-02**

**CALLING FOR REFORM OF THE LIFELINE PROGRAM, INCLUDING  
REFORM FOR PREPAID WIRELESS LIFELINE SERVICES**

**WHEREAS**, Low-income support mechanisms such as Lifeline have long been part of the national universal service goal;

**WHEREAS**, Lifeline has been an important means of achieving the goals of affordable universal service for all;

**WHEREAS**, wireless service has become an increasingly important part of telecommunications service, including Lifeline;

**WHEREAS**, unsettled economic times and changes in technology and consumer lifestyles have created the need for new approaches to low-income telecommunications assistance programs;

**WHEREAS**, this has created the need for the Federal Communications Commission ("FCC") to reexamine its earlier decisions regarding the Lifeline program;

**WHEREAS**, carriers have sought and the FCC and state commissions have allowed on an ad hoc basis a category of "low-income" eligible telecommunications carriers ("ETCs"), that seek only low-income funding under the federal universal service fund and do not seek high-cost funding

**WHEREAS**, the purpose of Lifeline programs is to balance the maximum value for low-income customers with the costs imposed on all customers who pay for the Lifeline programs;

**WHEREAS**, the federal Lifeline discount for incumbent local exchange carriers ("ILECs") not serving tribal lands consists of three tiers, with Tier 1 being a waiver of the subscriber line charge ("SLC"), Tier 2 being an additional \$1.75 discount off the retail rate for basic service, and Tier 3 being an additional \$1.75 discount off the retail rate for basic telephone service if the state matches the federal Tier 3 discount;

**WHEREAS**, the federal Lifeline discount for competitive local exchange carriers ("CLECs") and wireless carriers has been the same dollar amount as for ILECs, even where the carrier does not charge a SLC;

**WHEREAS**, Lifeline service traditionally consisted of the most basic local service offered by the ILEC, which in many areas includes unlimited local calling;

**WHEREAS**, the FCC has required non-ILEC Eligible Telecommunications Carriers (“ETCs”) it designates to offer local calling usage that is comparable to the ILECs’ local calling usage;

**WHEREAS**, technology changes and lifestyle changes have led carriers to market numerous additional services, and to create bundles and packages of services that include basic service along with additional services;

**WHEREAS**, wireless carriers typically offer only packages that include services beyond basic and usage that goes beyond local usage;

**WHEREAS**, some state commissions and some carriers have limited Lifeline customers’ access to packages that include more than basic service or, in the case of wireless carriers, to the lowest-usage package;

**WHEREAS**, in the National Broadband Plan, the FCC has recommended that the FCC and states should require ETCs to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service;

**WHEREAS**, the offering of service packages to Lifeline customers gives those customers choices, but there are concerns that carriers will heavily market packages to Lifeline customers that are beyond the customers’ means, and that the Lifeline customers will therefore have service disconnected for non-payment at a rate significantly greater than that applicable to Lifeline customers who subscribe only to limited services;

**WHEREAS**, the FCC has designated and has allowed the states to designate Lifeline-only ETCs that do not receive high-cost funds;

**WHEREAS**, the FCC has placed conditions on grants of low-income ETC status, including conditions based on the carrier’s status as a wireless reseller;

**WHEREAS**, these ETCs, principally prepaid wireless carriers, have brought telephone service to hundreds of thousands of low-income customers who have never had or have dropped their wireline service and previously could not afford wireless service;

**WHEREAS**, the existence of these prepaid wireless Lifeline-only ETCs has resulted in substantial growth to the federal USF paid by most customers, without a necessary assurance of adequate value provided to the Lifeline customer, or the most efficient use of Lifeline benefits;

**WHEREAS**, the appearance of prepaid wireless carriers as Lifeline-only ETCs that do not offer a Lifeline discount off their retail rate but instead offer “free” service (with or without a “free” handset) to Lifeline customers has also complicated the calculation of the value of Lifeline service, especially where the free service includes limited usage minutes and requires customers needing additional minutes to purchase those minutes from the carrier;

**WHEREAS**, the existence of wireless ETCs with limited usage plans, and especially prepaid wireless ETCs that offer extremely limited usage packages on their "free" plans, raises concerns about the equivalency of this calling to the ILECs' calling packages available to Lifeline customers;

**WHEREAS**, the existence of wireless ETCs, especially Lifeline-only wireless ETCs, raises concerns about ensuring that each household receives only one Lifeline benefit and ensuring that no carrier receives Lifeline support when customers opt for a different Lifeline service;

**WHEREAS**, there have been concerns raised about whether prepaid wireless carriers, especially prepaid Lifeline-only ETCs, do or should contribute to state funds, especially state 9-1-1 funds;

**WHEREAS**, in the National Broadband Plan, the FCC has noted that, in designing a Lifeline broadband program, it should consider the recent experience with expanding Lifeline to non-facilities-based prepaid wireless providers;

**WHEREAS**, wireline carriers' rates, including rates for basic service and for packages, are increasingly being rate-deregulated at the state level, and wireless carriers' rates, including prepaid wireless carriers' rates have not been rate-regulated, giving rise to additional concerns about the value and efficiency of Lifeline benefits;

**WHEREAS**, the FCC's rules for designating ETCs (including low-income ETCs) govern only ETC designations that the FCC makes, and are only suggestions for states that designate ETCs;

**WHEREAS**, a number of applicants for low-income ETC status have filed petitions for forbearance from statute or FCC rules that contain insufficient information to allow a determination of whether forbearance is in the public interest, specifically a description of the service(s) to be offered that will be subject to the Lifeline discount; *now, therefore be it*

**RESOLVED**, That the National Association of State Utility Consumer Advocates ("NASUCA") continues to support the Lifeline program, particularly for wireline service; *and be it further*

**RESOLVED**, That, given the use of dollars from around the country to support the federal Universal Service Fund, NASUCA supports the FCC's adoption of minimum standards for state ETC, especially low-income ETC, designation; *and be it further*

**RESOLVED**, That NASUCA supports a policy that requires carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and that requires carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer; *and be it further*

**RESOLVED**, That such policy should also include a prohibition on disconnection of the basic service portion of telecommunications service if the basic amount is paid, if the carrier offers a basic service, and if the carrier does not offer a stand-alone basic service, a provision that the lowest-price package be maintained if sufficient payment is made for that lowest-price package; *and be it further*



**RESOLVED**, That regulators should ensure that Lifeline customers with packages are not disconnected at a significantly greater frequency than Lifeline customers without packages; *and be it further*

**RESOLVED**, That the FCC should require any forbearance petition or petition for low-income ETC designation filed for a low-income ETC service to include a complete description of the service to be offered; *and be it further*

**RESOLVED**, That the FCC should consider establishing minimum standards of service for prepaid wireless Lifeline service that would apply to all prepaid wireless Lifeline services, facilities-based or not, and satisfy the public interest by providing adequate value for Lifeline recipients and comply with the universal service mandates of the Act; *and be it further*

**RESOLVED**, That the FCC should specifically adopt a minimum standard to ensure adequate value to prepaid Lifeline wireless customers from the service (i.e., minimum number of monthly minutes, maximum price for additional minutes and maximum price for text messages, etc.); *and be it further*

**RESOLVED**, That there should be continued evaluation of appropriate federal default rules for ongoing support when there is no monthly billing, carrier contributions to state funds, quality of service obligations, double billing, protection from fraud, recertification, and audits; *and be it further*

**RESOLVED**, that the FCC should investigate whether the Lifeline discount should no longer be taken off the retail rate, but off some measure of wholesale or forward-looking cost, especially where the carrier's services are not price-regulated; *and be it further*

**RESOLVED**, That the NASUCA Telecommunications Committee, with the approval of the Executive Committee of NASUCA, is authorized to take any and all actions consistent with this Resolution in order to secure its implementation.

Approved by NASUCA:  
Place: San Francisco, CA  
Date: June 15, 2010

Submitted by:  
NASUCA Telecommunications Committee

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 134**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

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## Providing Cellphones for the Poor



Ozlar Muhammad/The New York Times

Leon Simmons, 52, of the Bronx, N.Y., is disabled with emphysema. He received his free cellphone from Tracfone in April.

By MATT RICHTEL  
Published: June 14, 2009

John Cobb, 59, a former commercial fisherman who is disabled with cirrhosis of the liver and emphysema, lives in a studio apartment in Greensboro, N.C., on a fixed monthly income of \$674. He has been hoping to receive more government assistance, and in February, he did.

It came in the form of a free cellphone and free service.

Mr. Cobb became one of a small but rapidly growing number of low-income Americans benefiting from a new wrinkle to a decades-old federal law that provided them with subsidized landline telephone service.

In a twist, wireless carriers are receiving subsidies to provide people like Mr. Cobb with a phone and typically 68 minutes of talk time each month. It is a form of wireless welfare that puts a societal stamp on the central role played by the mobile device.

Mr. Cobb's cellphone is a Motorola 175. "I feel so much safer when I drive. If I get sick, I can call someone. If I break down, I can call someone," Mr. Cobb said. "It's a necessity."

The users are not the only ones receiving government assistance. Telecommunications industry analysts said the program, while in its infancy, could benefit mobile phone carriers, who face a steep challenge of their own: most Americans already own a cellphone, so the poor represent a last untapped market.

"The low hanging fruit is gone, and the wireless companies are going after the nooks and crannies," said Roger Entner, a wireless industry analyst with Nielsen. "Oh, the poor: How can we sign them up?"

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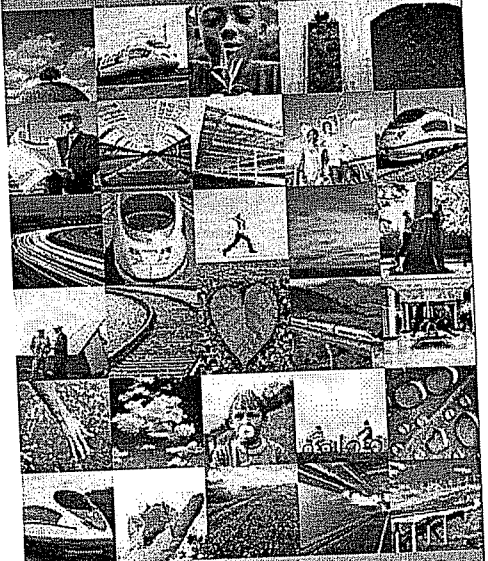
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Carriers can receive up to \$10 a month in government subsidies, sufficient to cover what amounts to about \$3 in service, Mr. Entner said.

Since November, the number of customers receiving free or subsidized wireless service has doubled to 1.4 million, he said. To be eligible for the program, known as Lifeline, a person must meet federal low-income guidelines or qualify for one of a handful of social service programs, including food stamps or Medicaid.

The opportunity has prompted interest from the nation's biggest carriers, including Sprint Nextel and AT&T. But at the forefront is a much smaller company, Tracfone, a Florida provider of prepaid mobile service that has become the face of the fledgling subsidized cellphone.

Tracfone began providing its service, called SafeLink, in Tennessee in August and now does so in 16 states, including New York, North Carolina and Pennsylvania, and the District of Columbia, according to its Web site. Each time it enters a market — which generally requires state approval — it runs television ads telling people how easy it is to get a free Motorola phone, like Mr. Cobb's.

The company says the economy makes the audience particularly receptive. "We'll read that more people are signing up for food stamps and look at our numbers and see volume rising," said Jose Fuentes, director of government relations for Tracfone. "It's not scientific proof," he added. "But we know times are tough."

He declined to say how many subscribers have signed up. But he said Tracfone, whose paid service has 10 million subscribers, sees the Lifeline service as an opportunity to make some money but, more pointedly, to eventually convert the subsidized customers into paying ones if their fortunes turn around and they no longer qualify for a free phone.

"It could make for a good business," Mr. Fuentes said.

According to Nielsen, 90 percent of Americans have at least one cellphone. That leaves 32 million, including the infirm, still up for grabs. "And the race is on to get them," Mr. Entner said.

He said the overwhelming majority of Americans with subsidized wireless service receive it through Tracfone.

One of them is Leon Simmons, 52, of the Bronx, N.Y., who did stints in the Navy, at the Post Office and as a security guard before becoming disabled with emphysema. His wife, who works a minimum wage job at a laundry, heard about the Tracfone service and he got a phone in April.

The free phone is not, as it is for some others in the program, their sole form of telecommunications. Out of the roughly \$1,600 they make each month after taxes, they pay \$159 for a landline telephone, high-speed Internet and cable television. But the cellphone, Mr. Simmons says, gives him the flexibility to tell his wife or daughter his comings and goings or to stay in touch when he is at the doctor.

According to the Federal Communications Commission, Lifeline service was started in 1984 to ensure that everyone had telephone service for emergencies. The Telecommunications Act of 1996 opened competition to new wireline and wireless providers.

More recently, companies, particularly Tracfone, have started pursuing the wireless opportunity. Still, most of the \$800 million in subsidies last year went for landline service even as more Americans cut the cord in favor of exclusively using a mobile phone.

The subsidy money comes from a tax applied to phone bills. Carriers seeking eligibility for it apply to state utility commissions, though several states have ceded their jurisdiction in the matter to the F.C.C.

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The issue has created controversy in some states over how and even whether to subsidize wireless service. In California, for example, the public utilities commission plans to debate on Thursday a proposal to extend Lifeline services to wireless — a matter backed by companies like [AT&T](#) and [Sprint](#) and T-Mobile.

The Greenlining Coalition, a nonprofit advocacy group for low-income residents, has lobbied the state to “move the [California Lifeline program](#) into the 21st century,” according to public documents provided for the hearing on Thursday.

But State Assemblyman Felipe Fuentes, who represents a district in Los Angeles, says the California legislature should ask some tough questions before moving ahead — particularly if people contemplate making wireless their only form of communication. Chiefly, he wants to know whether wireless service satisfies crucial aspects needed in lifeline, like reliability in an emergency.

“What if the phone isn’t charged, or junior doesn’t know how to use it?” Mr. Fuentes asked.

Across the country, Mr. Simmons from the Bronx says he likes being able to communicate when he is on the go. And he does not see what all the fuss is about when it comes to cellphones.

“People walk around with their head stuck into these things, not paying attention to what’s going on around them,” he said. Even though he thinks these people look silly, he said, he is going to use his cellphone.

Why not? he said. “It’s free.”

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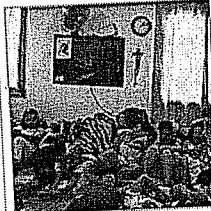
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CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 135**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

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

REPORT AND ORDER

Adopted: February 25, 2005

Released: March 17, 2005

By the Commission: Commissioners Abernathy, Copps, and Adelstein issuing separate statements;  
Commissioner Martin approving in part, and dissenting in part.

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example, the requirements to demonstrate compliance with a service quality improvement plan and to respond to any reasonable request for service will ensure designation of ETC applicants that are committed to using high-cost support to alleviate poor service quality in the ETC's service area.<sup>128</sup>

46. We disagree with commenters who contend that we should adopt a more precise cost-benefit test for the purpose of making public interest determinations.<sup>129</sup> While we believe that a consideration of both benefits and costs is inherent in conducting a public interest analysis, we agree with the Joint Board's recommendation and decline to provide more specific guidance at this time on how this balancing should be performed.<sup>130</sup> The specific determination, and the relative weight of the relevant considerations, must be evaluated on a case-by-case basis.

47. We also reject the assertions of several commenters that a more stringent analysis is necessary to determine whether an ETC designation is in the public interest.<sup>131</sup> These commenters argue that the current ETC application process is not rigorous enough to meet section 214(e)(2) of the Act and that ETC applicants should be required to demonstrate the public benefit they will confer as a result of the ETC designation.<sup>132</sup> We believe that the factors set out in the *Virginia Cellular ETC Designation Order*, as expanded in this Report and Order, allow for an appropriate public interest determination.

## 2. Potential for Creamskimming Effects

48. As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the *Virginia Cellular ETC Designation Order* and the *Highland Cellular ETC Designation Order*.<sup>133</sup> As discussed below, the state commissions that apply a creamskimming analysis similar to the Commission's will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.<sup>134</sup>

<sup>128</sup>See *supra* paras. 21-23.

<sup>129</sup>See CenturyTel Comments at 11-12, GVNW Comments at 13, F. Williamson Comments at 18-20, ITTA Comments at 21-27, NASUCA Comments at 33-34.

<sup>130</sup>See *Recommended Decision*, 19 FCC Rcd. at 4274, para. 42.

<sup>131</sup>CC Communications Comments at 3-6, Coalition Comments at 4-13, F. Williamson Comments at 12-25, GVNW Consulting, Inc. Comments at 12-13, ITTA Comments at 20-27, NASUCA Comments at 36, SBC Comments at 8, TCA Comments at 9-11.

<sup>132</sup>CC Communications Comments at 3-6, Coalition Comments at 4-13, F. Williamson Comments at 12-25, GVNW Consulting, Inc. Comments at 12-13, ITTA Comments at 20-27, NASUCA Comments at 36, SBC Comments at 8, TCA Comments at 9-11.

<sup>133</sup>In this Order, the term "service area" is used in reference to both study and service areas. The 1996 Act provided that the term "service area" means the company's "study area" in areas served by a rural telephone company. See 47 U.S.C. § 214(e)(5); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8791-92, para. 25 (1997).

<sup>134</sup>47 U.S.C. § 214(e)(5). Section 54.207 of the Commission's rules, which implements section 214(e)(5) of the Communications Act of 1934, as amended, provides that a rural telephone company's service area will be its study area "unless and until the Commission and the states, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company."  
(continued...)



49. When a competitive carrier requests ETC designation for an entire rural service area, it does not create creamskimming concerns because the affected ETC is required to serve all wire centers in the designated service area.<sup>135</sup> The potential for creamskimming, however, arises when an ETC seeks designation in a disproportionate share of the higher-density wire centers in an incumbent LEC's service area.<sup>136</sup> By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support.<sup>137</sup> Because line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. The effects of creamskimming also would unfairly affect the incumbent LEC's ability to provide service throughout the area since it would be obligated to serve the remaining high-cost wire centers in the rural service area while ETCs could target the rural incumbent LEC's customers in the lowest cost areas and also receive support for serving the customers in these areas.<sup>138</sup> In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed by the effects of creamskimming, the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural incumbent LECs. This would include examining the degree of population density disparities among wire centers within rural service areas, the extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area, and whether the incumbent LEC has disaggregated its support at a smaller level than the service area (e.g., at the wire center level).<sup>139</sup>

(Continued from previous page)

47 C.F.R. § 54.207(b). Among other things, the Joint Board recommended that the state commissions and the Commission consider and protect against the potential for creamskimming when contemplating a request to redefine a service area. See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 97, 179-80 para. 172 (1996) (1996 Recommended Decision). In *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, the Commission applied to certain service area redefinition petitions the creamskimming analysis the Commission uses to decide ETC applications. *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6440, para. 39; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

<sup>135</sup> See *Advantage Cellular ETC Designation Order* at para. 20; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

<sup>136</sup> See 1996 Recommended Decision, 12 FCC Rcd at 180, para. 172. The Commission recognizes that the type of service provided by a competitive ETC may force it to seek designation in a service area that is smaller than or different from the rural incumbent LEC's service area. For example, the Commission has recognized that the lowest cost portion of a rural service area may be the only portion of the service area that a wireless carrier is licensed to serve. See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 33; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6435, para. 27. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural service may have the same effects on the universal service fund and the rural incumbent LEC as creamskimming. Accordingly, the analysis should consider not whether the competitive ETC intends to creamskim, but whether the ETC applicant's proposed service area has the effect of creamskimming.

<sup>137</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9454-55, para. 196, App. J (1997).

<sup>138</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9399, para. 82 (1997).

<sup>139</sup> See 47 C.F.R. § 54.315. As discussed *infra*, a rural incumbent LEC's wire center is the minimum geographic area for ETC designation. See *infra*, paras. 77-78.

50. Because a low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve only the lower cost wire centers to the exclusion of other less profitable areas.<sup>140</sup> For instance, the Commission found in the *Virginia Cellular ETC Designation Order* that designating a wireless carrier as an ETC in a particular service area was not in the public interest due to the disparity in density between the high-density wire center in the area that the applicant was proposing to serve and the wire centers within the service area that the wireless carrier was not proposing to serve.<sup>141</sup> Even if a carrier seeks to serve both high and low density wire centers, the potential for creamskimming still exists if the vast majority of customers that the carrier is proposing to serve are located in the low-cost, high-density wire centers.<sup>142</sup>

51. The Commission has also determined that creamskimming concerns may be lessened when a rural incumbent LEC has disaggregated support to the higher-cost portions of the incumbent's service area.<sup>143</sup> Specifically, under the Commission's rules, rural incumbent LECs are permitted to depart from service area averaging and instead disaggregate and target per-line high-cost support into geographic areas below the service area level.<sup>144</sup> By doing so, per-line support varies to reflect the cost of service in a particular geographic area, such as a wire center, within the service area.<sup>145</sup> By reducing per-line support in high density areas, disaggregation may create less incentive in certain circumstances for an ETC to enter only those areas.<sup>146</sup> Nevertheless, although disaggregation may alleviate some concerns regarding creamskimming by ETCs, because an incumbent's service area may include wire centers with widely disparate population densities, and therefore highly disparate cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities.<sup>147</sup> This problem may be compounded where the cost characteristics of the rural incumbent LEC and competitive ETC applicant differ substantially.<sup>148</sup> Thus, creamskimming may remain a concern where a competitive ETC seeks designation in a service area where the incumbent rural LEC has disaggregated high-cost support to the higher-cost portions of its service area.<sup>149</sup>

<sup>140</sup>See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578-79, para. 34.

<sup>141</sup>See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1579-80, para. 35. In that case, the highest-density study area had a population density of 273 persons per square mile, while the average population density of the remaining wire centers in the study area was about 33 persons per square mile. *Id.*

<sup>142</sup>See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6436-37, para. 31.

<sup>143</sup>See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

<sup>144</sup>See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11300, para. 137 (2001) (*Rural Task Force Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001), recon. pending; 47 C.F.R. § 54.315.

<sup>145</sup>See *id.*

<sup>146</sup>*Virginia Cellular ETC Designation Order*, FCC Rcd at 1580, para. 35. See also TDS Comments at 12.

<sup>147</sup>See *Recommended Decision*, 19 FCC Rcd at 4278-79, para. 54; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

<sup>148</sup>*Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

<sup>149</sup>See *id.*

52. We find that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Unlike the rural mechanism, which uses embedded costs to distribute support on a service area-wide basis, the non-rural mechanism uses a forward-looking cost model to distribute support to individual wire centers where costs exceed the national average by a certain amount.<sup>150</sup> Therefore, under the non-rural methodology, high-density, low-cost wire centers receive little or no high-cost support, thereby protecting against the potential for creamskimming.<sup>151</sup>

53. We urge state commissions to apply the Commission's creamskimming analysis when determining whether to designate an ETC in a rural service area. We reject assertions that a bright-line test is needed to determine whether creamskimming concerns are present.<sup>152</sup> As demonstrated in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, we believe that a rigid standard would fail to take into account variations in population distributions, geographic characteristics, and other individual factors that could affect the outcome of a rural service area creamskimming effects analysis.<sup>153</sup> We believe that the factors indicated above provide states adequate guidance in determining whether an ETC application presents creamskimming concerns.

### 3. Impact on the Fund

54. We decline to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund. As the Commission has found in the past, analyzing the impact of one ETC on the overall fund may be inconclusive.<sup>154</sup> Indeed, given the size of the total high-cost fund — approximately \$3.8 billion a year — it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund.<sup>155</sup> In addition, the

<sup>150</sup>See 47 C.F.R. §§ 54.309; 36.611 to 36.641. We note that rural incumbent LECs may also disaggregate support to the wire center level. See 47 C.F.R. § 54.315.

<sup>151</sup>The non-rural mechanism determines the amount of federal support to be provided to non-rural carriers in each state by comparing the statewide average cost per line, as estimated by the Commission's cost model, to a nationwide cost benchmark that is two standard deviations above the national average cost per line. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 18 FCC Rcd 22559, 22589, para. 49 (2003) (*Ninth Report and Order Remand Order*), appeal pending sub nom. *Qwest Communications International Inc. v. FCC & USA*, Tenth Cir. No. 03-9617; *Vermont Public Service Board v. FCC & USA*, D.C. Cir. No. 04-1015; and *SBC Communications Inc. v. FCC & USA*, D.C. Cir. No. 04-1018. Even in a non-rural study area where an incumbent LEC receives high-cost support, creamskimming concerns would not be present because support is targeted at the wire-center level based on relative cost, thereby calculating high-cost support on a more granular basis and significantly reducing the possibility that carriers would receive a windfall from support for that wire center. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20471, para. 70 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (*Qwest*).

<sup>152</sup>State and Rural Coalition Comments at 9 (recommending a bright-line test for creamskimming when an applicant seeks to serve only the highest-density wire centers in a rural study area).

<sup>153</sup>See *Highland Cellular ETC Designation Order*, at 19 FCC Rcd 6436-37, para. 31; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1579-80, para. 35.

<sup>154</sup>See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432, n. 73; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1577, n. 96.

<sup>155</sup>See Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2005, Appendix HC 1 (Universal Service Administrative Company, November 2, 2004); Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2004, Appendix HC 1 (Universal Service (continued...))

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 136**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Carriers Eligible to	)	WC Docket No. 09-197
Receive Universal Service Support	)	
	)	
Petition of NTCH, Inc. for Forbearance	)	
Pursuant to 47 U.S.C. § 160(c) from	)	
47 U.S.C. § 214(e)(5) and 47 C.F.R.	)	
§ 54.207(b)	)	

PETITION FOR FORBEARANCE OF  
NTCH, INC.

FILED/ACCEPTED

MAR - 5 2010

Federal Communications Commission  
Office of the Secretary

Donald J. Evans  
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Counsel for NTCH, Inc.

March 5, 2010

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## Summary

NTCH, Inc. (“NTCH”), on behalf of itself and its affiliated operating entity in Alabama and Tennessee, NTCH-West Tenn, Inc. (collectively, “NTCH”), respectfully submits this Petition for Forbearance from the application of the definition of “service area” contained in 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b) (collectively, “Section 214(e)(5)”). NTCH requests forbearance from Section 214(e)(5) for the purpose of designation as a Lifeline-only eligible telecommunications carrier (“ETC”) under its concurrently-filed Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama and Tennessee.

As discussed herein, NTCH’s request meets the three prerequisites for forbearance set out in section 10 of the Communications Act of 1934 (the “Act”).<sup>1</sup> First, in this circumstance, application of the Section 214(e)(5) definition of “service area” is not necessary to ensure that NTCH’s charges and practices—or the classifications and regulations governing its service—are just, reasonable, and nondiscriminatory. Here, application of Section 214(e)(5) would not promote the purposes either of the provision itself or of the Lifeline program generally. In fact, it would undermine these statutory goals.

Second, enforcement of Section 214(e)(5) definition of “service area” is not necessary to protect consumers. Rather, enforcement will harm consumers by discouraging supported service in the requested areas. In contrast, grant of the forbearance request will benefit consumers in those areas by fostering competition among alternative providers and service plans. NTCH’s service plans are particularly advantageous for low income customers, as they provide unlimited minutes, fixed low monthly costs, and no long-term commitment or credit check.

---

<sup>1</sup> 47 U.S.C. § 160.

Forbearance will therefore also further the Commission's goals of increasing participation in the Lifeline Program.

Third, forbearance is in the public interest. By expanding the reach of the Lifeline program and offering service under terms that allow increased numbers of low income consumers to participate, NTCH's service will help to ensure that all citizens have access to essential telecommunications services, which is the core goal of the Universal Service Fund.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Carriers Eligible to	)	WC Docket No. 09-197
Receive Universal Service Support	)	
	)	
Petition of NTCH, Inc., for Forbearance	)	
Pursuant to 47 U.S.C. § 160(c) from	)	
47 U.S.C. § 214(e)(5) and 47 C.F.R.	)	
§ 54.207(b)	)	

**FILED/ACCEPTED**

MAR - 5 2010

Federal Communications Commission  
Office of the Secretary

**I. BACKGROUND**

**A. NTCH**

NTCH, under the brand name ClearTalk, provides mobile wireless voice service on a short-term, low-cost basis. It provides this service over its cutting-edge 3G network, which uses a third less power than traditional installations and delivers enhanced signal strength and coverage. By using “software-defined” base stations,<sup>2</sup> NTCH is able to extend the networks of other carriers into remote and rural areas, increasing reliability as well as capacity to those who need it most. This technology is easily upgraded as the industry develops. NTCH’s basic voice service is currently less than \$30 per month, with unlimited anytime minutes, no credit check, no deposit, and no annual contract.

NTCH has been building mobile networks in underserved areas of the country since 1999. In the past ten years, NTCH has built wireless networks in 17 different markets and

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<sup>2</sup> For detailed technical information, please see our technical pdf, “Detailed Technical Information,” <http://www.cleartalk.net/cleartalk/info/cttech.pdf> (last visited March 5, 2010).

constructed or acquired over 300 telecommunication sites. Its markets include or have included Colorado (Grand Junction), Idaho (Pocatello, Twin Falls, Idaho Falls), Tennessee (Jackson, Dyersburg), Alabama (Florence), Arizona (Yuma), California (El Centro) and Florida (Jacksonville). In just the last three years, NTCH has built over 250 communication sites and is today one of the largest tower owners in the US. Its network has expanded not only through the growth of its own network but through roaming agreements with larger carriers. In the future, NTCH will continue to identify and reach out to unserved and underserved markets, where affordable service can provide much-needed voice options for consumers.

## II. FORBEARANCE STANDARD

Section 10(a) of the Act provides that “the Commission shall forbear from applying any regulation or provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications carriers, in any or some of its or their geographic markets,” if the Commission determines that three conditions are satisfied:

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

In making the public interest determination required by section 10(a)(3), the Commission must consider “whether forbearance . . . will promote competitive market conditions.”<sup>4</sup> A

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<sup>3</sup> 47 U.S.C. § 160(a).

<sup>4</sup> 47 U.S.C. § 160(b).

finding that forbearance will promote competition among providers of telecommunications services may be the basis for forbearance. Forbearance is required only when all three factors of the analysis are met.<sup>5</sup>

### III. DISCUSSION

#### B. Just and Reasonable

A provision or regulation is “necessary” when there is a strong connection between the requirement and the regulatory goal.<sup>6</sup> Section 10(a)(1) requires the Commission to consider whether enforcement of the service area definition of Section 214(e)(5) for a Lifeline-only carrier is “necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and not unjustly or unreasonably discriminatory.”<sup>7</sup> In this context, the service area definition is not necessary to further the goals of the Lifeline program, and in fact frustrates the broader goal of ensuring that all citizens, including low-income consumers, have access to telecommunications services.

Universal service has been a fundamental goal of U.S. telecommunications policy for more than seventy-five years.<sup>8</sup> Pursuant to section 254 of the Act,<sup>9</sup> the Commission established the Low Income program to ensure access to telecommunications services for all consumers,

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<sup>5</sup> *Id.*

<sup>6</sup> See *TracFone Wireless, Inc.*, Order, 24 FCC Rcd 4180, 4185, ¶ 11 (2008) (citing *CTIA v. FCC*, 330 F.3d 502, 512 (2003)).

<sup>7</sup> 47 U.S.C. § 160(a).

<sup>8</sup> 47 U.S.C. § 151 (“to make available, so far as possible, to *all people* of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and communication service with adequate facilities at reasonable rates”) (emphasis added).

<sup>9</sup> 47 U.S.C. § 254(b).

including low income consumers.<sup>10</sup> The Lifeline program, a component of the Low Income program, is designed to reduce the monthly cost of telecommunications services by providing qualifying low income consumers with service discounts.<sup>11</sup> Noting that the Low Income program remains underutilized, the Commission has made it a priority to increase participation in the program.<sup>12</sup>

Section 214(e)(5) requires that if an application for ETC status includes the study area of a rural telephone company in its requested designated service area, the applicant must either seek designation for the entire study area or request redefinition to a smaller area. If asked to redefine a portion of a rural study area, the Commission must take into account the recommendations of the Federal-State Joint Board before approving the new service area.<sup>13</sup> This statutory structure makes clear that the purpose behind Section 214(e)(5) is the same as the concerns articulated in the Federal-State Joint Board's recommendations—once the Joint Board's concerns are met, the statute allows redefinition.

The concerns of the Federal-State Joint Board with respect to rural service areas are: 1) “cream-skimming” by competitors serving only the lower-cost portions of an incumbent’s territory yet receiving support calculated based on higher-cost areas; 2) the “different competitive footing” afforded rural telephone companies by the Act; and 3) the calculation of costs based on the embedded costs of the entire study area, to avoid imposing any additional

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<sup>10</sup> 47 U.S.C. § 254(b)(3) (requiring the Commission and the Joint Board to base universal service policies in part on access to telecommunications services by low income consumers).

<sup>11</sup> See 47 C.F.R. §54.400 *et seq.* (Subpart E).

<sup>12</sup> See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305 (2004) (“*Lifeline and Link-Up Order*”).

<sup>13</sup> 47 U.S.C. § 214(e)(5).

administrative burden on rural telephone companies.<sup>14</sup> As the following discussion will make clear, granting NTCH's Petition for Forbearance will further the statutory goals of sections 254 and 214 with no detriment to the purpose of Section 214(e)(5).

First, the risk of cream-skimming is nonexistent in this case, because reimbursement of the Lifeline program is not based on the embedded cost of providing service but is calculated on a per-consumer basis, following the guidelines contained in the Commission's rules.<sup>15</sup> Therefore, it is not possible for a competitive carrier to serve only the lower-cost portions of an incumbent's territory while seeking support calculated on the basis of higher-cost areas.

Second, designating an ETC for Lifeline-only service for only a portion of the incumbent rural carrier's study area will not place the incumbent carrier in a different competitive position than if the competitive carrier were authorized to provide Lifeline throughout its service area, again, because support is not calculated based on embedded costs of providing service throughout the incumbent's study area.

Third, there is no additional administrative burden placed on the incumbent carrier by a Lifeline-only competitor operating in part of its study area because Lifeline reimbursement does not require the incumbent carrier to calculate its costs differently—in fact, it does not require the incumbent to calculate costs at all.

Furthermore, if the instant Petition is denied, it will actually impede greater utilization of Lifeline services. NTCH's business plan targets consumers who are not adequately provided for by mainstream or prepaid carriers. Its service is tailored to these customers: fixed monthly

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<sup>14</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (1996), ¶ 172.

<sup>15</sup> 47 C.F.R. § 54.403.

payments, no credit check, and no long-term contract. If approved, NTCH would therefore be able to provide a vital service to many Americans who might not otherwise be able afford or qualify for it, furthering the goals and increasing the reach of the Lifeline program by packaging supported services in a plan that accommodates the needs of low income consumers.

For these reasons, a request for redefinition by a Lifeline-only carrier would be an expensive, time-consuming, and pointless ritual. The required cream-skimming analysis, even if performed, cannot provide a meaningful conclusion in this context. For these reasons, the requirement of the first prong of section 10(a) is met. Section 214(e)(5) is in no way necessary to ensure that NTCH's charges and practices are just and reasonable.

### **C. Consumer Protection**

Section 10(a)(2) requires that the Commission consider whether the service area definition of Section 214(e)(5), applied to a Lifeline-only carrier, is necessary for the protection of consumers. As noted above, forbearance from this provision will actually benefit consumers by introducing a competitive Lifeline provider into the designated service areas. In particular, NTCH's service offerings are beneficial to consumers because they provide an alternative arrangement to credit checks, long-term contracts, and potentially unexpected charges.

Furthermore, NTCH does not seek forbearance from any of the consumer protection provisions of sections 54.101 and 54.201, such as access to emergency services, access to operator services, directory assistance, toll limitation, and applicable consumer protection and service quality standards. NTCH's commitment to these provisions is described fully in the concurrent Petition for Designation as an Eligible Telecommunications Carrier, including its

adoption of the CTIA Consumer Code for Wireless Service.<sup>16</sup> NTCH places great emphasis on public safety and the quality of service to its customers.

#### **D. Public Interest**

Section 10(a)(3) requires the Commission to consider whether enforcement of Section 214(e)(5) for a wireless carrier that seeks only Lifeline support is in the public interest. Here, as discussed above, the express public interest in access to telecommunications service for low-income consumers can be promoted without any detrimental effect on rural telephone companies by forbearance from Section 214(e)(5).

Conversely, forbearance from the application of Section 214(e)(5) against a Lifeline-only ETC applicant will expand the accessibility of, and therefore the participation in, the Lifeline program. The Lifeline program remains underutilized. In recent years, only about one-third of households eligible for low-income assistance subscribed to the program.<sup>17</sup> The Commission has noted that “there is more we can do to make telephone service affordable for more low-income households” and to expand Lifeline participation in particular.<sup>18</sup> In pursuit of this goal, the Commission has adopted expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.<sup>19</sup> It has also sought comment on “how best to provide support through the Lifeline and Link-Up programs to more low-income individuals and ,

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<sup>16</sup> [http://files.ctia.org/pdf/The\\_Code.pdf](http://files.ctia.org/pdf/The_Code.pdf).

<sup>17</sup> *Virgin Mobile USA LP Petition for Forbearance and Petition for Designation as an Eligible Telecommunications Carrier*, Order, 24 FCC Rcd 3381 (2009).

<sup>18</sup> *Lifeline and Link-Up*, *supra* note 12, at 8305 (stating that at the time of the order only a third of eligible households participated in the Lifeline program).

<sup>19</sup> *Lifeline and Link-Up Order*, *supra* note 12, at 8305, para. 1.

families.”<sup>20</sup> Approving NTCH for the Lifeline program would therefore promote the public interest by enabling more consumers to participate in the program through service offerings that are tailored to meet the specific needs and situation of low income customers.

A public interest determination under section 10 also requires the Commission to consider whether forbearance will promote competitive market conditions.<sup>21</sup> A finding that forbearance will promote competition among carriers may be the basis for forbearance. Here, such a finding is easy to make. In forbearing to apply Section 214(e)(5) to NTCH, the Commission would allow a new Lifeline provider to enter the market in the designated areas, which would then compete with the incumbent and existing competitive carriers. In this Petition we have described how NTCH’s services and facilities differ from those of other carriers, and the unique services that it can provide low income consumers. This competition will further the public interest by “spur[ring] innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers.”<sup>22</sup> As a spokesperson for AT&T Wireless commented upon NTCH’s entry to the Jacksonville, Florida, market: “Customers always win when they have a choice in their wireless providers. Wireless is growing as an industry, and you have to look after everyone’s needs.”<sup>23</sup>

In conclusion, the public interest analysis in this case clearly indicates that forbearance from Section 214(e)(5) would promote the statutory goals of the Universal Service Fund in

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<sup>20</sup> *The Wireline Competition Bureau Seeks to Refresh the Record on Lifeline and Link-Up*, Public Notice, 22 FCC Rcd 4872 (Mar. 12, 2007); *Lifeline and Link-up Order* at 8305.

<sup>21</sup> 47 U.S.C. § 160(b).

<sup>22</sup> *TracFone Order*, *supra* n.11, ¶ 19.

<sup>23</sup> See Urvaksh Karkaria, *Option to Prepaid Cell Arrives*, THE FLORIDA TIMES-UNION, Aug. 21, 2007, [http://jacksonville.com/tu-online/stories/082107/bus\\_193024365.shtml](http://jacksonville.com/tu-online/stories/082107/bus_193024365.shtml) (last visited March 4, 2010).



general and the Lifeline Program in particular, without affecting the function and purpose of Section 214(e)(5).<sup>24</sup> Furthermore, forbearance would enhance competition among carriers. Therefore, the public interest would be served by granting NTCH's Petition for Forbearance from Section 214(e)(5) for ETC designation as a Lifeline-only carrier.

#### **IV. ANTI-DRUG ABUSE CERTIFICATION**

NTCH certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

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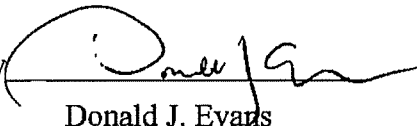
<sup>24</sup> NTCH also notes that forbearance as proposed in this Petition will not affect the recent growth of high-cost disbursements.

**V. CONCLUSION**

As NTCH has demonstrated above, grant of this Petition for Forbearance from Section 214(e)(5) for ETC designation as a Lifeline-only carrier is consistent with the Act, Commission rules, and the public interest. Accordingly, NTCH respectfully requests that the Commission grant this Petition expeditiously.

Respectfully submitted,

NTCH, INC.

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March 5, 2010

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 137**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Carriers Eligible to Receive Universal Service Support	)	WC Docket No. 09-197
	)	
CRICKET COMMUNICATIONS, INC.	)	
	)	
Petition for Forbearance	)	
	)	

**PETITION OF CRICKET COMMUNICATIONS, INC. FOR FORBEARANCE**

Pursuant to Section 10 of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> Cricket Communications, Inc. (“Cricket”) petitions the Commission to forbear from enforcing Section 214(e)(5) of the Act and Section 54.207 of the Commission’s rules (which implements Section 214(e)(5))<sup>2</sup> in connection with Cricket’s pending applications for limited designation as an eligible telecommunications carrier (“ETC”) to participate in the Lifeline and Link Up programs.<sup>3</sup> More specifically, Cricket seeks such forbearance with respect to: (i) those areas in New York, North Carolina, Tennessee, Virginia, and the District of Columbia in which Cricket has sought such ETC designation from the Commission and (ii) those areas in other

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<sup>1</sup> 47 U.S.C. § 160.

<sup>2</sup> 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

<sup>3</sup> See Petition of Cricket Communications, Inc. for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (Dec. 22, 2010); see also 47 C.F.R. § 54.101 (describing Lifeline and Link Up support). Cricket notes that NTCH, Inc., also a provider of mobile wireless voice services, filed a similar forbearance petition on March 5, 2010. See Petition for Forbearance of NTCH, Inc., WC Docket No. 09-197 (Mar. 5, 2010). Cricket urges the Commission to ensure that any relief granted to NTCH, Inc. also is extended to Cricket.

states in which Cricket has sought, or will seek, designation as an ETC from the relevant state commission pursuant to Section 214(e)(2) of the Act.<sup>4</sup>

As explained herein, Sections 214(e)(5) and 54.207 are intended to prevent recipients of high-cost universal service support from engaging in “cream-skimming”—*i.e.*, the practice of targeting only the lower-cost portions of a rural study area. The Commission has explained that, where a competitive ETC obtains support that is based on the cost of serving particularly high-cost portions of an incumbent carrier’s study area without actually serving those areas, it can distort competition and potentially undermine universal service.<sup>5</sup> Thus, Sections 214(e)(5) and 54.207 effectively require an ETC to either: (i) serve the entirety of relevant rural study areas; or (ii) complete a lengthy and complex series of boundary-modification proceedings at the federal and state levels to demonstrate that the provision of service to a subset of the incumbent carrier’s service territory would not result in cream-skimming or otherwise harm the public interest.

Critically, however, concerns regarding cream-skimming have no application in the context of Lifeline/Link Up services, as the Commission has made clear. Carriers that receive support only for serving low-income consumers, as opposed to serving high-cost areas, have no incentive or ability to engage in cream-skimming. Accordingly, because Cricket is not seeking any high-cost support, but rather seeks designation as an ETC only for the limited purpose of receiving low-income support (*i.e.*, Lifeline and Link Up support), enforcement of Sections 214(e)(5) and 54.207 would be unnecessary and would waste federal, state, and company resources. In fact, the requested forbearance would strongly *promote* the universal

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<sup>4</sup> 47 U.S.C. § 214(e)(2).

<sup>5</sup> *See, e.g., Virginia Cellular, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 1563, at ¶ 32 (2003). *See also Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, at ¶ 172 (1996).

service objectives embodied in the Act and reflected in Commission policy. Therefore, Cricket respectfully requests that the Commission grant this Petition expeditiously, so that low-income customers can benefit from the variety of high-quality calling plans provided by Cricket without any unnecessary delay.

## I. BACKGROUND

*Cricket.* Cricket provides digital wireless services on a common carrier basis, offering customers unlimited calling at flat rates without requiring a fixed-term contract or a credit check and without any termination fee. Directly and through its affiliates, Cricket currently serves approximately 4.6 million customers in 34 states and the District of Columbia. Cricket is a Delaware corporation authorized to do business pursuant to Commercial Mobile Radio Service (“CMRS”) licenses granted by the Commission.

### *Cricket Petition for Designation as an Eligible Telecommunications Carrier.*

On December 22, 2009, Cricket filed with the Commission a petition seeking designation as an ETC throughout Cricket’s coverage area in certain counties in New York, North Carolina, Tennessee, Virginia, and the District of Columbia.<sup>6</sup> These areas encompass portions of the study areas of several rural telecommunications carriers. Consequently, the requirements of Sections 214(e)(5) and 54.207 are implicated. Critically, Cricket seeks ETC designation only for the purpose of receiving available low-income support (*i.e.*, Lifeline and Link Up support).

*Sections 214(e)(5) and 54.207.* Under Section 214(e)(1) of the Act, an ETC must offer supported services and advertise the availability of and charges for such services “throughout the *service area* for which the designation is received[.]”<sup>7</sup> Section 214(e)(5) of the

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<sup>6</sup> See Petition of Cricket Communications, Inc. for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (Dec. 22, 2010).

<sup>7</sup> 47 U.S.C. § 214(e)(1) (emphasis added).

Act, in turn, provides that “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States . . . establish a different definition of service area for such company.”<sup>8</sup> Section 54.207 of the Commission’s rules specifies a series of procedural steps that must be followed for this purpose at the federal and state levels to ensure that the provision of service to smaller portions of those areas would not result in cream-skimming or otherwise harm the public interest.<sup>9</sup> These steps often take years to complete, at great cost to both the carrier and relevant regulators.

As noted above, Cricket’s coverage area overlaps with a number of rural study areas. Yet Cricket cannot serve the entirety of any of those study areas. Consequently, Sections 214(e)(5) and 54.207, if enforced, would preclude Cricket from operating as an ETC until the Commission and the states could redefine Cricket’s service areas to be narrower than the relevant rural study areas—even though the Commission has made clear that no “cream-skimming” analysis is necessary where an ETC applies only for low-income support.<sup>10</sup>

***Forbearance Standard.*** Section 10(a) of the Act provides that the Commission *shall* forbear from applying any provision of the Act to a telecommunications carrier if the Commission determines that: (i) enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (ii) enforcement of such provision is not necessary for the protection of consumers; and (iii) forbearance from applying such provision is consistent with the public

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<sup>8</sup> 47 U.S.C. § 214(e)(5).

<sup>9</sup> 47 C.F.R. § 54.207.

<sup>10</sup> See *Virgin Mobile USA, L.P.*, Order, 24 FCC Rcd 3381, at ¶ 38 n.101 (2009) (“In addition, we need not perform a creamskimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only.”) (“*Virgin Mobile Forbearance Order*”).

interest.<sup>11</sup> Section 10(b) of the Act further provides that in evaluating whether forbearance would be consistent with the public interest, the Commission *shall* consider whether such forbearance would promote competitive market conditions or enhance competition.<sup>12</sup>

## II. DISCUSSION

Forbearance from enforcement of Sections 214(e)(5) and 54.207 in connection with Cricket's ETC applications is appropriate and, indeed, required because: (i) enforcement is not necessary to ensure that Cricket's rates, terms and conditions are just, reasonable, and non-discriminatory; (ii) enforcement is not necessary to protect consumers; and (iii) forbearance is consistent with the public interest.

### A. **Enforcement of Sections 214(e)(5) and 54.207 Is Not Necessary To Ensure that Cricket's Rates, Terms and Conditions are Just, Reasonable, and Non-Discriminatory.**

A carrier seeking forbearance from the enforcement of a provision of the Act must demonstrate that such enforcement is not necessary to ensure that the carrier's rates, terms and conditions are just, reasonable, and non-discriminatory. This prong of the analysis is easily satisfied because Sections 214(e)(5) and 54.207 have no bearing on a carrier's relationship with its customers. Rather, Sections 214(e)(5) and 54.207 serve to ensure that ETCs serving rural areas are not able to engage in cream-skimming, while at the same time preventing ETCs from complicating certain calculations with respect to high-cost support in rural areas.<sup>13</sup>

Far from leading to rate increases or unreasonable service terms, forbearance would enable Cricket to make Lifeline discounts available to its subscribers, thus giving consumers access to lower rates and the benefit of the additional commitments Cricket has made

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<sup>11</sup> 47 U.S.C. § 160(a).

<sup>12</sup> 47 U.S.C. § 160(b).

<sup>13</sup> See *Virgin Mobile Forbearance Order* at ¶ 38 n.101.



in its ETC designation petition. Nor would the requested forbearance in any way diminish the benefits of competition, which helps to ensure that rates are just, reasonable, and non-discriminatory.<sup>14</sup> To the contrary, by enabling Cricket to obtain available discounts for Lifeline-eligible customers, forbearance would better enable Cricket to compete with larger nationwide wireless carriers and incumbent LECs. By the same token, forbearance would not prevent the Commission from enforcing Section 201 or Section 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.<sup>15</sup> For these reasons, enforcement of Sections 214(e)(5) and 54.207 is not necessary to ensure that a Lifeline provider's rates, term, and conditions are just, reasonable, and non-discriminatory.<sup>16</sup>

**B. Enforcement of Sections 214(e)(5) and 54.207 Is Not Necessary To Protect Consumers.**

A carrier seeking forbearance from enforcement of a provision of the Act also must demonstrate that such enforcement is not necessary to protect consumers. Again, Sections 214(e)(5) and 54.207 do not govern the relationship between the carrier and its customers and thus are not consumer protection provisions. Rather, forbearance would protect consumers' interests by enabling them to obtain Lifeline discounts. Moreover, the requested forbearance would not affect the consumer protection provisions of the Act (*e.g.*, Sections 201, 202, and 222), or the Commission's rules—including Sections 54.101 and 54.201.<sup>17</sup> Similarly, the requested forbearance would not affect Cricket's ability to provide E-911 or other critical

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<sup>14</sup> See *e.g.*, *id.* at ¶ 19.

<sup>15</sup> 47 U.S.C. §§ 201, 202.

<sup>16</sup> See *Virgin Mobile Forbearance Order* at ¶ 19 n.53 (citing *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003)).

<sup>17</sup> See, *e.g.* 47 U.S.C. §§ 201, 202, 22; 47 C.F.R. §§ 54.101, 54.201.

services to consumers.<sup>18</sup> Cricket also would continue to abide by CTIA's Consumer Code for Wireless Service (the "CTIA Code"), including in those areas where it is seeking designation as an ETC. Thus, enforcement of Sections 214(e)(5) and 54.207 is not necessary to protect consumers.

**C. Forbearance from Applying Sections 214(e)(5) and 54.207 Is Consistent with the Public Interest.**

Finally, a carrier seeking forbearance from the enforcement of a provision of the Act must demonstrate that such forbearance is consistent with the public interest. In this case, forbearance from the enforcement of Sections 214(e)(5) and 54.207 of the Act against Cricket not only is consistent with, but would strongly promote, the public interest. In particular, the requested forbearance would expedite Cricket's ability to market its Lifeline and Link Up offerings to the public, thereby providing consumers with a valuable opportunity to obtain discounted service that includes a host of advantages. The particular nature of Cricket's offerings—including, for example, its monthly prepaid calling plans<sup>19</sup>—would offer eligible consumers an attractive option that may not be available to them today.

As noted in Cricket's ETC designation petition, Cricket has specifically tailored its wireless service plans to share the benefits of wireless telecommunications with underserved customers who have been left behind by other providers. Cricket offers unlimited voice service at affordable rates starting as low as \$30 per month and unlimited broadband starting at \$35 per month, without the typical strings attached (such as credit checks, long-term commitments, and early termination fees) that otherwise prevent many economically disadvantaged customers from obtaining wireless services. With this foundation of simplicity and affordability as its business

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<sup>18</sup> Cf. *Virgin-Mobile Forbearance Order* at ¶¶ 21-22.

<sup>19</sup> See, e.g., *id.* at ¶ 21.

model, Cricket and its joint venture partners have built a network covering almost 92 million individuals in 34 states and the District of Columbia, and are steadily expanding into new communities where the telecommunications needs of consumers are not being met by existing providers.

Cricket fulfills a critical role in the marketplace by ensuring that many Americans who cannot qualify for, or afford, the services provided by other wireless providers can still enjoy the benefits of wireless telecommunications, including wireless broadband. Cricket's flat-rate, unlimited service model is ideal for many consumers on a limited budget; other carriers often impose hefty overage charges if consumers exceed their usage limit. Many consumers cannot even qualify for service from other providers because of creditworthiness concerns or the inability to commit to a long-term contract.

As a result, Cricket's customer base of approximately 4.6 million customers is quite unlike those of other wireless providers. Notably, approximately 80 percent of Cricket's customers have annual household incomes of less than \$50,000 and 55 percent have annual household incomes of less than \$30,000. In contrast, just 48 percent of other wireless carriers' customers have annual household incomes of less than \$50,000. The usage patterns of Cricket's customers also are distinct. Ninety percent of Cricket's subscribers use the service for their primary phone (compared to an industry average of 50 percent), and 68 percent do not have a traditional landline phone service at home (compared to an industry average of 15 percent).

Cricket's customers also use an average of approximately 1500 minutes per month—almost twice as many minutes per month as the industry average. These figures reveal that Cricket reaches market segments that other carriers have ignored, and its customers look to Cricket for all of their telecommunications needs, including an entrance to the online world. In

fact, nearly 50 percent of customers subscribing to Cricket's flat-rate wireless broadband service have never had Internet access at home—not even dial-up.

The requested forbearance would expedite Cricket's ability to serve these customers, and thus promote the public interest. In particular, forbearance would enable Cricket to introduce a competitive alternative that better responds to the particular needs of low-income consumers, consistent with Commission policy generally and the specific guidance provided in Section 10(b) of the Act. At the same time, forbearance from the enforcement of Sections 214(e)(5) and 54.207 against Cricket would not harm the public interest. As explained above, such enforcement is not necessary to ensure that Cricket's rates are just, reasonable, and non-discriminatory, or to otherwise protect consumers.

Further, such enforcement is not necessary to advance the universal service policies set forth in Section 214 of the Act. First, as the Commission already has found, there is no need to perform a "cream-skimming" analysis where, as here, an ETC seeks to receive only low-income support.<sup>20</sup> Second, and perhaps more importantly, forbearance from the enforcement of Sections 214(e)(5) and 54.207 simply would expedite Cricket's ability to provide Lifeline and Link Up service, but would not prevent the Commission from designating Cricket as an ETC within *some* defined "service area" (*i.e.*, its existing coverage area), nor would it negate the service obligations specified in Section 214(e)(1) of the Act and the Commission's implementing rules.

### **III. ANTI-DRUG ABUSE CERTIFICATION**

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. Section 862.

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<sup>20</sup> See *Virgin Mobile Forbearance Order* at ¶ 38 n.101 (2009).

#### IV. CONCLUSION

For the reasons set forth above, Cricket respectfully submits that forbearance from the enforcement of Section 214(e)(5) of the Act and Section 54.207 of the Commission's rules against Cricket is appropriate and required.

Respectfully submitted,  
CRICKET COMMUNICATIONS, INC.

By: /s/ Matthew A. Brill  
Matthew A. Brill  
Jarrett S. Taubman  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, D.C. 20004

*Its Counsel*

June 21, 2010

**APPENDIX A**  
**Description of Relief Sought**

Cricket hereby provides the following information required by Section 1.54(a) and (e) of the Commission's rules, 47 C.F.R. §§ 1.54(a), (e):

- (1) Cricket petitions the Commission to forbear from enforcing Section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and Section 54.207 of the Commission's rules, 47 C.F.R. § 54.207.
- (2) Cricket seeks forbearance on behalf of itself only.
- (3) Cricket seeks forbearance with respect to its provision of Commercial Mobile Radio Service ("CMRS").
- (4) Cricket seeks forbearance with respect to (i) those areas in New York, North Carolina, Tennessee, Virginia, and the District of Columbia in which Cricket has sought such designation as an eligible telecommunications carrier ("ETC") from the Commission; (ii) those areas in other states in which Cricket has sought, or will seek, designation as an ETC from the relevant state commission pursuant to Section 214(e)(2) of the Act.

Cricket has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

All supporting data upon which Cricket intends to rely, for purposes of this petition, are included in the preceding narrative. Cricket is not relying on any separate market analysis, and, as such, Cricket is not attaching a separate appendix with supporting data.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 138**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Telecommunications Carriers Eligible to Receive Universal Service Fund Support	)	WC Docket No. 09-197
	)	
CRICKET COMMUNICATIONS, Inc.	)	
	)	
Petition for Forbearance	)	

**COMMENTS OF TRACFONE WIRELESS, INC.  
IN SUPPORT OF PETITION FOR FORBEARANCE**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments in support of the above-captioned petition of Cricket Communications, Inc. (“Cricket”) for forbearance from application or enforcement of Section 214(e)(5) of the Communications Act of 1934, as amended,<sup>1</sup> and Section 54.207 of the Commission’s Rules.<sup>2</sup> As will be explained in these comments, Cricket’s petition raises an issue of importance to all telecommunications carriers who seek designation as an Eligible Telecommunications Carrier (“ETC”) or who have been designated as an ETC for the limited purpose of providing services which are included in the low income program of the Universal Service Fund (“USF”).<sup>3</sup> Accordingly, TracFone supports Cricket’s petition. However, it urges the Commission to make the relief granted in this matter applicable to all similarly situated ETCs, *i.e.*, all ETCs, especially wireless ETC, who have been designated as ETCs for the limited purpose of providing services supported by the USF low income program.

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<sup>1</sup> 47 U.S.C. § 214(e)(5).

<sup>2</sup> 47 C.F.R. § 54.207.

<sup>3</sup> The USF low-income program includes two services -- Lifeline and Link Up. Some ETCs provide only Lifeline. In these comments, TracFone will refer to such ETCs as “Lifeline only” ETCs.



Section 214(e)(5) of the Communications Act and its implementing regulation, Section 54.207, define “service area” as a geographic area defined by a state commission for the purpose of determining an ETC’s service obligations and support mechanisms. As implemented by the Commission in the context of establishing standards for wireless telecommunications carriers seeking designation as ETCs for areas served by rural telephone companies, such applicants have been required to conduct “cream skimming” analyses.<sup>4</sup> The purpose for such cream skimming analyses is to determine that each ETC applicant seeking to serve areas served by rural telephone companies will, if designated as an ETC, serve the entirety of the rural telephone company service area, not just the most densely-populated portions of the rural telephone company’s service area, *i.e.*, that it will not engage in “cream skimming” within a rural telephone company’s service area.

The potential for facilities-based wireless ETCs obtaining high cost support to subsidize the build out of their wireless network to serve only the most lucrative portions of the rural telephone companies’ service areas, while leaving the rural telephone companies to serve by themselves the remainder of their service areas made the Commission’s cream skimming analysis requirement appropriate. However, as Cricket correctly notes in its forbearance petition, the Commission’s concerns which led to the cream skimming analysis requirement have no applicability to situations where wireless carriers seek ETC designation for the limited purpose of receiving USF support to provide low-income program services, *i.e.*, Lifeline and Link Up. That is so for facilities-based wireless Lifeline-only ETCs such as Cricket; it is even more so for those ETCs such as TracFone which provide service on a resale basis only and which own and operate no facilities of their own.

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<sup>4</sup> See, *e.g.*, Virginia Cellular, LLC, 19 FCC Rcd 1563 (2003) at ¶ 32.

Cricket's petition describes accurately and thoroughly why application of the cream skimming analysis requirement to Lifeline-only wireless ETCs is inappropriate and frankly, makes no sense. What Cricket's petition does not address is the extent to which the cream skimming requirement and related requirements regarding coverage areas of wireless Lifeline-only ETC applicants are being imposed unnecessarily by state commissions in their consideration of wireless Lifeline-only ETC designation matters. As a result, those proceedings have been unnecessarily prolonged and complicated and, most importantly, the availability of wireless Lifeline options for low-income households in many states has been -- and is still being -- delayed.

To date, TracFone has been designated as an ETC for the limited purpose of providing Lifeline service to low-income households in thirty-one jurisdictions. Of those, eleven designations were by the Commission pursuant to Section 214(e)(6) of the Act,<sup>5</sup> the remaining twenty by state commissions, pursuant to Section 214(e)(2) of the Act.<sup>6</sup> In addition, TracFone has ETC petitions pending in several other states. Some states have included as issues in their ETC proceedings whether TracFone must provide a cream skimming analysis. For example, the Oregon Public Utility Commission has included as an issue in TracFone's pending ETC designation proceeding: "*Will TracFone's designation result in creamskimming in the rural ILEC [incumbent local exchange carrier] areas in which it seeks designation?*"<sup>7</sup> In short, the Oregon Commission intends to address whether TracFone will engage in "cream skimming" in any service area of any Oregon rural telephone company, despite the facts that: i) TracFone only seeks USF support to provide Lifeline service; ii) TracFone is only capable of offering Lifeline

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<sup>5</sup> 47 U.S.C. § 214(e)(6).

<sup>6</sup> 47 U.S.C. § 214(e)(2).

<sup>7</sup> Oregon Public Utility Commission, Docket UM 1437, Final Issues List submitted to Shani Pines, Administrative Law Judge.

service in areas where its underlying network providers have coverage. The need for a cream skimming analysis in these circumstances is unexplained and unexplainable.

The cream skimming analysis requirement has impacted TracFone's state ETC proceedings in other ways. In many states, TracFone has been required by state commission staffs to produce maps of its coverage area matched up against incumbent LEC study areas disaggregated by wire centers and Common Language Location Identifier (CLLI) codes. Wire centers and CLLI codes are wireline service area concepts; they have no relevance to wireless services. Wireless carriers would have no reason to produce maps showing their coverage areas by wireline rate centers or by CLLI code. Yet, in many states, TracFone has been required to undertake significant efforts to create maps by taking its underlying wireless network providers' coverage maps and superimposing them on ILEC maps broken out by wire center or CLLI Code. Such maps are not routinely available and they can be obtained only after great effort. In some states, they cannot be obtained at all.

Given that TracFone provides service on a resale basis only and that it only seeks ETC designation to provide Lifeline service, comparison of its coverage areas (which are themselves limited by the network "footprints" of its underlying vendors) is unnecessary. Designation of TracFone as a Lifeline-only ETC will have no impact on the availability of USF support to construct networks which compete with those of the incumbent LECs.<sup>8</sup>

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<sup>8</sup> Demands for such irrelevant coverage area information have also been included in discovery requests in state ETC proceedings. For example, the Indiana Office of Utility Consumer Counselor recently directed the following questions to TracFone: 1) Please identify and provide a map depicting all areas of the state for which TracFone is seeking ETC designation in this proceeding; 2) State the names of the incumbent local exchange carriers and any other companies known to TracFone to have previously been designated ETCs for the areas identified in your response to subpart "a" above.

The Oregon and Indiana examples described herein are illustrative of the extensive scrutiny which state commissions have undertaken into the scope of TracFone's resale coverage area. TracFone seeks ETC to provide Lifeline service in all portions of states where it is able to obtain wireless coverage from its underlying network providers. Since TracFone's network vendors include several of the largest national wireless carriers, it is able to provide Lifeline service in most portions of those states. In situations where TracFone's underlying network provider is not an ETC, the network facilities which TracFone will be using to serve customers were not subsidized by any USF high cost support. In situations where TracFone's underlying network providers are ETCs, those carriers already provided cream skimming analyses to the state commissions as a condition of obtaining ETC designation. Therefore, the imposition of a separate cream skimming analysis obligation on TracFone as a resale, Lifeline-only ETC is unnecessary, duplicative and wasteful. No such requirement should be imposed by any state commission.

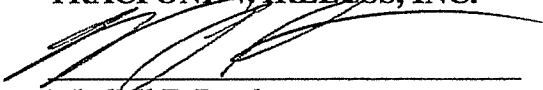
For the reasons stated in these comments, TracFone supports the petition for forbearance of Cricket and respectfully urges the Commission to exercise its statutory responsibility pursuant to Section 10 of the Communications Act<sup>9</sup> to forbear from application and enforcement of Section 214(e)(5) of the Act and Section 54.207 of the Commission's Rules to the extent necessary to relieve wireless Lifeline-only ETCs from any obligation to conduct cream skimming analyses. Alternatively, TracFone requests that the Commission issue a declaratory ruling that Section 214(e)(5) of the Act and Section 54.207 of the rules do not require wireless carriers seeking designation as Lifeline-only ETCs to conduct cream skimming analyses, and preempting states from imposing cream skimming analyses in such circumstances.

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<sup>9</sup> 47 U.S.C. § 160.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



---

Mitchell F. Brecher  
GREENBERG TRAUIG, LLP  
2101 L Street, NW  
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(202) 331-3100

*Its Attorneys*

July 26, 2010

**CERTIFICATE OF SERVICE**

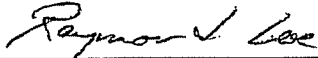
I, Raymond Lee, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that on July 26, 2010, a true and correct copy of the foregoing Comments of TracFone Wireless, Inc. in Support of Petition for Forbearance was sent via electronic-mail to the following:

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\_\_\_\_\_  
Raymond Lee

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 139**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

4. **How many subscribers does TracFone currently have in Oregon? Please provide current subscriber numbers, as well as estimates/forecasts for 1, 3, and 5 years from now (or similar time periods if the estimates/forecasts already exist in that format) for each of the services, including but not limited to Net10, SafeLink, TracFone, StraightTalk, Pay As You Go, or any and all other currently offered TracFone service.**

**Response**

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. This information solely relates to TracFone's non-Lifeline service, which is not the subject of this proceeding. TracFone also objects that this request is beyond the jurisdiction of the Commission in that it seeks information regarding TracFone's services that are not subject to the regulatory authority of the Commission. Section 759.036 of the Oregon Revised Statutes provides the Commission with authority to regulate "telecommunications services". However, Section 759.005(8)(a) specifically excludes radio common carriers, such as TracFone, from the definition of telecommunications services. TracFone further objects that the information sought by this data request is highly confidential, proprietary, and commercially sensitive.



5. **How many customers has TracFone forecast adding to its subscriber base, should its application under this docket to become an Eligible Telecommunications Provider, and/or Eligible Telecommunications Carrier, in Oregon be granted? Please provide estimates/forecasts for 1, 3, and 5 years after eligibility to provide the proposed services commences (or similar time periods if the estimates/forecasts already exist in that format).**

**Response**

TracFone has not developed a forecast of the additional customers it would serve if it was designated as an ETC and ETP in Oregon.

6. **What percentage of the total Oregon customer base has TracFone forecast as likely participating in Lifeline and other subsidized services? Please provide estimates for 1, 3, and 5 years after eligibility as an ETP, and/or ETC, commences (or similar time periods if the estimates/forecasts already exist in that format).**

**Response**

TracFone has not developed a forecast of the percentage of its Oregon customer base that would likely participate in Lifeline. Although TracFone has no such forecasts, it is hopeful that it will be able to increase the level of Lifeline participation by qualified low-income Oregon households above the 10.7 percent level contained in Federal Communications Commission data.

CASE: UM 1437  
WITNESS: Kay Marinos

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 140**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UT-093012
	)	
TRACFONE WIRELESS, INC.	)	
	)	ORDER 03
	)	
For Exemption from WAC 480-123-	)	FINAL ORDER ADOPTING
030(1)(d),(f) and (g); and Designation as	)	SETTLEMENT AGREEMENT;
an Eligible Telecommunications Carrier	)	GRANTING, ON CONDITION,
for the Purpose of Receiving Lifeline	)	DESIGNATION AS AN ELIGIBLE
Support from the Federal Universal	)	TELECOMMUNICATIONS
Service Fund	)	CARRIER AND EXEMPTION
	)	FROM PROVISIONS OF WAC 480-
	)	123-030; GRANTING WITA'S
	)	PETITION TO WITHDRAW
.....	)	INTERVENTION

1 **SYNOPSIS.** *In this final order, the Commission adopts the settlement agreement between TracFone Wireless, Inc., and Commission Staff, accepting the conditions for granting the Company designation as an eligible telecommunications carrier, and imposing an additional condition that the designation of TracFone as an eligible telecommunications carrier shall be for a one year interim period, after which TracFone may seek to renew its designation. Under this condition, the Company's interim designation shall continue until the Commission's final decision on designation.*

**I. INTRODUCTION**

2 **NATURE OF PROCEEDING.** This proceeding concerns a petition by TracFone Wireless, Inc. (TracFone or the Company), for designation as an Eligible Telecommunications Carrier (ETC) in order to receive Lifeline support from the federal universal service fund, and for exemption from Washington Utilities and

**DISSENT**

TracFone Wireless, Inc., Petition for ETC Designation:  
Docket UT-093012  
Dissenting Opinion, Commissioner Philip B. Jones

PHILIP B. JONES, Commissioner (dissenting):

- 92 I respectfully dissent from the majority decision. Let me begin by emphasizing that my overarching concerns about the current federal universal service funding (USF) mechanism inform my evaluation of TracFone's pending application. I believe the process for designating eligible telecommunications carriers (ETCs) is fundamentally flawed, which has resulted in exorbitant and unnecessary growth of the fund, especially in the low-income support payments in the Lifeline program. I oppose designating additional ETCs, such as TracFone, because the services it offers low-income consumers are of uncertain value and its designation is likely to exacerbate problems of the existing universal service system.
- 93 Recently, the Federal Communications Commission (FCC) has taken a number of steps to consider structural changes to federal USF funding. These changes reflect a marked shift in thinking on the effectiveness and benefit of approving new ETC petitions, particularly those such as TracFone's, which are likely to increase Lifeline and Linkup funding significantly. The process for designating ETCs, as well as the oversight and management of the use of federal universal service subsidies, is a shared responsibility between the FCC and state commissions. Pursuant to section 214(e) of the Act, Congress designed a unique program with a federalist formulation, in which the FCC provides overall "guidance" but delegates most of the key decisions on the merits of ETC applications to state commissions. Because federal universal service funds are not unlimited, and are ultimately paid by ratepayers through interstate long-distance rates, I do not believe the ETC designation process should enable or encourage a state to seize its "fair share" of what it may perceive is an unlimited federal pie. The current ETC designation process contains no constraint or

incentive that would encourage a state commission to deny an ETC designation request. Nonetheless, I believe that state commissions, including this Commission, must be mindful of the fiscal realities of the federal USF and act responsibly by denying those applicants whose plans have dubious benefit yet impose significant costs on an overly stressed funding mechanism. Unlike the majority, I believe the prudent course for this Commission would be to withhold approval of TracFone's petition until the FCC implements significant revisions to the Lifeline program.

94 The federal USF is in dire need of reform and repair. Since I joined the Commission five years ago, I have consistently aired my concern about the dysfunctional nature and substantial growth of the federal USF program; first with the high cost fund as additional competitive ETCs were designated and later in the Lifeline and Linkup programs. The annual outflow from the Lifeline and Linkup programs has grown from \$519 million in 2000, approximately \$930 million in 2009, to an estimated \$1.4 billion in 2011.<sup>75</sup> Most of the recent growth in the low-income program is directly attributable to carriers such as TracFone that entered the prepaid wireless market and the increasing number of state commissions that have approved its designation as an ETC through its SafeLink product.<sup>76</sup>

95 Two recent developments clearly show that the FCC recognizes the need for reform. First, the FCC calls for broad, comprehensive reform of the federal USF in Chapters 8 and 9 of the National Broadband Plan (NBP),<sup>77</sup> including reform of the Lifeline and Linkup funding programs. The FCC has already acted on some of the Plan's recommendations including, most recently, referral to the Federal-State Joint Board on Universal Service of a number of issues concerning Lifeline and Linkup. The referral clearly demonstrates the FCC's concern about the size and scope of these

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<sup>75</sup> Universal Service Monitoring Report, CC Docket No. 98-202, 2008, Table 2.2 ([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-287688A4.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A4.pdf)); see also *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109, FCC 10-72, Order (Rel. May 4, 2010), n.34 [Joint Board Low-Income Referral Order].

<sup>76</sup> See Joint Board Low-Income Referral Order, ¶ 11, n.33.

<sup>77</sup> *Connecting America: The National Broadband Plan*, Federal Communications Commission (rel. March 16, 2010). (<http://www.broadband.gov/>).

programs and the need for reform.<sup>78</sup> Perhaps as a sign of the urgency the FCC applies to the matter, it took the unusual step of asking the Joint Board for its recommendations “within six months of release of this Order” instead of the customary practice of waiting for inter-agency clearance and publication in the Federal Register.<sup>79</sup>

96 More importantly, the referral asks the Joint Board to address quickly a number of the issues that are central to TracFone’s petition. For example, the FCC asks the Joint Board to undertake “a thorough review of the existing consumer eligibility requirements, as well as the certification and documentation requirements imposed on ETCs.”<sup>80</sup> It also asks the Joint Board to examine carefully the transition from a paper-based to an electronic certification and verification of consumer eligibility that would automate the interaction between the carriers and the state and federal governments both at enrollment and on an ongoing basis. I believe the Joint Board referral is an important effort that will produce valuable recommendations and a more comprehensive set of practices to be applied to participants in the Lifeline and Linkup programs. Patience is a virtue and, for such rapidly growing programs I think a better course for us would be to wait for implementation of the Joint Board’s recommendations before making a final decision on the pending petition.

97 In addition to my observations regarding the potential changes to federal USF policy, I also have concerns about conditions in the Settlement Agreement. In particular, the conditions related to eligibility and verification in the settlement negotiated by our staff with Tracfone, while steps in the right direction, do not go far enough. In condition 8, TracFone is required to provide a quarterly report that contains the number of Lifeline customers in the plan and the number of deactivated customers. In my view, this condition is merely a reporting requirement that does not address what occurs if an ineligible customer actually enrolls and who will enforce compliance. Similarly, condition 10 specifies that Tracfone “shall cooperate” with DSHS to work out a procedure to verify eligibility but that is about as far as the

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<sup>78</sup> Joint Board Low-Income Referral Order, ¶¶ 10-12.

<sup>79</sup> *Id.*, ¶ 1.

<sup>80</sup> *Id.*, ¶ 15.

condition goes. This appears to be an endorsement of the current paper-based verification system of eligibility which largely occurs after the fact and has failed in many other states to detect and prevent fraud and abuse of the Lifeline program.

- 98 Finally, condition 12 requires TracFone to provide information necessary for an audit of customer records through the submission by March 31<sup>st</sup> for the prior calendar. Such records “must have all the necessary information and be in an electronic format required by DSHS.” While this condition is well-intentioned, in my view it is insufficient to prevent abuses in the eligibility and verification system because such an audit occurs well after the date of enrollment of the low-income consumer.
- 99 While I believe our staff has been diligent in crafting a series of detailed conditions addressing some of my concerns while preserving the potential benefits of mobile communications for low-income and homeless populations, I must conclude the conditions do not meet the public interest test. In my view, these conditions will soon become outdated based on the imminent recommendations of the Joint Board and the FCC as they address the necessary reforms to this program. I applaud staff for their efforts and hope they continue to demonstrate equal vigor in the oversight of Tracfone as this program is implemented. Even staff admits that the designation of TracFone in Washington State will create a large program overnight based on the results achieved in other states: Staff estimates TracFone will enroll about 84,000 customers at a cost to the fund of \$8.4 million, and a penetration rate of 11 percent in the first year, before the first full audit.<sup>81</sup> I believe this is a conservative estimate. For a prepaid wireless carrier such as Tracfone, which does not pay a regulatory fee to the Commission and is not under our direct jurisdiction, this will be a challenge for our staff and that of DSHS to oversee the Company’s compliance and will likely consume a disproportionate amount of staff time and resources.
- 100 In conclusion, I believe that federal and state policymakers need to identify better means to extend the reach of telecommunications services of all forms to low-income populations. The business model that Tracfone has developed is not the best and most cost-effective approach and does not warrant our approval. Despite the majority’s intent to grant the petition on an interim basis, I believe that once-

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<sup>81</sup> November 25, 2009 Staff Open Meeting Memorandum, Docket UT-093012, at 7.



approved, it will be difficult to deny access to a federal subsidy after it has been provided. Hence I believe we should not approve this settlement agreement or TracFone's amended petition.

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PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.**

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 200**

**Reply Testimony**

**August 3, 2010**

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**  
2 **ADDRESS.**

3 A. My name is Jon Cray. I am the Program Manager for the Residential Service  
4 Protection Fund (RSPF) of the Public Utility Commission of Oregon  
5 (Commission). My business address is 550 Capitol Street NE Suite 215,  
6 Salem, Oregon 97301-2551.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**  
8 **EXPERIENCE.**

9 A. My Witness Qualification Statement is found in Exhibit Staff/201. For the  
10 previous four years, I have served as the manager for the Oregon Telephone  
11 Assistance Program (OTAP). I administer the day to day operations of OTAP  
12 and I am responsible for evaluating carrier applications for Eligible  
13 Telecommunications Provider (ETP) designation and filing recommendations to  
14 the Commission regarding the applications. The ETP applications that I  
15 evaluated include those from one landline carrier (Wantel dba Comspan) and  
16 two wireless carriers (AT&T Mobility fka Cingular Wireless and LCW Wireless  
17 dba Cricket). After extensive discussions and data gathering efforts, I  
18 recommended approval of each of these carriers and the Commission  
19 subsequently granted ETP designation to each. My duties also include  
20 monitoring and enforcing compliance among all thirty-three ETPs in Oregon,  
21 including four wireless carriers and twenty-nine landline companies.

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

1 A. The purpose of my testimony is to provide to the Commission an informed  
 2 analysis of whether TracFone demonstrates that it meets the Oregon  
 3 requirements for designation as an ETP. I also analyze three of the sub-  
 4 issues relating to whether granting ETC status to TracFone is in the public  
 5 interest.

6 **Q. DID YOU PREPARE AN EXHIBIT FOR THIS DOCKET?**

7 A. Yes. In addition to my Witness Qualification Statement, I prepared Exhibit  
 8 Staff/202 through Exhibit Staff/211, consisting of 29 pages.

9 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

10 A. My testimony is organized as follows:

11 Background..... 3  
 12 Issue IV. Requirements for ETP Designation and OTAP ..... 6  
 13 Issue V. Public Interest Considerations ..... 14

**BACKGROUND****Q. WHAT IS AN ETP?**

A. OAR 860-033-0005(3) defines an ETP as

a provider of telecommunications service, including a cellular, wireless or other common carrier that is certified by order of the Commission as eligible to provide OTAP to its qualifying customers throughout a designated service area by having met the following eligibility criteria:

(a) Offers services under 47 C.F.R. § 54.101 (2008) using either its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another Eligible Telecommunications Carrier throughout the service area). Pursuant to 47 C.F.R. § 54.201(f) (2008), the requirement of using its "own facilities" includes, but is not limited to, purchasing unbundled network elements from another carrier;

(b) Advertises the availability of and the charges for such services using media of general distribution; and

(c) Demonstrates that it will comply with OAR 860-033-0005 through 860-33-0100.

**Q. WHAT IS THE OTAP?**

A. The Oregon Telephone Assistance Program (OTAP) is the state-mandated corollary of the Federal Communication Commission's (FCC) Lifeline program. It is one of four telephone assistance programs established and funded under the Residential Service Protection law. The OTAP is set forth and explained in both state statute and in Commission rules. See generally Oregon Laws 1987, chapter 290, Sections 1 through 8; Oregon Administrative Rule (OAR) Chapter 860, Division 033. The OTAP offers reduced local exchange rates to eligible low-income residential customers. It is an addition to the support available

1 from the Federal Universal Service Fund (FUSF). The maximum combined  
2 support an eligible customer can receive is \$13.50 - \$3.50 from the OTAP and  
3 \$10.00 from the FUSF.

4 Lifeline support is comprised of four tiers as follows:

5 **Tier I** support is equal to the incumbent local exchange carrier's federal tariffed  
6 subscriber line charge or end-user common line charge. The maximum Tier 1  
7 support is \$6.50.

8 **Tier II** support is an additional \$1.75 per month of federal Lifeline support if the  
9 carrier certifies that it will pass through the full amount of Tier 2 support to  
10 qualifying customers.

11 **Tier III** support is an additional amount of federal Lifeline support equal to one-  
12 half the amount of any state-mandated Lifeline support, up to a maximum of  
13 \$1.75 per month.

14 **Tier IV** support is an additional federal Lifeline support of up to \$25 per month  
15 available to residents of tribal lands provided that the amount does not reduce  
16 the basic local residential rate to less than \$1.

17 The \$3.50 from OTAP is Tier III support.

18 Since the OTAP provides \$3.50 of state Lifeline support, it enables an ETP to  
19 obtain \$1.75 in Tier III support. However, Tier III support can also be obtained  
20 if a carrier provides \$3.50 on its own volition without state Lifeline support.

21 TracFone states its Lifeline service offering is based on "a direct pass through  
22 of one hundred percent of the Lifeline support which TracFone receives from

1 the FUSF, plus an addition contribution by TracFone of \$3.50 per customer per  
2 month.” See Exhibit Staff/202.

3 **Q. HOW IS ETP DESIGNATION RELATED TO ETC DESIGNATION?**

4 A. Order No. 06-292 requires ETC applicants to “commit to offer and advertise  
5 Lifeline, Link Up and OTAP services as a condition of becoming an ETC.” See  
6 Order No. 06-292 at pages 7 through 8 and Appendix A, Requirement 7.  
7 Before an ETC is authorized to offer and advertise Lifeline, Link Up and OTAP  
8 services, it must be designated as an ETP by the Commission.

9 **Q. PLEASE GENERALLY EXPLAIN HOW AN ETC OBTAINS DESIGNATION**  
10 **AS AN ETP.**

11 A. ETC and ETP designations are generally accomplished through a two-step  
12 application process in Oregon. After receiving federal ETC designation from  
13 the Commission, the carrier than submits a separate application for ETP status  
14 to participate in the OTAP. If the Commission approves the application, the  
15 ETC is granted ETP status in a separate docket and Commission Order. See  
16 OAR 860-033-0005. Because TracFone’s ETC application requested  
17 designation for only low-income support and not high-cost support, staff  
18 reviewed TracFone’s ETC and ETP applications at the same time in the same  
19 docket. TracFone filed its ETP application on April 9, 2010.

1                   **ISSUE IV. DOES TRACFONE MEET THE REQUIREMENTS FOR ETP**  
2                   **DESIGNATION AND PARTICIPATION IN THE OTAP?**  
3

4           A. The individual requirements are identified in sub-issues of Issue IV. They are:

5           A. Will TracFone comply with all OTAP procedural requirements for eligibility  
6           and verification?

7           B. Will TracFone comply with OTAP pro-rating requirements for benefits  
8           purposes?

9           C. Will TracFone comply with all OTAP requirements for reporting?

10          D. Will TracFone comply with OTAP requirements by offering the same  
11          Lifeline/OTAP discount on all its services, including NET10 and Straight Talk?

12          E. Will TracFone agree to Staff review and approval of any and all advertising  
13          for Lifeline offerings in Oregon?

14          **Q. HAVE YOU ANALYZED WHETHER TRACFONE MEETS THE**  
15               **REQUIREMENTS FOR DESIGNATION AND PARTICIPATION IN THE**  
16               **OTAP?**

17          A. Yes. I separately address each of these requirements below. TracFone  
18          appears to meet most of the requirements. However, I have concerns as to  
19          whether TracFone has sufficiently demonstrated that it meets all the  
20          requirements for designation and participation in the OTAP.

21  
22               **ISSUE IV.A. WILL TRACFONE COMPLY WITH ALL OTAP PROCEDURAL**  
23               **REQUIREMENTS FOR ELIGIBILITY AND VERIFICATION?**  
24

25          **Q. WHAT ARE THE REQUIREMENTS FOR ELIGIBILITY FOR OTAP?**

26          A. OAR 860-033-0030 states that



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(1) Eligibility for OTAP is demonstrated by application to the Commission by an individual currently:  
(a) Receiving benefits from the federal food stamp program or receiving benefits from another Commission-approved low-income public assistance program for which eligibility requirements do not exceed 135 percent of the poverty level;  
(b) Certified by an agency contracting with the Commission to qualify an individual meeting eligibility criteria; or  
(c) Certified as eligible in a public assistance program that the Commission has determined to meet the eligibility criteria.

\* \* \* \* \*

(3) An applicant must sign a written authorization (OTAP application) permitting the Commission to release necessary information to an [ETP,]

Under OAR 860-033-0030, the Commission is required to determine a person's initial eligibility before enrolling them in the OTAP.

**Q. WHAT IS VERIFICATION AND HOW DOES IT RELATE TO THE OTAP?**

A. OAR 860-033-0030(4) provides:

The Commission must be able to verify an individual's continuing participation in a qualifying program. Continuing OTAP eligibility is based on monthly or quarterly recertification by the Commission.

The Commission is required to verify a person's continuing eligibility in the OTAP and conducts monthly recertification for all customers regardless of their carrier. When a customer is determined ineligible, the Commission mails a letter notifying the customer of their impending de-enrollment from the OTAP. The letter instructs the customer to contact the Commission if they are receiving benefits from a qualifying program listed in OAR 860-033-0030(1) to avoid the interruption of their OTAP support. Otherwise, the

1 Commission distributes an electronic report requiring the ETP to de-enroll the  
2 customer from the OTAP.

3 **Q. WILL TRACFONE COMPLY WITH THE OTAP ELIGIBILITY AND**  
4 **VERIFICATION REQUIREMENTS?**

5 A. It appears that TracFone will comply with all OTAP procedural requirements  
6 for eligibility and verification. In its ETC application on page 18, TracFone  
7 stated “[it] will certify and verify consumer eligibility in accordance with  
8 Commission rules [but that it] will petition this Commission for waiver of any  
9 rules that impose certification and verification requirements that differ from the  
10 FCC’s.” Conversely, TracFone filed its ETP application agreeing to abide by  
11 the condition that only the Commission may approve applicants for OTAP  
12 support. Thus, staff issued a series of data requests asking TracFone to  
13 clarify its statement. TracFone stated,

14 At the time TracFone filed its ETC application, it was not aware  
15 that OTAP had its own certification and verification requirements  
16 that applied to [ETPs] that were seeking support from the  
17 [FUSF]. TracFone will comply with the OTAP certification and  
18 verification requirements [listed in OAR 860-033-0030].  
19

20 Furthermore, TracFone claims it,

21 understands that in Oregon consumers are required to submit  
22 an OTAP application to the Commission [and instead of using  
23 its standard SafeLink Wireless application], will develop an  
24 Oregon-specific application which conforms with the specific  
25 OTAP requirements. See Exhibit Staff/203.  
26

27 There is no requirement for TracFone to develop an Oregon-modified SafeLink  
28 application. The existing OTAP application (hard copy and online) will suffice.

1           **ISSUE IV.B. WILL TRACFONE COMPLY WITH OTAP PRO-RATING**  
2           **REQUIREMENTS FOR BENEFITS PURPOSES?**  
3

4           **Q. WHAT IS PRO-RATION AND HOW DOES IT RELATE TO THE OTAP?**

5           A. OAR 860-033-0035(2) provides:

6                               The OTAP benefit is provided for each billing period that a  
7                               customer is determined eligible for assistance. When a  
8                               customer is determined eligible for less than an entire billing  
9                               period, the benefit is prorated.  
10

11           **Q. DOES THE FCC REQUIRE PRO-RATION FOR FEDERAL LIFELINE**  
12           **SUPPORT?**

13           A. Pro-ration for federal Lifeline support (\$10.00) is an unresolved issue before  
14           the FCC. The Wireline Competition Bureau at the FCC sought public  
15           comment<sup>1</sup> on a letter it received from the Universal Service Administrative  
16           Company (USAC) in which USAC requested guidance from the FCC on how  
17           Line 9 of Form 497 should be used in the federal Lifeline program. USAC  
18           contends that Line 9 requires ETCs to pro-rate Lifeline support, since the ETCs  
19           are not entitled to a full month's FUSF reimbursement or support when a  
20           customer enrolls in or is de-enrolled from Lifeline mid-month.

21           **Q. IS TRACFONE SUBJECT TO OTAP PRO-RATING REQUIREMENTS?**

22           A. The parties included this issue in the final issues list based on the assumption  
23           that TracFone would claim \$3.50 in monthly OTAP support. However,  
24           TracFone is contributing \$3.50 of Lifeline support from its own resources.  
25           Therefore, it appears that whether TracFone will be subject to the proration

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<sup>1</sup> See *Wireline Competition Bureau Seeks Comment on Universal Service Administrative Company Letter Seeking Guidance on FCC Form 497 for Low-Income Universal Service Program*, WC Docket No. 03-139, Public Notice, DA 10-401 (rel. Mar. 10, 2010).

1 requirements set forth in OAR 860-033-0035(2) turns on the FCC's decision as  
2 to whether ETCs must pro-rate federal Lifeline benefits.

3 **ISSUE IV.C. WILL TRACFONE COMPLY WITH ALL OTAP REQUIREMENTS**  
4 **FOR REPORTING?**

5  
6 **Q. WHAT ARE THE OTAP REPORTING REQUIREMENTS?**

7 A. OTAP reporting requirements are delineated in OAR 860-033-0046 and include  
8 an "Active OTAP Customer Report," "Order Activity Report," and "No Match  
9 Report." Also, OAR 860-033-0046(6) requires an ETP to (1) keep all OTAP  
10 records and supporting documentation for three years, or if a Commission audit  
11 is pending, until the review or audit is complete, whichever is later; and (2)  
12 produce for inspection or audit upon request of the Commission or its  
13 authorized representative all OTAP records and supporting documentation.

14 **Q. WHAT IS THE PURPOSE OF THE THREE REPORTS?**

15  
16 A. Staff compares the ETPs' Active OTAP Customer Report with the records in  
17 the Commission database to verify that the ETP only enrolled Commission-  
18 approved customers in Lifeline. Also, staff uses the Active OTAP Customer  
19 Report to confirm that ETPs do not enroll an ineligible customer in Lifeline.  
20 Staff uses the Order Activity Report to update records in the Commission  
21 database and maintain their integrity by de-enrolling Lifeline customers whose  
22 service with the ETP was disconnected.

23  
24 Staff uses the No Match Report to identify customers that the Commission has  
25 determined to be eligible for OTAP, but that the ETP believes are not eligible  
26 for OTAP. Staff mails a letter notifying each such customer that they have not

1           been enrolled in Lifeline with their ETP and to present an opportunity for the  
2           customer to rectify the discrepancy that prevents them from enrolling in  
3           Lifeline.

4           **Q. SHOULD THE COMMISSION REQUIRE TRACFONE TO PRODUCE THESE**  
5           **REPORTS? PLEASE EXPLAIN.**

6           A. Yes. Staff will determine initial and continuing OTAP eligibility for all  
7           customers. These critical reports serve a dual purpose in ensuring that  
8           disbursements from both the OTAP and FUSF are documented, justifiable and  
9           in compliance with rules established by the Commission and the FCC. Despite  
10          the fact that TracFone does not seek OTAP funds, ensuring integrity of the  
11          federal Lifeline program is fundamental to the Commission's stewardship of the  
12          FUSF. As the doorkeeper of the FUSF, the Commission must be committed to  
13          not only protecting the citizens of Oregon, but all taxpayers and  
14          telecommunications providers who contribute to the FUSF. The Commission  
15          has a unique and integral role in protecting public funds before USAC  
16          disburses payments from the FUSF for federal Lifeline support.

17          **Q. WILL TRACFONE COMPLY WITH ALL OTAP REPORTING**  
18          **REQUIREMENTS INCLUDING RETENTION OF OTAP RECORDS AND**  
19          **SUPPORTING DOCUMENTATION?**

20          A. TracFone submitted its ETP application agreeing to comply with OAR 860-033-  
21          0046, which unequivocally defines the OTAP reporting requirements.  
22          However, See TracFone/1, Fuentes/19 through 20:

1 TracFone will comply with the OTAP reporting requirements to  
2 the extent they are applicable to TracFone. The OTAP  
3 reporting requirements include submission of monthly  
4 remittance reports regarding the RSPF surcharge. TracFone  
5 does not plan to collect RSPF fees from Lifeline customers if it  
6 obtains ETC status because it is not obligated to make such  
7 collections...Given that TracFone is not required to assess and  
8 collect the RSPF surcharge from its Lifeline customers, no  
9 purpose would be served by requiring it to file monthly  
10 remittance reports. Furthermore, TracFone will not be seeking  
11 funds from the RSPF. As such, TracFone should not be  
12 required to file monthly requests for reimbursement.  
13

14 Mr. Fuentes associates OTAP reporting requirements with the RSPF surcharge  
15 provisions, remittance reports and payments. Because TracFone does not  
16 collect and remit the RSPF surcharge for its existing and intended service  
17 offerings is immaterial to OTAP reporting requirements. TracFone confirmed  
18 for staff in subsequent data request responses that it will comply with OAR  
19 860-033-0046. See Exhibit Staff/204.

20 TracFone has not made any specific mention of complying with OAR 860-033-  
21 0046(6). However, as noted above, TracFone has stated that it will comply  
22 with Oregon's accounting requirements.

23 **ISSUE IV.D. WILL TRACFONE COMPLY WITH OTAP REQUIREMENTS BY**  
24 **OFFERING THE SAME LIFELINE/OTAP DISCOUNT ON ALL ITS**  
25 **SERVICES, INCLUDING NET10 AND STRAIGHT TALK?**  
26

27 **Q. IS THERE AN OAR THAT REQUIRES ETPS TO OFFER OTAP/LIFELINE ON**  
28 **ALL ITS SERVICE OFFERINGS?**

29 A. Yes. OAR 860-033-0010 states:

30 The Oregon Telephone Assistance Program (OTAP) is  
31 designed to provide a reduced rate or discount for an [ETP]'s  
32 basic service, whether sold separately or in combination with

1 other services, to low-income customers who meet eligibility  
2 requirements. An [ETP] must offer OTAP reduced rates or  
3 discounts with all service offerings that include basic telephone  
4 service. Reduced rates or discounts apply to the single line, or  
5 service that is functionally equivalent to a single line, serving the  
6 eligible recipient's principal residence.  
7

8 **Q. DID TRACFONE SUBMIT ITS ETP APPLICATION AGREEING TO COMPLY**  
9 **WITH THE REQUIREMENT THAT IT MUST OFFER OTAP/LIFELINE ON**  
10 **ALL ITS SERVICE OFFERINGS?**

11 A. Yes. TracFone filed its ETP application agreeing "to offer reduced residential  
12 rates with all service offerings that include basic telephone or cellular service to  
13 eligible low-income customers pursuant to the Oregon Telephone Assistance  
14 program (OTAP)." See Exhibit Staff/205.

15 **Q. WILL TRACFONE COMPLY WITH THE REQUIREMENT THAT IT MUST**  
16 **OFFER OTAP/LIFELINE ON ALL ITS SERVICE OFFERINGS?**

17 A. I am unable to tell at this point.

18 **Q. PLEASE EXPLAIN.**

19 A. In its ETP application on April 7, 2010, TracFone agreed to offer reduced  
20 residential rates with all service offerings that include **cellular** (emphasis  
21 added) service to eligible low-income customers in Oregon. However, in  
22 testimony filed on June 11, 2010, Mr. Fuentes stated that TracFone is  
23 "currently considering whether and how to develop other Lifeline services  
24 based on other TracFone service offerings." (TracFone/1, Fuentes/20.)  
25 TracFone's testimony and response to several staff data requests is  
26 inconsistent with TracFone's "agreement" in its ETP application. Later,

1 TracFone presented a legal argument that it is exempt from this requirement,  
2 which I am not considering as part of its ETP application. See Exhibit  
3 Staff/206.

4 TracFone states that “In [its] experience, the majority of its Lifeline customers  
5 are not existing TracFone customers.” TracFone also states that “[its] Lifeline  
6 plan offers another Lifeline service option to Oregon’s low-income households  
7 [and] that those low-income consumers have the right to choose which Lifeline  
8 plan fits their needs.” See Exhibit Staff/207. All existing ETPs, including  
9 wireless ETPs, comply with this requirement; thereby, maximizing the choices  
10 for their existing and future customers. TracFone limits low-income consumers  
11 to only one Lifeline plan that it has branded as SafeLink Wireless, which  
12 appeals to a majority of its non-existing customers. I urge the Commission to  
13 impose this requirement on TracFone as not to establish a precedent resulting  
14 in differential treatment among ETPs. This OAR allows all low-income  
15 customers irrespective of whether they are an existing or new customer of an  
16 ETP the equitable opportunity to elect a service offering that best meets their  
17 telecommunications needs.

18 **Q. ISSUE IV.E. DOES THE COMMISSION HAVE A RULE THAT REQUIRES AN**  
19 **ETP TO SUBMIT FOR STAFF REVIEW ITS ADVERTISING PERTAINING TO**  
20 **ITS LIFELINE OFFERINGS?**  
21

22 A. No. However, TracFone has agreed “to provide copies of advertisements to  
23 Commission Staff and to consider recommendations from Commission Staff as  
24 it has agreed to in other states.” See TracFone/1, Fuentes/13. Therefore, the  
25 Commission should require TracFone to notify staff of impending marketing



1 campaigns in order for staff to prepare for the anticipated and increased  
2 workload (e.g. customer phone calls and applications). In addition, the  
3 Commission should require TracFone to submit all advertising materials,  
4 including television and radio Public Service Announcements, for staff review  
5 and approval to ensure accuracy of all content.

6 **ISSUE V. IS GRANTING TRACFONE'S APPLICATION**  
7 **IN THE PUBLIC INTEREST?**  
8

9 **ISSUE V.A. IS TRACFONE REQUIRED TO SUBMIT TO THE COMMISSION**  
10 **REMITTANCE REPORTS AND SURCHARGE FEES FOR EACH ONE OF**  
11 **ITS EXISTING AND INTENDED SERVICE OPTIONS?**  
12

- 13 A. This issue presents legal matters that staff's counsel will address in his legal  
14 brief to be submitted at the close of the hearing. However, as background,  
15 TracFone does not currently collect and remit fees to the RSPF. TracFone  
16 argues that the statute (Oregon Laws 1987, Chapter 290, Section 7(1))  
17 "provides that the RSPF surcharge [must] be collected from each paying retail  
18 subscriber [and] that subsection applies the surcharge only to certain wireless  
19 subscribers." TracFone contends that it does not render bills to customers and  
20 is exempt pursuant to Oregon Laws, Chapter 290 Section 7(5) in which the  
21 Commission directs telecommunications public utilities to identify separately in  
22 bills to customers the RSPF surcharge. Finally, TracFone maintains that it is  
23 exempt from RSPF surcharge collection and/or remittance requirements  
24 pursuant to Section 7(1) of Chapter 290, Oregon Laws 1987 that mandates  
25 "cellular, wireless or other radio common carriers [to apply] the surcharge on a  
26 per instrument basis, but [that it only] applies to subscribers whose place of

1 primary use, as defined and determined under 4 U.S.C. §§ 116 to 126, is within  
2 this state.”

3 **ISSUE V.B. IS AN ETC ELIGIBLE TO RECEIVE RSPF FUNDS FOR THE**  
4 **PROVISION OF OTAP SERVICES IF IT IS NOT LEGALLY REQUIRED TO**  
5 **SUBMIT TO THE COMMISSION REMITTANCE REPORTS AND**  
6 **SURCHARGE FEES [SEE OAR 860-033-0006(4)]?**  
7

8 **Q. IS TRACFONE CLAIMING \$3.50 OF MONTHLY SUPPORT AVAILABLE**  
9 **FROM THE OTAP?**

10 A. No. TracFone states that it will not request \$3.50 of monthly OTAP  
11 reimbursement or support. Accordingly, whether TracFone is eligible for the  
12 support does not appear to be at issue in this docket.

13 **ISSUE V.H. WHAT ARE THE ANTICIPATED IMPACTS OF TRACFONE'S**  
14 **DESIGNATION ON THE OREGON TELEPHONE ASSISTANCE PROGRAM**  
15 **(OTAP) RELATED TO FUND SIZE, ADMINISTRATIVE RESOURCE**  
16 **REQUIREMENTS, ETC.?**  
17

18 **Q. WHAT ARE THE ADMINISTRATIVE RESOURCE REQUIREMENTS FOR**  
19 **THE OTAP?**

20 A. OTAP staff (3.3 FTE) dedicates approximately 50% of their time analyzing,  
21 customer applications, manually entering them into the Commission database,  
22 and reviewing the Department of Human Services database to determine if the  
23 recipient meets eligibility requirements for the OTAP. Staff reviews these  
24 computerized records to ensure consistency and accuracy of information. If a  
25 customer is determined to be eligible for the OTAP, staff records and updates  
26 telephone company data and distributes weekly reports of new enrollees. At  
27 least 40% of OTAP staff time is dedicated to responding to public inquiries via  
28 inbound and outbound phone support in which staff explains Oregon

1 Administrative Rules, Oregon Revised Statutes, eligibility criteria, the  
2 application and program processes, policies, and procedures as well as  
3 available benefits. The remaining 10% is reserved for other RSPF program  
4 support and assistance.

5 **Q. WHAT IS THE ADMINISTRATIVE COST?**

6 A. Staff estimated that it costs \$0.65 to process and determine a customer's initial  
7 eligibility. See Exhibit Staff/208 for the figures staff used to derive this cost.

8 Note that the administrative cost does not account for the Commission's  
9 Information Systems staff time and labor in generating weekly enrollment and  
10 monthly de-enrollment reports. Most importantly, these figures do not account  
11 for the impact TracFone will have on the OTAP since it did not develop a  
12 forecast for increasing the number of Lifeline customers in Oregon. See  
13 Exhibit Staff/209.

14 In each state, TracFone doubled the number of Lifeline customers in  
15 Tennessee, Virginia and Florida. See TracFone/1, Fuentes/30. As of  
16 December 2009, there were 49,500 OTAP customers. If TracFone is  
17 successful in doubling the number of OTAP customers in Oregon to 99,000,  
18 the variable costs (e.g. staffing, services, supplies) from the RSPF fund to  
19 sustain OTAP operations is likely to double. As a result, I will need to review  
20 the surcharge rate and the balance in the RSPF fund and recommend rate  
21 adjustments to the Commission in order to ensure the RSPF fund has  
22 adequate resources to sustain the expenditures and services of all telephone  
23 assistance programs of the RSPF, including the OTAP.

1 **Q. IS TRACFONE WILLING TO PAY A FEE FOR THE COMMISSION'S**  
2 **OTAP/LIFELINE CERTIFICATION AND MONTHLY VERIFICATION OF**  
3 **INDIVIDUALS' ELIGIBILITY?**

4 A. Yes. TracFone notes that,

5 [its] current Lifeline verification costs using its third party vendor  
6 is \$0.07 per transaction...[and that it] is willing to pay an amount  
7 up to \$0.15 per transaction to account for the fact that the  
8 Oregon system would identify whether an applicant is enrolled  
9 in a low-income benefits program. That amount, which is more  
10 than double the per-transaction verification fee which TracFone  
11 currently pays, should be more than sufficient to cover any  
12 additional costs incurred in verifying applicants' enrollment in  
13 qualifying programs.  
14

15 TracFone's cost justification is a logical fallacy considering its third party  
16 vendor (LexisNexis) only validates the residential address of the Lifeline  
17 applicant whereas the Commission performs an ongoing comprehensive  
18 eligibility and verification process. See Exhibit Staff 210.

19 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION REGARDING**  
20 **TRACFONE'S ETP APPLICATION?**

21 A. I cannot, in good faith, recommend that the Commission approve TracFone's  
22 ETP application until the aforementioned issues are resolved. Otherwise, there  
23 will be no assurance that these issues will be addressed and resolved.

24 **Q. DO YOU IDENTIFY ANY CONDITIONS UNDER WHICH TRACFONE**  
25 **WOULD MEET THE REQUIREMENTS FOR ETP DESIGNATION?**

26 A. Yes. Please refer to Exhibit Staff 211 for a preliminary list of conditions for the  
27 Commission's consideration.

1 **Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?**

2 A. Yes.

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 201**

**Witness Qualification Statement**

**August 3, 2010**

**WITNESS QUALIFICATION STATEMENT**

NAME: Jon Cray

EMPLOYER: Public Utility Commission of Oregon

TITLE: Residential Service Protection Fund Program Manager, Central Services Division

ADDRESS: 550 Capitol Street NE, Suite 215  
Salem, OR 97301-2115

EDUCATION: MS in Communication Sciences and Disorders  
East Carolina University, 2002

BS in Communication Sciences and Disorders  
East Carolina University, 2000

PROFESSIONAL EXPERIENCE:

Program Manager, Residential Service Protection Fund, Public Utility Commission of Oregon, 2006 – Present  
Manage the Oregon Telephone Assistance Program, Telecommunication Devices Access Program and Oregon Telecommunications Relay Service

Contact Center Manager, Communication Service for the Deaf, 2005 – 2006  
Managed the California Telephone Access Program call center for the California Public Utilities Commission

Contact Center Supervisor, Communication Service for the Deaf, 2003 – 2006  
Managed a team of customer service representatives for the California Telephone Access Program

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 202**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**



**DR-5 Exactly how many free minutes will TracFone provide to Lifeline/OTAP customers per month in Oregon? What is the basis for that determination?**

**Response**

TracFone will provide 68 minutes of free airtime each month to Lifeline/OTAP customers per month. In every state where TracFone offers Lifeline service, the Lifeline benefit is calculated based on a direct pass through of one hundred percent of the Lifeline support which TracFone receives from the federal Universal Service Fund ("USF"), plus an additional contribution by TracFone of \$3.50 per customer per month. The amount of Lifeline support available to TracFone or any other ETC is determined based upon FCC rules, specifically Section 54.403 of the FCC's rules (47 C.F.R. §54.403). One of the factors which governs the amount of Lifeline support available is the subscriber line charge ("SLC") imposed by wireline incumbent local exchange carriers ("ILECs") pursuant to the FCC's rules. According to the most recent data reported by the Universal Service Administrative Company ("USAC") in Oregon, all ILECs, with the exception of United Telephone Company of the NW, have a SLC equal to \$6.50. United Telephone Company's SLC is \$6.30. TracFone offers uniform Lifeline benefits statewide. In states, such as Oregon, where there is no uniform SLC, TracFone calculates a weighted average of the SLCs based on how many households are in the service areas of the ILECs. For Oregon, TracFone calculated the weighted average SLC as \$6.40.

Under the FCC's Rules, which set forth the tiers of support, TracFone may receive \$9.90 in Lifeline support from the federal USF for each customer in Oregon (\$6.40 (Tier One) + \$1.75 (Tier Two) + \$1.75 (Tier Three)). See 47 C.F.R. § 54.403. To receive \$9.90 in federal Lifeline support in Oregon, an ETC must provide a Lifeline benefit of \$13.40 (\$9.90 + \$3.50 additional contribution from TracFone). In Oregon, TracFone decided that it will contribute an additional \$0.10 to the Lifeline benefit so that the total Lifeline benefit to Oregon Lifeline customers will

be \$13.50. The number of minutes offered in Oregon is calculated by dividing the total amount of the Lifeline benefit to be provided by \$0.20 (i.e.  $\$13.50 / .20 = 68$  minutes).

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 203**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-22** On page 18 of its ETC application, TracFone states that it “will petition this Commission for waiver of any rules that impose certification and verification requirements that differ from the FCC’s requirements.” Please explain the meaning of this statement and identify all OTAP certification and verification requirements TracFone believes differ from the FCC’s. Does this statement mean that TracFone does not agree to follow all requirements and procedures, including OARs, established by the OTAP? If so, please explain why.

**Response**

At the time TracFone filed its ETC application, it was not aware that OTAP had its own certification and verification requirements that applied to ETCs that were seeking support from the federal Universal Service Fund. TracFone will comply with the OTAP certification and verification requirements.

Staff/203  
Cray/2

**DR-38** In its ETP application, TracFone agreed that only the Commission may approve benefits for the eligible Lifeline customer. Will TracFone comply or not comply with Oregon Administrative Rule (OAR) 860-033-0030, which requires the Commission to verify an individual's continuing eligibility?

**Response**

TracFone will comply with OAR 860-033-0030.

**DR-47 Please provide a copy of the SafeLink Wireless Lifeline service application.**

**Response**

A copy of the SafeLink Wireless® Lifeline application form used in New York is provided as Exhibit 47. TracFone understands that in Oregon consumers are required to submit an OTAP application to the Commission. Therefore, TracFone will not be using its standard Lifeline application form in Oregon. Instead, it will develop an Oregon-specific application which conforms with the specific OTAP requirements.

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 204**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-39** In its ETP application, TracFone agreed to maintain accounting records so that costs associated with OTAP can be separately identified. Will TracFone comply or not comply with these requirements that are also listed in OAR 860-033-0046?

**Response**

TracFone will comply with OAR 860-033-0046.



**DR-48 Relative to page 19 of Mr. Fuentes' testimony, please explain in what capacity will TracFone work with the Commission and the Department of Human Services to ensure that only qualified individuals receive Lifeline benefits.**

**Response**

TracFone will comply with the Commission's rules, including reporting obligations set forth in OAR 860-033-0046, so that it can work with the Commission and the Department of Human services to ensure that only qualified individuals receive Lifeline benefits.

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
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**STAFF EXHIBIT 205**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

Oregon Telephone Assistance Program (OTAP) Application  
for Eligible Telecommunications Provider (ETP) to provide OTAP Services

**TRACFONE WIRELESS, INC.**

**Part I. Application Information and Service Plan**

1. Contact information pertaining to your designated staff who would be handling OTAP communications:

Name: Jose Fuentes

Address: 9700 N.W. 112<sup>th</sup> Avenue

City: Miami State: Florida Zip: 33178

Phone number: (305) 715-3727 Fax: (305) 640-2070

E-Mail: [jfuentes@tracfone.com](mailto:jfuentes@tracfone.com)

2. The number of residential, business and tribal basic service customers served by the applicant as of December 31, of the most recent calendar year.

As of December 31, 2009, TracFone had [CONFIDENTIAL] residential customers in Oregon.

**Part II. Conditions to Provide OTAP Services to Qualifying Oregonians**

These conditions apply in addition to the general conditions of certification. Violating these conditions, or misrepresenting information provided to PUC in the course of administering the OTAP programs may result in cancellation of your authority to provide OTAP Services and/or an order requiring you to refund with interest and penalties of any OTAP support distributed under false information.

1. The applicant agrees to offer reduced residential rates with all service offerings that include basic telephone or cellular service to eligible low-income customers pursuant to the Oregon Telephone Assistance program (OTAP).
2. The applicant understands that only PUC may approve OTAP benefits for the consumer and provide benefits to OTAP consumers after PUC has notified the applicant of their eligibility. A telecommunication provider who grants OTAP benefits to ineligible customers will have the total amount of the OTAP benefits that were given to those customers deducted from the monthly or quarterly OTAP reimbursement invoices that the telecommunications provider submits to the Commission (OAR 860-033-0045 (1) (d)).

3. The applicant agrees that they will ensure the consumer will see their OTAP credit within 30 days from the date that the applicant has been notified of the consumer's eligibility status, and to remove consumers within 30 days after they no longer qualify for OTAP benefits.
4. The applicant agrees that they will submit reports for reimbursement quarterly (if they have less than 1,000 OTAP consumers) or monthly (if they have more than 1,000 OTAP consumers). Reports are expected to be submitted even if there are zero consumers (OAR 860-033-0045 (1)).
5. An OTAP recipient is required to be the named subscriber to the local telecommunication service in order for that household to qualify for OTAP benefits. PUC may waive this requirement if it determines that good cause exists. Applicant agrees to comply with reimbursing OTAP consumers who are not named subscribers at the Commission's request.
6. The applicant agrees to apply Commission assigned OTAP identification numbers to its OTAP customers' accounts.
7. Based upon accounting procedures approved by the Commission, the applicant agrees to maintain accounting records so that costs associated with OTAP can be separately identified. Records must be provided to the Commission upon request.
  - a. **Active OTAP Customer Report:** The applicant agrees to submit an Active OTAP Customer Report listing the names of all customers with the Commission assigned identification number receiving the OTAP benefits. Applicants with 1,000 or more OTAP customers must submit the report monthly to the Commission Applicants with fewer than 1,000 OTAP customers must submit the report quarterly to the Commission.
  - b. **Order Activity Report:** The applicant agrees to submit an Order Activity Report listing the names of all OTAP customers with the Commission assigned identification number whose service was disconnected. The applicant is aware that the Commission may require additional information such as a listing of all OTAP customers whose telephone numbers or addresses have changed.
  - c. **No Match Report:** The applicant agrees to notify the Commission of any discrepancy that prevents a customer from receiving the OTAP benefit after the Commission has notified the applicant of customers who meet eligibility criteria on a weekly basis.
8. The applicant agrees to ensure that confidential information (including phone number, addresses, contact information, etc.) of OTAP recipients is protected (OAR 360-033-0030 (5)). The applicant agrees to maintain a written policy to ensure that the applicant's staff does not breach the confidentiality of OTAP

consumers, and to do background checks on employees who have access to customer records.

9. The applicant agrees to have in place database encryption and firewall technologies to protect customer service information stored electronically.

s/JAF

APPLICANT UNDERSTANDS ALL OF THE ABOVE CONDITIONS AND AGREES TO ABIDE BY ALL APPLICABLE COMMISSION RULES, STATE LAW AND THE CONDITIONS OF CERTIFICATION. PLEASE INITIAL BOX AT LEFT.

/s/ Jose A. Fuentes  
Signature of person authorized to represent applicant

Director of Government Relations  
Title

Jose A. Fuentes  
Printed Name

April 9, 2010  
Date

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 206**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-7 Oregon Administrative Rule (OAR) 860-033-0010 stipulates that an ETP must offer OTAP reduced rates or discounts with all service offerings. If granted ETP status, what methods will TracFone adopt in complying with this OAR in addition to advertising such OTAP availability on all service offerings (i.e. Net10)?**

**Response**

TracFone is currently developing Lifeline products based on other service offerings. However, TracFone is still resolving some technical issues regarding how to properly provide the required discount each month. TracFone will advise the Commission as soon as it is able to offer a Lifeline service offering in addition to the SafeLink Wireless Lifeline service.

**DR-27** Does TracFone offer any Lifeline products other than SafeLink or apply Lifeline discounts to non-SafeLink service offerings in other states? According to Georgia Public Service Commission Docket Number 26282, TracFone intends to offer two different Lifeline products: TracFone Pay-As-You-Go Wireless and NET10 Pay-As-You-Go Wireless. What is the status of these two proposed Lifeline service offerings in Georgia? What is the status of the Safelink service offering in Georgia? How many eligible Georgia Lifeline customers subscribe to each of TracFone's Lifeline products (Net10, TracFone Pay-As-You-Go, Safelink, etc.) in Georgia?

**Response**

TracFone only offers the SafeLink Wireless® Lifeline product. When TracFone filed its ETC petition with the GeorgiaPSC in 2008, it contemplated offering two different Lifeline products. However, since the time when TracFone commenced offering Lifeline service in Georgia it has only offered SafeLink Wireless® Lifeline service.

TracFone is currently in the process of finalizing a settlement with the Washington UTC that will require TracFone to offer a discounted version of its Straight Talk™ plan within four months of the date the Washington UTC approves the settlement. TracFone offers Straight Talk™ only through Walmart stores. Therefore, prior to being able to offer a discounted version of Straight Talk™, TracFone must negotiate terms and conditions with Walmart. If TracFone is successful in introducing a discounted Straight Talk™ product to Lifeline-eligible consumers in Washington, it will consider expanding this option to other states, including Oregon.



**DR-30** In its response to Staff DR7, TracFone states it *“...is currently developing Lifeline products based on other service offerings. However, TracFone is still resolving some technical issues regarding how to properly provide the required discount each month. TracFone will advise the Commission as soon as it is able to offer a Lifeline service offering in addition to the Safelink Wireless Lifeline service.”* TracFone signed its ETP application indicating that it will comply with OAR 860-033-0010.

- a. Will TracFone comply or not comply with OAR 860-033-0010?
- b. What are the technical constraints?
- c. What is the anticipated timeline for resolving these technical issues?
- d. Will TracFone consider withdrawing its ETC and ETP application until it can comply with OAR 860-033-0010?

**Response**

TracFone only plans to seek Lifeline support from the federal Universal Service Fund. TracFone understands that it is required to apply to be an Eligible Telecommunications Provider (“ETP”) in order to be an ETC in Oregon. OAR 860-033-0010 notes that OTAP is designed to provide a reduced rate or discount for an ETP’s basic service. This reduced rate is funded by the Residential Service Protection Fund (“RSPF”). TracFone does not intend to seek any reimbursement for its provision of Lifeline service in Oregon from the RSPF. Therefore, to the extent that the Commission concludes that the requirement in OAR 860-033-0010 that an ETP offer OTAP reduced rates or discounts on all service offerings applies to TracFone, TracFone will request a waiver of that requirement.

**DR-93 In response to Staff DR30, TracFone stated it “will request a waiver” of OAR 860-033-0010.**

- a. Why will TracFone request a waiver when it submitted its signed ETP application agreeing to comply with OAR 860-033-0010?**
- b. When will TracFone submit the waiver?**
- c. What are the “technical issues regarding how to properly provide the required discount each month” to other TracFone service offerings (e.g. Straight Talk, NET10)?**
- d. What is the anticipated timeline for resolving these “technical issues”?**

**Response**

At the time TracFone submitted its ETP application it understood that it would be able to comply with all OTAP rules that are applicable to it. TracFone is in the process of reviewing all OTAP rules, including OAR 860-033-0010 and will determine which rules it believes apply to TracFone’s Lifeline service and whether it needs to request a waiver of any rule. TracFone anticipates that it will file any necessary petition for waiver no later than July 28, 2010. TracFone’s SafeLink Wireless® Lifeline service does not require any payments from Lifeline customers for the free monthly airtime or the handset. If TracFone decided to offer a Lifeline product based on Straight Talk or NET10, the Lifeline customer would be charged for the handset and Lifeline customers would not receive free airtime. Therefore, TracFone would need to modify its computer systems to address these issues. TracFone in the process of determining whether OTAP rules would require TracFone to offer a Lifeline service based on Stright Talk and NET10 and if so, whether to file a petition for waiver.

**DR-107 List all OTAP OARs that TracFone will not comply with and explain why for each.**

OAR 860-033-0005(3) requires an ETP to demonstrate that it will comply with OAR 860-033-0005 through 860-033-100. TracFone will not comply with the following rules if it is granted ETC designation in Oregon. TracFone will petition the Commission for waiver of these rules to the extent that the rules are applicable to TracFone.

860-033-0006 – This rule relates to the RSPF surcharge, remittance reports, and payment. TracFone is not legally obligated to collect or remit the RSPF surcharge. Therefore, this rule is not applicable to TracFone. In a separate filing, TracFone will explain the basis for its conclusion that the RSPF surcharge requirement is not applicable.

860-033-0007 – This rule relates to actions the Commission may take if a telecommunications provider fails to file a RSPF remittance report. TracFone is not legally obligated to collect or remit the RSPF surcharge. Therefore, this rule, which concerns the Commission's authority to propose a surcharge assessment on a telecommunications provider, is not applicable to TracFone.

860-033-0008 – This rule relates to the actions the Commission may take if a telecommunications provider fails to file a RSPF remittance report. TracFone is not legally obligated to collect or remit the RSPF surcharge. Therefore, this rule, which concerns the Commission's right to audit a telecommunications provider for failure to submit a remittance report, is not applicable to TracFone.

860-033-0010 – This rule relates to OTAP applicability and provides that an ETP must offer OTAP reduced rates or discounts with all service offerings that include basic telephone service. TracFone does not offer basic telephone service as that term is defined by Oregon law. Section 759.400 of the Oregon Revised Statutes defines "basic telephone service" as "local exchange telecommunications service defined as basic by rule of the Public Utility

Commission.” However, TracFone does not provide “local exchange telecommunications service” because it does not provide “telecommunications service” as defined by Oregon Statutes. Section 759.005(8)(a) specifically excludes services provided by radio common carrier from the definition of “telecommunications service.” TracFone, as a commercial mobile radio service provider, provides services by radio common carrier. As such, TracFone does not provide telecommunications service under Oregon law nor does it provide local exchange telecommunications service or basic telephone service. Therefore, the requirement that an ETP offer OTAP reduced rates or discounts with all service offerings that include basic telephone service does not apply to TracFone. Notwithstanding this response, TracFone’s proposed Lifeline service will offer consumers service that is comparable to local exchange service.

860-033-0030(6) - Sub-section (6) which requires the name of the applicant to appear on a billing statement for the telecommunications service in order to qualify for OTAP benefits. TracFone, as a provider of prepaid services, does not issue billing statements. In accordance with sub-section (6), which states that the Commission may waive this requirement if good cause exists, TracFone will petition the Commission for waiver of this sub-section.

860-033-0035(1)(e) and (1)(f) – As stated in response to DR-106, TracFone will comply with sub-sections (1)(e) and 1(f), which relate to the OTAP benefit on tribal lands to the extent that TracFone is eligible to receive Tier IV support. If TracFone is not eligible to receive Tier IV support, then TracFone will offer the same Lifeline benefit to residents of tribal lands as it does to residents of non-tribal lands in Oregon.

860-033-0035(2) – Sub-section (2) of this rule requires ETPs to provide the OTAP benefit for a “billing period” and to prorate the benefit if a customer is eligible for less than an entire billing period. TracFone, as a provider of prepaid service, does not issue bills and does not have billing periods. TracFone provides free airtime minutes to its SafeLink Wireless® Lifeline customers on a monthly basis. TracFone is technically unable to prorate the Lifeline benefit to

customers, and does not do so in any jurisdiction where it operates as an ETC. TracFone provides its Lifeline customers with a full month of Lifeline benefit without regard to when during the month a customer enrolls in Lifeline. For example, if a customer enrolls in SafeLink Wireless® on July 1, the customer will receive 68 minutes of airtime. If a customer enrolls in SafeLink Wireless on July 29, the customer will still receive 68 of minutes of airtime. TracFone will petition the Commission for waiver of this sub-section.

860-033-0050 – This rule relates to Link-Up America eligibility. TracFone is not seeking designation as an ETP to provide Link-Up service. Therefore, this rule does not apply to TracFone.

860-033-0055 – This rule relates to Link-Up America benefits. TracFone is not seeking designation as an ETP to provide Link-Up service and is not permitted to do so by the conditions of the FCC's 2005 Forbearance Order. Therefore, this rule will not be applicable to TracFone.

860-033-0100 – This rule relates to toll-limitation service. There is no need for TracFone to offer a toll limitation feature to qualifying low-income customers. Since TracFone's service is a prepaid service, no customers will be disconnected for failure to pay toll charges or, for that matter, any other charges. TracFone treats long distance minutes of use as any other usage and the customers are not charged separately for toll services. Inasmuch as all TracFone services are prepaid there is no danger that low income customers will incur large charges for heavy toll (or other) calling and no risk that they will be disconnected for nonpayment. Therefore, TracFone will not offer toll limitation service. TracFone will petition the Commission for waiver of this sub-section.

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 207**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-40 Please explain the various means of enrollment in SafeLink Wireless.**

**Response**

TracFone's usual enrollment procedures enable consumers to demonstrate their eligibility for enrollment in SafeLink Wireless® by contacting TracFone via telephone, facsimile, or the Internet. Consumers accessing the program through the Internet will be able to access the SafeLink Wireless® Lifeline application for their state of residence. Consumers may either complete the form "on-line" or call 1-800-SAFELINK and follow the Interactive Voice Response ("IVR") instructions. Once the IVR process is completed, a blank application form will be mailed to the applicant. The applicant then completes the form and sends it to TracFone via fax or e-mail. Those consumers who prefer to submit the enrollment materials to TracFone via U.S. mail will be allowed to do so. However, in Oregon, TracFone understands that consumers must apply for Lifeline benefits by submitting an application to the Commission. Therefore, TracFone's usual enrollment process will not be used in Oregon. TracFone further understands that the Commission checks the eligibility of each Lifeline applicant by accessing a database maintained by the Department of Human Services. Finally, the Commission Staff advises applicants that they are approved for Lifeline by letter and provides a weekly electronic report to all ETCs listing all consumers eligible for Lifeline benefits.

The Commission's OTAP application lists companies that participate in OTAP and asks each applicant to identify his or her telephone company and telephone number. In TracFone's experience, the majority of its Lifeline customers are not existing TracFone customers. Therefore, TracFone anticipates that if it is designated as an ETC, the weekly list provided to all ETCs would not include the names of existing TracFone customers who want to receive the OTAP benefits from TracFone. In addition, TracFone usually uses the address provided on its enrollment form to send the free handset provided as part of its Lifeline service and to assign an appropriate telephone number. TracFone understands from Commission Staff that the electronic

list of individuals approved for Lifeline includes develop and implement an application procedure that will allow Lifeline applicants who are not existing TracFone customers with a TracFone telephone number to be approved for Lifeline service.



**DR-59 How does the designation of TracFone as an ETC serve the public interest in the provision of wireless telecommunications services to higher volume users (e.g. those who use more than 1 hour per month)?**

**Response**

TracFone thoroughly explained why its Lifeline plan is in the public interest in its ETC Application. In addition, existing wireless Lifeline offerings require a monthly payment. TracFone's Lifeline offering is especially attractive to people who cannot make a monthly payment for service or commit to a contract, but who want to have access to telecommunications services. Furthermore, TracFone's Lifeline plan provides qualified consumers with a handset and 68 minutes of airtime free of charge. TracFone is not aware of any other wireless ETC in Oregon that offers wireless service and a handset for no charge. TracFone's Lifeline plan will provide low-income Oregon households with the security and convenience of mobile telecommunications with all its attendant features, and without subjecting customers to any risk of unanticipated and unwanted additional charges and without the risk of service disruption or cancellation for failure to pay such unanticipated or unwanted additional charges. TracFone's Lifeline plan offers another Lifeline service option to Oregon's low-income households. Those low-income consumers have the right to choose which Lifeline plan fits their needs.

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
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**STAFF EXHIBIT 208**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**Initial Cost of Verifying OTAP Eligibility**

\$4,498,821.00	Biannual OTAP Program Budget Total
\$3,731,671.00	Biannual OTAP Reimbursement
<u>\$767,150.00</u>	Biannual OTAP Program Operating Costs
\$383,575.00	Annual OTAP Program Operating Costs
<u>\$31,964.58</u>	Monthly OTAP Program Operating Costs
49,500	Number of OTAP Recipients as of December 2009
<u>\$0.65</u>	INITIAL COST OF VERIFYING OTAP ELIGIBILITY PER CUSTOMER

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
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OREGON**

**STAFF EXHIBIT 209**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-105 If eligible for \$3.50 in support from OTAP, what impact does TracFone anticipate it will have on the state fund for 1, 3 and 5 years if it is granted ETC designation in Oregon? Provide all supporting data TracFone uses to derive these figures.**

TracFone has not developed a forecast of the additional customers it would serve if it is designated as an ETC and ETP in Oregon. Therefore, TracFone is not able to estimate the amount of funds that it would receive from OTAP, if it is eligible for support from OTAP.

CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
OF  
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**STAFF EXHIBIT 210**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

**DR-44 On page 32 of his testimony, Mr. Fuentes alludes to a third-party vendor that TracFone relies on to validate the identity and addresses of SafeLink Wireless Lifeline service applications. Please name this vendor and describe its business relationship with TracFone. What methods does this third-party vendor use to validate the identity and addresses of SafeLink applicants?**

**Response**

As stated in Mr. Fuentes' testimony, TracFone relies on a third-party vendor to validate addresses included on SafeLink Wireless® Lifeline service applications. TracFone contracts with LexisNexis so that it can have access to a database to verify the identities of Lifeline applicants. TracFone's business relationship with LexisNexis is as a customer of its database product. The database uses various public records to enable TracFone to verify that a person with the applicant's name and Social Security Number lives at the address listed on the application and to confirm that the address is associated with a residential dwelling.

**DR-100 All ETCs collect and/or remit the RSPF surcharge that funds the OTAP benefit and its associated administrative costs. Is TracFone willing to pay a fee for the Commission's OTAP/Lifeline certification and monthly verification of individuals' eligibility to receive OTAP/Lifeline benefits if it is not required to collect and/or remit the RSPF surcharge? What does TracFone consider to be an appropriate amount? Explain the rationale and provide all supporting data that TracFone uses to estimate what it considers to be an appropriate amount.**

**Response**

TracFone is willing to pay certification and verification costs which reflect the actual costs of the necessary process to comply with applicable state requirements. TracFone does not have knowledge of the administrative costs that are incurred by the Commission when it initially certifies an individual's eligibility for OTAP/Lifeline benefits and conducts a monthly verification of eligibility. Moreover, TracFone utilizes state-managed data bases to verify customer eligibility in several other states, including Texas, Maryland, and Florida. Therefore, TracFone is unable to provide an estimate of an appropriate amount based on what it pays other states. TracFone's current Lifeline eligibility verification costs using its third party vendor is \$0.07 per transaction. That vendor provides TracFone with all the information it needs to confirm a Lifeline applicant's eligibility and the accuracy of the information contained in a prospective Lifeline customer's enrollment application, but does not disclose whether the applicant is enrolled in a qualifying low-income benefits program. TracFone is willing to pay an amount up to \$0.15 per transaction to account for the fact that the Oregon system would identify whether an applicant is enrolled in a qualifying low-income benefits program. That amount, which is more than double the per-transaction verification fee which TracFone currently pays, should be more than sufficient to cover any additional costs incurred in verifying applicants' enrollment in qualifying programs.



CASE: UM 1437  
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION  
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**STAFF EXHIBIT 211**

**Exhibits in Support  
Of Reply Testimony**

**August 3, 2010**

Docket UM 1437

## CONDITIONS

Prior to Commission approval of its ETP application, TracFone must make a compliance filing for approval by the Commission demonstrating how it will comply with all OARs set forth below:

### 860-033-0010

#### OTAP Applicability

The Oregon Telephone Assistance Program (OTAP) is designed to provide a reduced rate or discount for an Eligible Telecommunications Provider's basic service, whether sold separately or in combination with other services, to low-income customers who meet eligibility requirements. An Eligible Telecommunications Provider must offer OTAP reduced rates or discounts with all service offerings that include basic telephone service. Reduced rates or discounts apply to the single line, or service that is functionally equivalent to a single line, serving the eligible recipient's principal residence. Eligible Telecommunications Providers and OTAP must treat OTAP data as confidential information, to the extent allowed by law, and OTAP data may be used only for OTAP program purposes.

### 860-033-0030

#### OTAP Eligibility

(1) Eligibility for OTAP is demonstrated by application to the Commission by an individual currently:

(a) Receiving benefits from the federal food stamp program or receiving benefits from another Commission-approved low-income public assistance program for which eligibility requirements do not exceed 135 percent of the poverty level;

(b) Certified by an agency contracting with the Commission to qualify an individual as meeting eligibility criteria; or

(c) Certified as eligible in a public assistance program that the Commission has determined to meet eligibility criteria.

(2) An applicant or recipient may be required to furnish his or her social security number before OTAP eligibility can be determined or verified. Failure to do so may result in denial of benefits.

(3) An applicant must sign a written authorization (OTAP application) permitting the Commission to release necessary information to an Eligible Telecommunications Provider and, as necessary, to the following: Department of Human Services, and the applicant's personal representative or legal guardian.

(4) The Commission must be able to verify an individual's continuing participation in a qualifying program. Continuing OTAP eligibility is based on monthly or quarterly recertification by the Commission.

(5) The OTAP benefit is limited to one single line, or single line equivalent, at the applicant's or recipient's principal residence. Generally, only one OTAP benefit is allowed per residential address, but the Commission may make exceptions for certain facilities including but not limited to rooming houses and other independent living facilities.

(7) An applicant who did not receive benefits from an Eligible Telecommunications Provider after being approved by the Commission may be reimbursed up to a maximum of six months of OTAP benefits credited to the applicant's account. An applicant must submit a written request to the Commission in order to receive the OTAP credit.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.036 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & ef. 2-14-92 (Order No. 92-238); PUC 11-1995, f. & ef. 11-27-95 (Order No. 95-1217); PUC 6-1997, f. & ef. 1-10-97 (Order No. 97-005); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09

**860-033-0035**

### **OTAP Benefits**

(1) A residential customer qualifying for the OTAP benefit pays a reduced monthly rate, as established by the Commission, for basic service, whether sold separately or in combination with other services, provided by an Eligible Telecommunications Provider. The monthly OTAP benefit includes:

(a) The federal baseline Lifeline support equal to the Eligible Telecommunication Carriers tariff rate for the federal end user common line charge for primary residential lines;

(b) An additional federal Lifeline support of \$1.75 in accordance with 47 C.F.R. § 54.403 (2008);

~~(d) An additional federal Lifeline support, in an amount equal to one-half the amount of support provided by the State of Oregon up to a federal maximum of \$1.75, available to the Eligible Telecommunications Providers that provide OTAP benefits to qualifying low-income recipients;~~

(d) For each qualifying low-income individual living on federally recognized tribal lands, provided this support does not bring the basic local rate below \$1.00 per month:

(A) An additional federal Lifeline support, in an amount up to \$25.00 per month, available for each eligible resident of tribal lands; and

(f) A qualifying tribal Lifeline customer must directly contact the local Eligible Telecommunications Provider to receive tribal Lifeline support.

(3) Initial benefits become effective on the date the Commission receives the signed OTAP application (written authorization) from an eligible customer.

(4) A customer removed from or denied OTAP may reapply by telephone or online when eligible. Benefits then become effective on the date the Commission verifies the customer's eligibility.

(a) A customer removed from or denied OTAP benefits after the Commission is notified that the customer is no longer eligible because the customer is not currently receiving benefits from one of the qualifying programs listed OAR 860-033-0030(1) may file a written request for a hearing to appeal the termination.

(b) At the hearing, the customer must provide to the Commission written documentation showing the customer's current participation in one of the qualifying programs listed in OAR 860-033-0030(1).

(5) A customer who has not received OTAP benefits for three or more years must submit a new signed OTAP application.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040, 759.036 & Ch. 290 OL 1987  
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 2-2002, f. & cert. ef. 2-5-02; PUC 12-2009, f. & cert. ef. 11-13-09

**860-033-0046**

### **OTAP Accounting, Reporting and Auditing**

(1) Based upon accounting procedures approved by the Commission, Eligible Telecommunications Providers must maintain accounting records so that costs

associated with OTAP can be separately identified. Records must be provided to the Commission upon request.

(2) Active OTAP Customer Report: The Active OTAP Customer Report is a listing of all customers receiving the OTAP benefit. The listing may include the customers' telephone numbers, addresses or Commission-assigned OTAP Identification Number.

(a) Each Eligible Telecommunications Provider with 1,000 or more OTAP customers must submit monthly to the Commission in an electronic format accessible by the Commission, an Active OTAP Customer Report.

(b) Each Eligible Telecommunications Provider with fewer than 1,000 OTAP customers must submit quarterly to the Commission in an electronic format accessible by the Commission an Active OTAP Customer Report.

(3) Order Activity Report: The Order Activity Report is a listing of all OTAP customers whose service was disconnected. The Commission may also require additional information such as a listing of all OTAP customers whose telephone numbers or addresses have changed.

(a) Each Eligible Telecommunications Provider with 1,000 or more OTAP customers must submit monthly to the Commission in an electronic format accessible by the Commission an Order Activity.

(b) Each Eligible Telecommunications Provider with fewer than 1,000 OTAP customers must submit quarterly to the Commission in an electronic format accessible by the Commission an Order Activity Report.

(4) No Match Report: When the Commission notifies the Eligible Telecommunications Provider of customers who meet eligibility criteria, the Eligible Telecommunications Provider must notify the Commission of any discrepancy that prevents a customer from receiving the OTAP benefit. Notification of discrepancies may be submitted electronically in a format accessible by the Commission.

(5) The Commission reserves the right to audit the records of an Eligible Telecommunications Provider that provides OTAP benefits or low-income telephone assistance.

(6) OTAP Records: Each Eligible Telecommunications Provider must keep all OTAP records and supporting documentation for three years, or if a Commission review or audit is pending, until the review or audit is complete, whichever is later.

(a) An Eligible Telecommunications Provider must produce for inspection or audit upon request of the Commission or its authorized representative all OTAP records and supporting documentation. The Commission, or its representative, must allow the

~~Eligible Telecommunications Provider a reasonable time to produce the records for inspection or audit.~~

(b) In addition to any other penalty allowed by law, the Commission may suspend or cancel an Eligible Telecommunications Provider's certificate of authority to provide telecommunications service for its failure to produce for inspection or audit the records required by this rule.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.036 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-2009, f. & cert. ef. 11-13-09

**CERTIFICATE OF SERVICE**

**UM 1437**

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to the following parties or attorneys of parties.

Dated at Salem, Oregon, this 3rd day of August, 2010.

*Kay Barnes*

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**UM 1437  
SERVICE LIST (PARTIES)**

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