

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 1437

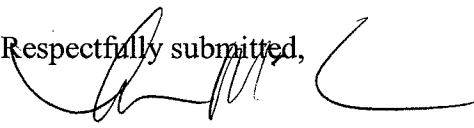
In the Matter of)

TRACFONE WIRELESS, INC.)

Application for Designation as an Eligible)
Telecommunications Carrier.)

**TRACFONE WIRELESS,
INC.'S FIRST AMENDED
DIRECT TESTIMONY AND
EXHIBITS**

TracFone Wireless Inc., by counsel, files its First Amended Direct Testimony and Exhibits with the Public Utility Commission of Oregon in this matter. TracFone's First Amended Direct Testimony and Exhibits include the testimony of Jose Fuentes (Exhibit TracFone/1) and Exhibit TracFone/2 through Exhibit TracFone/5, inclusive, identified therein.

Respectfully submitted, 

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January 7, 2011

TRACFONE WIRELESS, INC.

Direct Testimony of Jose Fuentes

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

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

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

8 A. On June 11, 2010, TracFone filed my direct testimony in support of TracFone's ETC
9 application, and on August 20, 2010, TracFone filed my supplemental testimony which
10 addressed a change to TracFone's SafeLink Wireless® Lifeline offering. This first
11 amended direct testimony is being filed in compliance with the Prehearing Conference
12 Report issued in this docket on December 9, 2010. This testimony replaces all prior
13 testimony filed by TracFone in this docket and incorporates additional information
14 regarding TracFone's Lifeline service disclosed during this proceeding. My testimony
15 will show that TracFone's Second Amended ETC Application, which is also being filed
16 today, meets the federal and Oregon requirements for ETC designation to the extent those
17 requirements are applicable to TracFone as a prepaid, non-facilities-based reseller that
18 will offer Lifeline service.

19 The federal requirements are contained at Section 214 of the Communications Act
20 of 1934, as amended, and in the rules of the Federal Communications Commission
21 ("FCC"). This Commission's ETC requirements are set forth in Order No. 06-262,

1 issued in Docket No. UM 1217 on June 13, 2006. Appendix A of Order No. 06-292
2 includes Initial Designation - Application Requirements (“Initial Requirements”) and
3 Annual Recertification Requirements (“Recertification Requirements”).

4 **Q. WHAT IS TRACFONE?**

5 A. TracFone is a 98%-owned subsidiary of America Movil. America Movil is the fourth
6 largest wireless telecommunications carrier in the world, serving over 260 million
7 customers throughout Latin America, the Caribbean and the United States. TracFone is
8 the largest provider of prepaid wireless service in the United States serving over 15
9 million customers under the brands TracFone[®], NET10[®], Straight Talk[®], and SafeLink
10 Wireless[®]. TracFone’s market share in prepaid wireless in the United States continues to
11 grow, now at over 30% according to Neilson and others. TracFone is also the fifth
12 largest wireless carrier and largest mobile virtual network operator in the United States in
13 terms of total customer counts. TracFone is incorporated under the laws of the State of
14 Delaware and is headquartered at Miami, Florida. Its corporate offices are located at
15 9700 N.W. 112th Avenue, Miami, FL 33178.

16 **Q. DOES TRACFONE HAVE A PRESENCE IN OREGON?**

17 A. TracFone is a reseller of commercial mobile radio service throughout the United States,
18 including the State of Oregon. TracFone provides service through a “virtual network”
19 consisting of services obtained from numerous licensed operators of wireless networks.
20 TracFone has provided CMRS service throughout the State of Oregon continuously for
21 over ten years. In Oregon, TracFone obtains service from the following underlying
22 carriers: AT&T Mobility, T-Mobile, and Verizon Wireless. TracFone’s arrangements

1 with these providers enable it to offer services wherever any of those providers offer
2 service in the State of Oregon.

3 **Q. DOES TRACFONE HAVE THE ABILITY TO PROVIDE LIFELINE?**

4 A. Yes. TracFone, through its arrangements with the underlying carriers listed above, has
5 the ability to provide all services and functionalities supported by the universal service
6 program, as detailed in the FCC rules at 47 C.F.R. § 54.101, throughout its underlying
7 carriers' service areas in Oregon. Upon designation as an ETC, TracFone will make
8 available to consumers a Lifeline offering, under the brand SafeLink Wireless[®], which
9 will provide consumers with all of the functionalities and features currently provided by
10 TracFone to existing customers. TracFone will provide Lifeline service to qualifying
11 low-income Oregon households requesting these services pursuant to the universal
12 service program and in accordance with federal law. Customers are eligible for Lifeline
13 service in Oregon if they participate in a qualified low-income program, including Food
14 Stamps, Supplemental Security Income, Temporary Aid to Needy Families, or Medicaid.
15 TracFone requests ETC designation statewide in all exchanges to the extent that its
16 underlying carriers have facilities and coverage.

17 **Q. WHAT ARE THE GENERAL TERMS OF TRACFONE'S SAFELINK
18 WIRELESS[®] LIFELINE SERVICE?**

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

- 21 1) 250 free minutes each month, which do not carry over to the next month if
22 unused (unless there are unused purchased minutes at the end of the

1 month), with texting available at a rate of one text per minute of airtime;

2 or

3 2) 125 free minutes each month, which carry over to the following month if

4 unused, with texting available at a rate of one text per minute of airtime;

5 or

6 3) 68 free minutes each month, which carry over to the following month if

7 unused, with texting available at a rate of 3 texts per each minute of

8 airtime, plus International Long Distance calling to over 60 destinations.

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

1 TracFone will provide E911-compliant handsets to its participating Lifeline
2 customers at no charge. TracFone will pre-activate handsets provided to qualified
3 customers, enroll the customers in the Lifeline plan, and allocate the appropriate number
4 of minutes of usage to the customers' accounts. The handsets will be delivered to
5 customers upon enrollment in the program with the first month's free usage allotment
6 already activated. Low-income customers who have limited access to communications
7 sources will gain immediate and free access to wireless telecommunications service
8 simply by turning on the handsets provided by TracFone.

9 TracFone pledges that one hundred percent of the federal Lifeline support it
10 receives will be flowed through to Lifeline customers in the form of free usage.
11 TracFone's terms and conditions governing SafeLink Wireless® Lifeline service are
12 attached as Exhibit 12 to the Second Amended ETC Application.

13 **Q: ARE LIFELINE CUSTOMERS ABLE TO PURCHASE ADDITIONAL**
14 **MINUTES? IF SO, AT WHAT PRICE?**

15 **A:** Yes. SafeLink Wireless® Lifeline customers will be able to purchase additional minutes
16 at any retail location where TracFone services are sold at a rate of \$0.10 per minute. In
17 the states where TracFone has been providing Lifeline service as an ETC under its prior
18 plan, fewer than seven percent of Lifeline customers purchased additional wireless
19 airtime in any month. With the increase the availability in the number of free minutes
20 from 68 to 250, TracFone expects that very few customers selecting the 250 minute
21 option will purchase additional minutes.

22 **Q: EARLIER IN THIS PROCEEDING, TRACFONE STATED THAT ITS**
23 **SAFELINK WIRELESS® SERVICE INCLUDED 68 MINUTES OF AIRTIME**

1 **EACH MONTH. WHY DID TRACFONE ENHANCE ITS LIFELINE PROGRAM**
2 **WITH THESE NEW OPTIONS?**

3 A: TracFone is the industry leader in prepaid wireless Lifeline service. It was the first
4 wireless carrier to obtain a favorable forbearance ruling from the FCC to enable it to be
5 designated as an ETC for the purpose of providing Lifeline service without providing
6 service, at least in part, using its own facilities. TracFone was the first non-facilities-
7 based telecommunications company to become designated as an ETC in any state.
8 TracFone was the first ETC to offer a Lifeline plan which provided Lifeline customers
9 with free service rather than discounts on the service prices billed to those customers. As
10 TracFone's Lifeline business grew, and as it sought ETC designation in other states, it
11 was becoming apparent that consumer groups and others were becoming increasingly
12 critical of TracFone's program and were advocating that low-income consumers needed
13 more free minutes. TracFone was also aware that another ETC offering prepaid wireless
14 Lifeline service in certain states had introduced a Lifeline plan which provided its
15 Lifeline customers with 200 free minutes per month. As a result of these developments,
16 TracFone began to evaluate its Lifeline program and to consider changes. In 2010,
17 TracFone commissioned extensive market research into customer needs and wants and
18 commenced a series of market tests in which it offered differing amounts of free minutes
19 in various states. The results of that research and testing enabled TracFone to gauge such
20 factors as the relationship of free minutes to consumer demand, whether consumers
21 preferred additional free minutes to other benefits such as the ability to carry over unused
22 minutes to succeeding months, or the ability to place international calls, and the

1 importance of text messaging to Lifeline customers. TracFone analyzed the data it
2 compiled from its market tests and developed the three options.

3 **Q: PLEASE DESCRIBE THE DIFFERENCES IN THE THREE OPTIONS?**

4 A: The first option provides for 250 free minutes of wireless airtime each month. Unlike the
5 other two options, unused minutes do not carry over from month to month. This plan was
6 developed in response to concerns from consumer advocacy groups around the country,
7 including the Citizens' Utility Board of Oregon, that low-income households need more
8 free minutes than were available under TracFone's prior plan. No other wireless ETC
9 offers more than 250 free minutes per month. The Virgin Mobile Lifeline program
10 previously offered only 200 minutes per month -- twenty percent less than TracFone's
11 first option. However, Virgin Mobile has since increased its monthly minutes allotment
12 to 250 minutes in response to TracFone's expanded offerings. Like TracFone's 250
13 minute plan, Virgin Mobile's unused free minutes do not carry over. Unlike TracFone's
14 plan, Virgin Mobile's plan does not allow for texting. TracFone's second option
15 provides 125 free minutes each month with unused minutes carrying over from month to
16 month. That option also allows for text messaging at the rate of 1 text per minute of
17 airtime. This plan, like TracFone's initial plan (now the third option) allows for minutes
18 to carry over but provides 57 more minutes (nearly an hour of airtime) per month. It also
19 allows for text messaging. The third option provides 68 free minutes each month, with
20 unused minutes carrying over to the following month. The plan also allows for text
21 messaging, but at a lower rate than the text rate of the first two options. The plan also
22 allows for international long distance calling. This is the only plan in the industry that

1 allows international long distance calling to more than 60 international destinations at no
2 additional cost.

3 **Q: WHICH OPTION IS MOST BENEFICIAL TO CONSUMERS?**

4 A: Which of the three options is most favorable to any Lifeline customer will depend on the
5 calling needs of the specific customer. For those customers who want the maximum
6 amount of free airtime each month, the first option will be the best choice. Therefore,
7 TracFone expects that most Lifeline customers will select that option. However,
8 TracFone's market research and testing confirmed that some Lifeline-eligible low-
9 income households prefer the carry over feature and prefer to save unused minutes from
10 month to month rather than lose unused minutes at the end of the month. For those
11 customers, either the second or third option would be preferable. Other customers do not
12 have large daily calling needs but do have an ongoing need to communicate with persons
13 in foreign countries. For example, many of TracFone's Lifeline customers who are
14 recent immigrants value the ability to use their free Lifeline minutes to call friends and
15 relatives in their home countries. For such customers, the third option which includes
16 international calling would be the most attractive option, despite the fact that the option
17 provides fewer total free minutes than either of the other two options. The point is that
18 Lifeline customers will have a choice of options which best meet their needs.

19 **Q: WHAT PERCENTAGE OF CUSTOMERS ARE EXPECTED TO SELECT EACH**
20 **OPTION?**

21 A: Based on TracFone's limited testing in several test market states, it became apparent that
22 most Lifeline customers will choose the first option. Many customers want the maximum
23 number of free minutes. For such customers, the most important benefit of the program

1 will be sufficient free wireless service so that they can rely on their SafeLink Wireless®
2 phone as their means for connecting with the public switched network. For those
3 customers, their SafeLink Wireless® phone truly is their “Lifeline.” Lesser percentages
4 of customers are expected to select either the 125 minute or 68 minute options. However,
5 sufficient customers seemed to desire the benefits of those options -- including carry over
6 minutes, text messaging at lower rates and international calling -- so as to warrant making
7 those options available. TracFone does not have precise projections of demand for each
8 option. However, based on what it learned during market testing, TracFone expects that
9 at least sixty-five percent of its Lifeline customers will select the first option in order to
10 receive the maximum amount of monthly free airtime minutes; about twenty-five percent
11 will select the second option, and about ten percent will select the third option.

12 **Q: DOES TRACFONE ANTICIPATE FURTHER CHANGES TO ITS LIFELINE**
13 **OPTIONS?**

14 **A:** The wireless telecommunications service market is evolving as new competitors enter,
15 new products are introduced and technology improves. TracFone, like most prudent
16 businesses, constantly monitors market developments and changes its services
17 accordingly. When TracFone first introduced SafeLink Wireless® in 2008, its plan based
18 on 68 minutes was “state of the art.” No other company before had offered a Lifeline
19 program which included free service. As with other wireless services, what was deemed
20 to be a desirable service two years ago may no longer be what consumers need and
21 expect. It is for that reason that TracFone introduced its new plans. At this time,
22 TracFone has no plans to change these options. However, it is certainly possible that in
23 the future, further changes will be appropriate. One thing is certain -- throughout the

1 history of the commercial mobile service industry the consistent trend has been lower
2 prices, increased and improved services and features. TracFone expects that trend to
3 continue throughout the wireless telecommunications market, including the Lifeline
4 segment of the market. TracFone is a company prepared for change and it will continue
5 to respond to change.

6 **Q: WILL TRACFONE ASSIST APPLICANTS FOR ENROLLMENT IN ITS**
7 **LIFELINE PROGRAM TO SELECT THE OPTION MOST APPROPRIATE FOR**
8 **THE APPLICANTS?**

9 A: Yes. TracFone's website will contain detailed descriptions of each of the three options.
10 In addition, when prospective SafeLink Wireless® Lifeline customers contact TracFone's
11 Lifeline enrollment department, they will be asked to select which option they prefer.
12 Customer service representatives who assist customers in the Lifeline enrollment process
13 will be trained to explain the options, to answer questions and to help applicants
14 determine which option is best for them. Moreover, customers are free to change plans
15 as often as they wish. Therefore, if a customer is not satisfied with a certain option, he or
16 she can switch to another option.

17 **Q: WILL TRACFONE'S EXPANDED LIFELINE OFFERINGS BENEFIT OREGON**
18 **CONSUMERS?**

19 A: Yes. Not too many years ago, wireless telecommunications service was considered to be
20 a luxury item that only upper income consumers could afford. In recent years, wireless
21 service prices have decreased, new and improved services and devices have become
22 available and millions of Americans have come to rely on wireless service as an essential
23 tool in an increasingly mobile society. Until recently, the lowest income segments of the

1 population had limited, and often no, wireless service options. TracFone has made it
2 possible for Lifeline-eligible low-income households in many states to obtain wireless
3 handsets and some mobile service through its SafeLink Wireless[®] Lifeline program.
4 However, as CUB has noted in this proceeding and as other consumer advocates have
5 stated in other ETC proceedings throughout the country, many low-income consumers
6 need more than 68 minutes a month of free airtime. TracFone's revised offerings will
7 enable low-income Oregon residents who qualify for Lifeline assistance to receive 250
8 minutes of free service per month. TracFone is not aware of any party to this proceeding
9 who has suggested that 250 free minutes will not be a sufficient amount of service.
10 Neither is TracFone aware of any wireless ETC operating in Oregon or elsewhere which
11 provides Lifeline customers with more free minutes than TracFone will provide under its
12 first option. The increased minutes option will enable Oregon's neediest residents to
13 enjoy the security and convenience of mobile telecommunications. They will be
14 reachable wherever they are. Persons seeking employment will not have to remain home
15 to receive calls from potential employers. Persons who travel -- around the block, around
16 town, around the state, around the country -- will be able to call and be called by family
17 members, friends, service providers (e.g., doctors), employers, government departments.
18 Moreover, with 250 minutes per month of free airtime, Lifeline customers will not feel
19 the need to keep their phones turned off to avoid using up their limited amounts of free
20 airtime. Perhaps more importantly, the mobile nature of SafeLink Wireless[®] will bring
21 Lifeline-supported service to those needy Oregonians with no permanent fixed address.
22 TracFone has been working with the FCC and with operators of homeless shelters in

1 various states to enable homeless persons residing in such shelters to enroll in SafeLink
2 Wireless®. It plans to do that in Oregon as well.

3 **Q. CAN TRACFONE DIFFERENTIATE ITSELF FROM OTHER ETCs? IF SO,**
4 **HOW?**

5 A. TracFone's Lifeline offerings differ from other ETCs' Lifeline programs in several very
6 important respects. First, TracFone will offer low-income consumers the convenience,
7 portability, and security of wireless services. In addition, unlike all other ETCs' Lifeline
8 programs, TracFone's Lifeline service will provide quantities of wireless usage at no
9 charge to the consumer. Stated simply, TracFone's Lifeline service will be free to
10 qualified subscribers. Typically, Lifeline programs provide participating consumers with
11 discounts below carriers' standard rates. However, enrolled Lifeline customers still must
12 pay the ETC's discounted rates as well as standard rates for additional services and
13 features not subject to the Lifeline discount (including, for example, long distance toll
14 charges and charges for vertical features like call waiting, voice mail, and caller ID), and
15 face service termination if they fail to pay the amounts owed. For example, if a
16 provider's standard monthly charge is \$30.00 and the Lifeline customer receives a \$10.00
17 discount funded by the USF, the customer will still receive an invoice for \$20.00, plus
18 additional charges incurred during the billing period as well as various taxes and fees.
19 TracFone's Lifeline customers will not receive any bill. Such customers will face
20 termination of service if they fail to pay those billed amounts -- amounts which often are
21 well in excess of the discounted local service portion of their bills. Furthermore,
22 TracFone's Lifeline customers will be able to initiate and receive calls from their wireless
23 phones without incurring any activation charges.

1 **Q. DOES TRACFONE MEET THE REQUIREMENTS FOR ETC DESIGNATION?**

2 A. TracFone meets all applicable requirements for ETC designation contained in both
3 federal and Oregon state law. TracFone has requested the Commission to waive certain
4 Oregon state law requirements that are not applicable to TracFone or with which
5 TracFone is unable to comply. TracFone's Waiver Request is included as part of its
6 Second Amended ETC Application. In addition, TracFone recognizes that the
7 Communications Act states that ETCs shall offer services, at least in part, over their own
8 facilities and prohibits state commissions from designating as an ETC a
9 telecommunications carrier that offers services exclusively through the resale of another
10 carrier's services. However, on September 8, 2005, the FCC granted a petition filed by
11 TracFone that requested the FCC to exercise its forbearance authority with respect to the
12 facilities-based service requirement ("TracFone Forbearance Order"). See Second
13 Amended ETC Application, Exhibit 3. In an Order dated April 11, 2008, the FCC
14 designated TracFone as an ETC in ten states and the District of Columbia, subject to the
15 conditions set forth in the TracFone Forbearance Order. Those conditions include
16 TracFone providing its Lifeline customers with 911 and enhanced 911 ("E911") access
17 regardless of activation status and availability of prepaid minutes; obtaining a
18 certification from each Public Safety Answering Point ("PSAP") where TracFone
19 provides Lifeline service confirming that TracFone complies with the 911 service
20 condition; providing its Lifeline customers with E911-compliant handsets; requiring its
21 customers to self-certify at time of service activation and annually thereafter that they are
22 the head of household and receive Lifeline-supported service only from TracFone; and
23 establishing safeguards to prevent its customers from receiving multiple TracFone

1 Lifeline subsidies at the same address. On March 5, 2009, the Commission issued an
2 Order modifying one of the conditions imposed in the TracFone Forbearance Order
3 requiring that TracFone obtain a certification from each PSAP where TracFone provides
4 Lifeline service confirming that it provides its customers with access to basic and E911
5 service. See Second Amended ETC Application, Exhibit 6.

6 **Q. DO ANY OF THE CONDITIONS IMPOSED ON TRACFONE IN THE**
7 **FORBEARANCE ORDER HAVE ANY IMPACT ON OR RELATIONSHIP TO**
8 **THE COMMISSION'S AUTHORITY TO GRANT ETC DESIGNATION?**

9 A. All state commissions, including this Commission, are required by federal law (47 U.S.C.
10 § 160(e)) to comply with the FCC's decision to forbear from applying or enforcing the
11 facilities requirement on TracFone. Similarly, the FCC-imposed conditions of
12 forbearance are binding on TracFone in all jurisdictions where it may be designated as an
13 ETC.

14 **Q. WHAT FUNCTIONS WILL TRACFONE OFFER TO LIFELINE SUBSCRIBERS**
15 **IF GRANTED ETC STATUS?**

16 A. Upon designation as an ETC in Oregon, TracFone will offer all of the services and
17 functionalities required by the FCC's rules (47 C.F.R. § 54.101) and Oregon's regulations
18 (Initial Requirement 2.1) as applicable to TracFone. These services and functionalities
19 include the following:

20 Voice Grade Access to the Public Switched Network.

21 The voice grade access provided by TracFone enables a user of telecommunications
22 services to transmit voice communications, including signaling the network that the caller

1 wishes to place a call, and to receive voice communications, including receiving a signal
2 indicating there is an incoming call.

3 Local Usage.

4 As part of the voice grade access to the public switched telephone network, an ETC must
5 provide local calling. TracFone provides subscribers the ability to send and receive local
6 phone calls wherever it provides service. Moreover, a certain amount of free local usage
7 is included in TracFone's calling plan. The FCC rules require an ETC applicant to show
8 it has a local usage plan comparable, although not identical, to that offered by the ILECs
9 in the same service areas. Further, the FCC has not adopted any minimum local usage
10 requirements. As a designated ETC, TracFone will comply with any applicable
11 minimum local usage requirements established by the FCC.

12 Wireless and wireline services, though increasingly substitutable for each other,
13 are different from each other and they are priced differently. Unlike any ILEC's or other
14 ETC's Lifeline plans, TracFone's Lifeline offerings will go beyond those of other
15 providers in a very important respect: TracFone's Lifeline customers will receive as part
16 of Lifeline service specified amounts of free wireless service. That is, Lifeline customers
17 will be able to use TracFone's service to initiate and receive specified amounts of
18 wireless calling -- local and long distance, including international calls to more than 60
19 destinations, as well as roaming calls -- with no charge to the customers.

20 Dual Tone Multi-Frequency (DTMF) Signaling or Its Functional Equivalent.

21 DTMF signaling allows carriers to provide expeditious call set-up and call detail
22 information and enables modem usage. All telephone handsets provided by TracFone
23 are DTMF-capable as required by federal law.

1 Single-party Service or Its Functional Equivalent.

2 Single-party service means that only one party will be served by a subscriber line
3 or access loop in contrast to a multi-party line. TracFone provides customers with
4 single-party access for the duration of every phone call.

5 Access to 911 and E911 Emergency Service.

6 TracFone provides universal access to the 911 system for its customers.
7 TracFone has implemented and will continue to implement enhanced 911 services
8 consistent with the FCC's rules and orders applicable to wireless resellers. Given that
9 TracFone is a reseller, it does not own or operate any facilities. TracFone has the ability
10 to remain functional in emergency situations. TracFone provides service in Oregon by
11 reselling services of underlying wireless network carriers, including AT&T Mobility, T-
12 Mobile, and Verizon Wireless. Those network operators have implemented state-of-the-
13 art network reliability standards and TracFone and its customers benefit from their high
14 standards. Throughout its more than ten years of operation, TracFone has never received
15 a complaint about a 911 system failure.

16 Access to Operator Services.

17 TracFone offers all of its customers access to operator services.

18 Access to Interexchange Service.

19 TracFone does not impose separate charges for interexchange calls. Long
20 distance calling is included in TracFone's service with no additional charge.

21 Access to Directory Assistance.

22 All TracFone customers, including those customers located in Oregon, have
23 access to directory assistance services provided by TracFone's vendors. Unlike other

1 telecommunications carriers, TracFone does not impose separate charges for directory
2 assistance.

3 Toll Limitation for Qualified Low-Income Customers.

4 There is no need for TracFone to offer a toll limitation feature to qualifying low-
5 income customers. Since TracFone's service is a prepaid service, no customers will incur
6 toll charges they cannot pay for or be disconnected for failure to pay toll charges or, for
7 that matter, any other charges. TracFone treats long distance minutes of use as any other
8 usage and the customers are not subject to additional charges for toll services. OAR 860-
9 033-0100 entitles a qualifying OTAP recipient to receive Toll Limitation Service from an
10 ETP at no additional charge. As I just described, toll limitation service is not necessary
11 nor is it applicable to TracFone's service. TracFone has requested a waiver of OAR
12 860-033-0100 to the extent the Commission deems such a waiver to be necessary.

13 **Q. WILL TRACFONE OFFER LINK-UP SERVICE IN OREGON?**

14 A. TracFone does not seek designation as an ETC for the purpose of offering Link Up
15 service to customers. In the TracFone Forbearance Order, the FCC forbears from
16 applying the facilities requirement to TracFone only for the purpose of offering Lifeline
17 service. Moreover, TracFone does not impose activation or connection charges --
18 charges which are offset by Link-Up support. Thus, there is no need for TracFone to
19 offer Link-Up.

20 **Q. HOW QUICKLY WILL TRACFONE BE ABLE TO START PROVIDING**
21 **LIFELINE SERVICE?**

22 A. Within a very reasonable timeframe, since TracFone already provides service in Oregon
23 by reselling service which it obtains from underlying facilities-based providers. Each of

1 those providers' networks are operational and are largely built out. Thus, TracFone
2 already serves those areas. The only delay will be the time needed to implement
3 procedures and internal systems to offer the Lifeline program. For example, TracFone
4 will need to implement computer systems to ensure that it can comply with the
5 Commission's rules governing Lifeline, including reporting obligations set forth in OAR
6 860-033-0046. In addition, TracFone will need to work with the Commission Staff to
7 develop an application procedure that will enable individuals who are not existing
8 customers of TracFone and who do not have a TracFone telephone number to apply for
9 Lifeline with the Commission.

10 **Q: WHAT IS THE LIFELINE APPLICATION PROCESS IN OREGON?**

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

22 **Q: WHY CAN'T THE OTAP APPLICATION BE USED BY SAFELINK**
23 **WIRELESS® LIFELINE APPLICANTS?**

1 A: In TracFone's experience, the majority of its SafeLink Wireless® Lifeline applicants are
2 not existing TracFone customers. Therefore, individuals interested in receiving SafeLink
3 Wireless® Lifeline service are not be able to list TracFone as their current phone
4 company nor are they able to provide a telephone number for a TracFone account.
5 Moreover, TracFone does not issue bills to any of its customers, including its Lifeline
6 customers. Thus, applicants who wish to receive SafeLink Wireless® Lifeline service
7 would not be able to indicate that they understood and that their name must be on the bill.
8 As part of the Second Amended ETC Application being filed simultaneously with this
9 First Amended Direct Testimony and Exhibits, TracFone has requested a waiver of the
10 initial certification requirements to the extent that applicants must have active billed
11 service with an ETC to be eligible to receive Lifeline service. A waiver is necessary to
12 enable Oregon consumers to apply for SafeLink Wireless® Lifeline service.

13 As explained in the waiver request, the OTAP Application unfairly favors
14 companies that have current customers who wish to receive Lifeline benefits. A
15 company, such as TracFone, that attracts new customers to its Lifeline service, rather
16 than relying solely on its current non-Lifeline customer base, is at a significant
17 competitive disadvantage under the current Lifeline certification process. Indeed, if the
18 current OTAP Application were to be the only application that is accepted by the
19 Commission, low-income Lifeline-eligible Oregon households who wish to receive
20 Lifeline benefits from TracFone will be unable to do so. Such Lifeline applicants will
21 only be able to receive Lifeline-supported service from their existing telephone company
22 -- in most cases, the incumbent local exchange carrier.

23 Moreover, a requirement that a Lifeline applicant provide his or her current

1 telephone number on the application would render Lifeline service unavailable to those
2 low-income households which do not currently have telephone service. The primary
3 purpose for Lifeline is to make affordable telecommunications service available to low-
4 income households, including those households that, for economic reasons or otherwise,
5 do not currently have service. A requirement that applicants provide their current
6 telephone numbers precludes current non-subscribers from receiving Lifeline assistance,
7 in contravention of the national policy that consumers, “including low income
8 consumers,” have access to telecommunications service. See 47 U.S.C. § 254(b)(3).

9 TracFone has asked the Commission to waive the requirement in the OTAP
10 Application that applicants must have their name on the phone bill and have active phone
11 service to receive Lifeline benefits. TracFone also requested that the OTAP Application
12 be modified to account for the fact that an applicant may not be an active customer of a
13 billed telephone service prior to applying for Lifeline benefits. In particular, TracFone
14 requested that the OTAP Application require the applicant to identify the company from
15 which it seeks Lifeline benefits, rather than identify the applicant’s phone company and
16 telephone number. TracFone also asked that the OTAP Application delete the
17 requirement that the applicant must indicate an understanding that the applicant’s name
18 must be on the phone bill and that the applicant must have active phone service to receive
19 Lifeline benefits. Finally, TracFone asked that upon the Commission’s designation of
20 TracFone as an ETC, the OTAP Application be revised to add TracFone SafeLink
21 Wireless[®] as a participating wireless ETC. In the alternative, TracFone requested that the
22 Commission allow TracFone to use its own Lifeline application form that will direct
23 applicants to submit the form to the Commission for approval. If this approach is

1 acceptable, then TracFone is prepared to work with Commission Staff and CUB to
2 develop a suitable application form.

3 **Q. HOW RELIABLE IS TRACFONE'S QUALITY OF SERVICE?**

4 A. As a reseller of other carriers' wireless services, TracFone's service is of the same quality
5 and reliability as that of its underlying vendors. I cannot assure the Commission that
6 TracFone will never experience service disruptions. Occasional dropped calls and
7 inconsistent coverage depending on atmospheric conditions are a fact of life in the
8 wireless industry. However, TracFone's service is as reliable as that of any other wireless
9 provider serving the Oregon market. To demonstrate its commitment to high service
10 quality, TracFone will comply with the CTIA - The Wireless Association[®] Consumer
11 Code for Wireless Service. A copy of the CTIA Code is attached as Exhibit TracFone/2.
12 TracFone's SafeLink Wireless[®] service is also subject to a Privacy Policy available to all
13 customers on its website at www.safelink.com. See Second Amended ETC Application,
14 Exhibit 9.

15 **Q. CAN TRACFONE MEET ALL RESPONSIBILITIES UNDER THE CTIA
16 CONSUMER CODE GIVEN ITS RESELLER STATUS?**

17 A. Yes. TracFone is able to and does meet each of the CTIA Consumer Code provisions.
18 The following describes TracFone's compliance with each of the provisions of the CTIA
19 Consumer Code for Wireless Service.
20 Disclose rates and terms of service to consumers: TracFone discloses its rates and terms
21 of service to consumers on its website.
22 Make available maps showing where service is generally available: TracFone makes
23 available maps showing where service is generally available on its website. See

1 http://www.tracfone.com/jsplib/verify_mapcov.jsp. Coverage maps are accessed by
2 clicking on “Site Map” on TracFone’s home page, then clicking on “Coverage Maps”.

3 Provide contract terms to customers and confirm changes in service: TracFone does not
4 require its customers to enter into contracts. TracFone’s service is governed by the terms
5 and conditions as set forth on its website.

6 Allow a trial period for new service: TracFone only offers prepaid service and does not
7 charge an early termination fee. Consumers can purchase the amount of airtime minutes
8 they wish to use. Therefore, there is no need for TracFone to offer a trial period for
9 service. Customers may terminate their use of TracFone service at any time without
10 incurring any penalty or termination charge.

11 Provide specific disclosures in advertising: TracFone provides specific disclosures in any
12 advertising of prices. TracFone does not charge activation or initiation fees, monthly
13 access fees, or early termination fees and does not have a required contract term or peak
14 and off-peak calling times. TracFone makes all disclosures related to prices that are
15 applicable to its service.

16 Separately identify carrier charges from taxes on billing statements: As a prepaid service
17 provider, TracFone does not issue billing statements. Therefore, requirements
18 concerning billing statements are not applicable to TracFone.

19 Provide customers the right to terminate service for changes to contract terms: TracFone
20 does not require its customers to enter into contracts. TracFone’s service is governed by
21 the terms and conditions as set forth on its website. Therefore, requirements concerning
22 cancellation of contracts are not applicable to TracFone.

23 Provide ready access to customer service: TracFone provides ready access to its

1 customer service department via a toll-free telephone number during regular business
2 hours. TracFone's toll-free customer service telephone number is provided on its website
3 and in all communications with its customers.

4 Promptly respond to consumer inquiries and complaints received from government
5 agencies: TracFone promptly responds to consumer inquiries and complaints received
6 from federal and state government agencies.

7 Abide by policies for protection of consumer privacy: TracFone's Privacy Policy is
8 available to all customers on its website. TracFone also complies fully with applicable
9 requirements governing Customer Proprietary Network Information set forth at Section
10 222 of the Communications Act and in the FCC's rules.

11 **Q. HOW WILL TRACFONE ENSURE THAT ELIGIBLE CUSTOMERS ARE**
12 **MADE AWARE OF ITS SERVICES?**

13 A. TracFone will aggressively advertise the availability of its SafeLink Wireless[®] Lifeline
14 service and the associated charges using media of general distribution, in accordance with
15 the requirements under federal and Oregon state law. TracFone plans to utilize such
16 marketing and outreach efforts as necessary and appropriate to ensure that as many
17 eligible consumers as possible avail themselves of TracFone's prepaid wireless Lifeline
18 offering. TracFone understands that it will be competing with other ETCs in Oregon,
19 including the incumbent local exchange carriers, to be chosen by consumers to be their
20 Lifeline service provider. TracFone will utilize traditional means for promoting the
21 availability of its Lifeline program. These means will include print and broadcast
22 advertising in media outlets most likely to reach consumers eligible for Lifeline. These
23 would include national publications as well as local and community newspapers, and

1 commercial broadcast stations, especially those stations whose programming is targeted
2 to significant lower income communities including, for example, Spanish language
3 stations in areas with significant Spanish-speaking populations. Sample print
4 advertisements are provided as Exhibit 10 to the Second Amended ETC Application.

5 **Q. WILL TRACFONE AGREE TO COMMISSION STAFF REVIEW AND**
6 **APPROVAL OF ALL ADVERTISING FOR LIFELINE OFFERINGS IN**
7 **OREGON?**

8 A. TracFone is not aware of a Commission rule that requires Commission Staff review and
9 approval of advertisements of ETCs offering Lifeline service and does not believe that it
10 is appropriate for the Commission to impose a pre-approval condition on TracFone's
11 Lifeline advertising unless all ETCs offering Lifeline service are subject to a similar
12 requirement. However, TracFone will agree to provide copies of advertisements to
13 Commission Staff and to consider recommendations from Commission Staff as it has
14 agreed to in other states.

15 **Q. CAN YOU IDENTIFY EACH SERVICE PLAN TRACFONE OFFERS THAT**
16 **WILL QUALIFY FOR FEDERAL LIFELINE SUPPORT AS REQUIRED BY**
17 **INITIAL REQUIREMENT 2.3?**

18 A. Yes. TracFone's Second Amended ETC Application (incorporated herein by this
19 reference) identifies the name of the Lifeline service plan (SafeLink Wireless[®]), the
20 number of minutes (68, 125 or 250 minutes), and the price (free), in accordance with
21 Initial Requirement 2.3.

1 **Q. DOES TRACFONE OFFER A LOCAL USAGE PLAN THAT IS COMPARABLE**
2 **TO BASIC SERVICE OFFERINGS OF THE ILECS IN THE PROPOSED**
3 **SERVICE AREA AS REQUIRED BY INITIAL REQUIREMENT 2.4?**

4 A. As explained in TracFone's Second Amended ETC Application at pages 10 and 11,
5 TracFone meets the local usage requirement stated in Initial Requirement 2.4 and in FCC
6 Rule 54.202(a)(1)(ii)(4). Initial Requirement 2.4 does not mandate a direct comparison
7 with ILECs' calling plans or require an ETC applicant to show that its plans are identical
8 to the ILECs' plans. The FCC concluded that TracFone's Lifeline service would meet
9 the comparability requirement of 47 C.F.R. § 54.202(a) given the differences between
10 wireline and wireless services.

11 **Q. HOW DOES TRACFONE DEFINE ITS PROPOSED DESIGNATED SERVICE**
12 **AREA?**

13 A. The Commission's Initial Requirement 3.1 requests ETC applicants to provide a map
14 showing designated service area boundaries overlaid on the boundaries of all ILEC wire
15 centers and a list of ILEC wire centers included in the proposed designated service area.
16 TracFone is not an ILEC and does not have access to maps of the boundaries of ILEC
17 wire centers. However, TracFone has provided the Commission with the following
18 documents describing its Lifeline service area in Oregon: (1) a map depicting its
19 coverage area in Oregon; (2) a list of rate centers within its service area; (3) a list of Zip
20 Codes in TracFone's service area and the underlying wireless carrier or carriers
21 providing service in each Zip Code; and (4) a list of CLLI codes included in its
22 underlying carriers' service areas. See Second Amended ETC Application, Exhibit 8.
23 TracFone has sufficiently described its service area using all data available to it from its

1 underlying carriers and from a third party data source (i.e. www.telcodata.us).

2 Furthermore, TracFone asks individuals for their Zip Code when they apply for SafeLink

3 Wireless[®] Lifeline service. Thus, customers are advised immediately whether

4 TracFone's service is available in the Zip Code where they reside. In addition, network

5 coverage maps are available on TracFone's website. Oregon residents who wish to

6 subscribe to TracFone's wireless Lifeline service will not be impacted if TracFone is

7 unable to provide a list and map of ILEC wire centers. As stated in Exhibit 2 to the

8 Second Amended ETC Application, TracFone seeks a waiver of Initial Requirement 3.1

9 to the extent that the Commission deems that TracFone's description of its service area

10 does not meet this requirement.

11 **Q. WILL TRACFONE OFFER LIFELINE SERVICES THROUGHOUT THE**

12 **PROPOSED SERVICE AREA AND ATTEMPT TO PROVIDE SERVICE TO**

13 **EVERY REQUESTING CUSTOMER IN THE AREA AS REQUIRED BY**

14 **INITIAL REQUIREMENT 3.2?**

15 A. Yes. This requirement is based on FCC rule 54.202(a)(1)(i) (47 C.F.R. §

16 54.202(a)(1)(i)), which provides that in order to be designated as an ETC, a carrier must

17 commit to provide service throughout its proposed designated service area to all

18 customers making a reasonable request for service. Initial Requirement 3.2 also refers to

19 the six-step process that must be used when service is requested within the applicant's

20 service area, but outside its existing network coverage. The purpose of this requirement

21 is to ensure that an ETC is using high-cost support to expand and improve network

22 services. TracFone does not own and operate a network and it will not seek high-cost

23 support. However, TracFone will provide service on a timely basis to all qualified

1 customers requesting Lifeline service within its designated service area. TracFone, as a
2 reseller, defines its service area to include the service areas of its underlying carriers.
3 TracFone does not have the ability to expand or make any changes to the networks of its
4 underlying carriers. As such, it can only comply with requests for service within its
5 underlying carriers' service areas.

6 **Q. IS TRACFONE ABLE TO REMAIN FUNCTIONAL IN EMERGENCIES AS**
7 **REQUIRED BY INITIAL REQUIREMENT 8.1?**

8 A. In accordance with FCC Rule 54.202(a)(2) (47 C.F.R. § 54.202(a)(2)) and Initial
9 Requirement 8.1, TracFone has the ability to remain functional in emergency situations.
10 Given that TracFone is a reseller, it does not own or operate any cell sites, microwave
11 hubs, or switches. Therefore, the requirement that TracFone demonstrate that it has back-
12 up power and is able to reroute and manage traffic in emergency situations is not
13 applicable. TracFone provides service in Oregon by reselling services of underlying
14 wireless network carriers, including AT&T Mobility, T-Mobile, and Verizon Wireless.
15 Those network operators have implemented state-of-the-art network reliability standards
16 and TracFone and its customers benefit from their high standards. Throughout its over
17 ten years of operation, TracFone's service reliability has compared favorably with that of
18 any facilities-based operator in the wireless telecommunications industry.

19 **Q. HAS TRACFONE DESCRIBED THE STATUS OF E911 DEPLOYMENT AND**
20 **COMPLIANCE AS REQUIRED BY INITIAL REQUIREMENT 8.2?**

21 A. TracFone is a reseller and does not operate or control any network facilities of its
22 underlying carriers. As such, it has no ability to report on the status of E911 deployment
23 of its underlying carriers. As explained in its Second Amended ETC Application, at

1 pages 12-13, TracFone has implemented and will continue to implement E911 services
2 consistent with the FCC's rules, including 47 C.F.R. § 54.101(a)(5), and orders when
3 such services are made available by the carriers from whom TracFone purchases services.
4 The FCC requires providers that use other carriers' facilities to provide wireless voice
5 service to customers to comply with the FCC's E911 rules to the extent that the
6 underlying facilities-based licensee has deployed the facilities necessary to deliver
7 enhanced 911 information to the appropriate PSAP. TracFone will fully comply with the
8 FCC's E911 requirements applicable to wireless resellers. In addition, as required by the
9 TracFone Forbearance Order, TracFone will provide all Lifeline customers with E911-
10 compliant handsets and will obtain certification from PSAPs that TracFone Lifeline
11 customers will have access to 911 and E911.

12 **Q. WILL TRACFONE'S RESELLER STATUS LIMIT ITS ABILITY TO RESOLVE**
13 **ALL COMPLAINTS REGARDING ITS SERVICE THAT MAY BE RECEIVED**
14 **BY THE COMMISSION?**

15 A. No. TracFone has been providing nationwide wireless telecommunications service for
16 more than twelve years. During that time period, TracFone has satisfactorily resolved
17 complaints that have been forwarded to it by state utility commissions. TracFone's status
18 as a reseller has not limited its ability to address and resolve any complaint. TracFone
19 will promptly work to resolve any complaints it receives from this Commission or from
20 an Oregon customer.

21 **Q. WILL TRACFONE COMPLY WITH OTAP PROCEDURAL REQUIREMENTS**
22 **FOR ELIGIBILITY AND VERIFICATION?**

1 A. As I testified earlier, the current OTAP Application would prevent individuals who are
2 not current TracFone customers or who do not have phone service from applying for
3 Lifeline service. Therefore, TracFone has requested in its Waiver Request that the
4 Commission modify the OTAP Application or allow TracFone to use its own application
5 to account for the fact that an applicant may not be an active customer of a billed
6 telephone service prior to applying for Lifeline benefits. TracFone will comply with the
7 OTAP requirements for Lifeline eligibility and verification.

8 **Q. WILL TRACFONE COMPLY WITH OTAP PRORATING REQUIREMENTS**
9 **FOR BENEFITS PURPOSES AS REQUIRED BY OAR 860-033-0035(2)?**

10 A. TracFone understands that the Commission's rules provide that when a customer is
11 determined eligible for the OTAP benefit for less than an entire billing period, the benefit
12 is prorated. TracFone, as a prepaid provider, does not have billing periods. Moreover,
13 TracFone provides Lifeline customers with minutes of airtime for free each month
14 without regard to when during the month the customer enrolls in TracFone's Lifeline
15 program. In other words, TracFone does not prorate Lifeline benefits. For example, a
16 customer enrolling in the 250 minute plan will receive 250 minutes whether the customer
17 enrolls on the first of the month or on the 25th of the month. Furthermore, none of the
18 Lifeline benefits provided by TracFone are funded by the RSPF, the fund that supports
19 the OTAP benefit. Therefore, the prorating requirement is not applicable to TracFone's
20 Lifeline service. Moreover, TracFone has discussed with the staffs of the FCC and
21 USAC whether TracFone is required to prorate the number of airtime minutes provided
22 to a Lifeline customer based on the date in the month on which TracFone commences
23 Lifeline service to a customer. TracFone was advised by both the FCC and USAC that

1 prorating did not apply to TracFone's Lifeline offer. TracFone has requested a waiver of
2 this requirement in its Waiver Request filed with TracFone's Second Amended ETC
3 Application.

4 **Q. WILL TRACFONE COMPLY WITH THE OTAP REPORTING**
5 **REQUIREMENTS?**

6 A. TracFone will comply with the OTAP reporting requirements to the extent that they are
7 applicable to TracFone. The OTAP reporting requirements include submission of
8 monthly remittance reports regarding the RSPF surcharge. TracFone does not collect
9 RSPF fees and does not plan to collect RSPF fees from OTAP-eligible customers if it
10 obtains ETC status because it is not obligated to make such collections. In the Waiver
11 Request filed with the TracFone's Second Amended ETC Application, TracFone
12 requested a waiver of OAR 860-033-0006, the Commission's rule that provides for a
13 RSPF surcharge and establishes general requirements in relation to the surcharge,
14 including the submission of remittance reports and payments. The Oregon statute
15 establishing the RSPF surcharge (1987 Or. Laws c. 290 § 7, appearing as a note
16 following ORS 759.690), instructs the Commission to assess the RSPF "surcharge"
17 against "paying retail subscriber[s]" who have "telecommunications service." As
18 explained in the Waiver Request, TracFone's SafeLink Wireless[®] customers are not
19 "paying retail subscribers" who receive telecommunications service. Moreover, it is
20 impossible for TracFone to collect RSPF surcharges from its SafeLink Wireless[®]
21 customers because it does not issue them any monthly bills. In addition, the RSPF
22 surcharge relates to "telecommunications service," which as defined in ORS
23 759.005(8)(a), expressly excludes wireless service. OAR 860-033-0006(3)(b) also

1 requires each telecommunications provider to “identify the surcharge on each retail
2 customer’s bill,” which reflects the fact that the surcharge is intended to be applicable to
3 billed services provided to paying retail subscribers. TracFone’s SafeLink Wireless®
4 services are not telecommunications services as that term is defined at ORS
5 759.005(8)(a), nor billed services provided to paying retail subscribers. Therefore,
6 TracFone has no legal obligation to collect the RSPF surcharge from its Lifeline
7 customers nor does it have a legal obligation to remit the RSPF surcharge.

8 Given that TracFone is not required to assess and collect the RSPF surcharge
9 from its customers, no purpose would be served by requiring it to file monthly remittance
10 reports. Furthermore, TracFone will not be seeking funds from the RSPF. As such,
11 TracFone should not be required to file monthly requests for reimbursement.

12 **Q. WILL TRACFONE OFFER A LIFELINE BENEFIT ON ALL OF ITS**
13 **PRODUCTS, INCLUDING NET10® AND STRAIGHT TALK™?**

14 A. TracFone’s SafeLink Wireless® Lifeline service is based on TracFone’s prepaid wireless
15 service offered under the TracFone brand name. NET10® and Straight Talk™ are
16 separate brands of services offered by TracFone. TracFone is currently considering
17 whether and how to develop other Lifeline services based on other TracFone service
18 offerings. TracFone will advise the Commission as soon as it is able to offer other
19 Lifeline service offerings in addition to the SafeLink Wireless® Lifeline service.

20 TracFone is aware that OAR 860-033-0010 provides that an ETP must offer
21 OTAP reduced rates or discounts with all service offerings that include basic telephone
22 service. As explained in the Waiver Request filed with TracFone’s Second Amended
23 ETC Application, TracFone does not offer basic telephone service as that term is defined

1 by Oregon law. Therefore, the requirement that an ETP offer OTAP reduced rates or
2 discounts with all service offerings that include basic telephone service is not applicable
3 to TracFone for purposes of its ETC and ETP Applications.

4 **Q. WILL TRACFONE BE ABLE TO COMPLY WITH THE ANNUAL REPORTING**
5 **REQUIREMENTS FOR ETCS IN OREGON?**

6 A. TracFone understands that the annual reporting requirements for ETCs are set forth in the
7 Recertification Requirements in Order No. 06-262. TracFone will be able to comply with
8 all reporting requirements to the extent that they are applicable to a reseller that only
9 offers Lifeline service. Some of the reporting requirements relate to high-cost support or
10 network improvements, such as reporting requirement 7. Such reporting requirements
11 are not applicable to TracFone because it does not seek high-cost support and does not
12 own or operate a network. The reporting requirements also ask for number of customers
13 and handsets by ILEC study area. TracFone does not have the ability to track its
14 customers by ILEC study area. However, it can report number of customers in Oregon.
15 TracFone considers some of the information requested for the ETC annual report, such as
16 the number of customers, to be confidential. Therefore, TracFone will invoke protections
17 appropriate to prevent public disclosure of confidential information. Finally, TracFone
18 has requested the Commission to waive certain requirements in a Waiver Request filed
19 with TracFone's Second Amended ETC Application.

20 **Q: ARE THERE ANY OTHER RULES OR REQUIREMENTS FOR WHICH**
21 **TRACFONE REQUESTS WAIVER, BUT WHICH ARE NOT SPECIFICALLY**
22 **DISCUSSED IN YOUR TESTIMONY?**

1 A: Yes. In my testimony, I discuss several of the Commission's rules and Initial
2 Requirements for which TracFone seeks waiver in its Waiver Request. However, I want
3 to note that TracFone requests waiver of all rules and requirements set forth in the
4 Waiver Request, even if they are not specifically discussed in my testimony.

5 **Q. WILL TRACFONE COLLECT AND/OR REMIT FEES THAT SUPPORT 911**
6 **SERVICES IN OREGON?**

7 A. The Oregon legislature has decided to impose the 911 tax on each "paying retail
8 subscriber" in ORS 403.200. TracFone's SafeLink Wireless[®] customers will not be
9 "paying retail subscribers" because their service will be free and they are not, therefore,
10 subject to this tax. Moreover, TracFone's SafeLink Wireless[®] customers are not "paying
11 retail subscribers" for purposes of the 911 tax for the same reasons that they are not
12 "paying retail subscribers" for purposes of the RSPF surcharge. These reasons are
13 discussed in detail in TracFone's Waiver Request filed with its Second Amended ETC
14 Application. Furthermore, TracFone has concluded that the language of the statute does
15 not encompass prepaid customers, and as such, prepaid providers are not obligated to
16 collect the 911 tax from their customers. TracFone's position is consistent with the
17 position of the CTIA - TheWireless Association[®] as described in its letter to the Oregon
18 Office of the Secretary of State dated November 14, 2007. A copy of the CTIA letter is
19 provided as Exhibit TracFone/3. In the November 2007 letter, CTIA explained that the
20 Oregon 911 tax statute provides that for "cellular, wireless or other radio common
21 carriers, the tax shall apply on a per instrument basis and only if the subscriber's place of
22 primary use, as defined and determined under 4 U.S.C. §§ 116 to 126, is within this
23 state." The term "place of primary use", as defined in 4 U.S.C. §§ 116 to 126 (generally

1 known as the Mobile Telecom Sourcing Act (“MTSA”), means the street address
2 representative of where the customer’s use of the mobile telecommunications service
3 primarily occurs. However, 4 U.S.C. § 116(c)(1) explicitly exempts prepaid telephone
4 calling service from the taxing situs determination rules of the MTSA. Given that the
5 Oregon 911 tax statute requires the use of a federal law that exempts prepaid telephone
6 service to determine the taxing jurisdiction of wireless carriers, CTIA concluded that the
7 Oregon 911 tax statute was not intended to nor does it apply to prepaid wireless service.
8 TracFone has similarly concluded that the Oregon 911 tax statute does not apply to
9 prepaid wireless service, and therefore, does not collect 911 taxes from its customers.

10 **Q. SINCE TRACFONE’S LIFELINE CUSTOMERS DO NOT PAY FOR THEIR**
11 **SERVICES, HOW COULD TRACFONE PARTICIPATE IN FUNDING THE 911**
12 **SYSTEM IN OREGON IN RELATION TO ITS LIFELINE CUSTOMERS?**

13 A. As noted above, the Oregon legislature has determined to impose the 911 tax only on
14 “paying” customers. It has also decided not to impose the tax on prepaid wireless
15 customers. If the legislature believes that non-paying consumers such as TracFone’s
16 Lifeline customers, and prepaid customers, should be subject to 911 fee contribution
17 obligations, then the legislature should enact such legislation. Expansion of the 911 fee
18 law to encompass non-paying consumers is within the province of the legislature, not the
19 Commission in its capacity as the entity which designates ETCs in Oregon.

20 There are additional practical concerns in collecting the 911 tax from prepaid
21 wireless customers generally. Those concerns involve a broader spectrum of the industry
22 and should be addressed in a different forum. For example, TracFone and other
23 companies have advocated point-of-sale tax collection methods as being the most

1 efficient and most equitable means for collecting such 911 taxes from consumers of
2 prepaid services. More importantly, point-of-sale tax collection methods ensure that all
3 customers of prepaid services contribute to the support of 911 services.

4 **Q. HAVE ANY STATES ENACTED POINT OF SALE LEGISLATION?**

5 A. Yes. Some states have enacted laws regarding their state 911 funds to address the fact
6 that prepaid providers do not render bills. These laws allow collection of 911 taxes at the
7 point of sale. The following states have point of sale laws that apply to the collection of
8 911 taxes: Colorado, Indiana, Louisiana, Maine, Mississippi, Oklahoma, South
9 Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. In addition, several
10 other states are currently considering point of sale legislation, including Illinois, Kansas,
11 Massachusetts, New York, and Pennsylvania. A point-of-sale bill was passed in Rhode
12 Island and is currently awaiting approval by the Governor.

13 **Q. HOW SHOULD THE COMMISSION ADDRESS THE ISSUE OF HOW TO**
14 **APPLY STATE-MANDATED FEES TO PREPAID CARRIERS?**

15 A. The state legislature is responsible for modifying state laws to accommodate changes in
16 industries, markets, and business models. It is not the responsibility of the Commission
17 to expand state statutes so as to encompass entities and activities which they believe
18 should be covered. Neither is it appropriate for parties to Commission proceedings to
19 advocate application of tax obligations in a manner wholly inconsistent with the statutes
20 which create those obligations. These issues should be addressed by the legislature or the
21 Department of Revenue, which is authorized to enforce tax and fee collection laws.

22 Oregon is not the first state where attempts have been made to subject TracFone
23 to state requirements which are not applicable to it or to delay approval of TracFone's

1 ETC applications based on disputes regarding such taxes. In such states, TracFone has
2 consistently worked cooperatively with legislators, regulatory departments, and other
3 stakeholders to develop and implement new laws which achieve state objectives but
4 which do so in an equitable, nondiscriminatory and competitively neutral manner as
5 required by Section 253 of the Communications Act of 1934 (47 U.S.C. § 253).

6 If the Commission deems it necessary to determine whether TracFone and other
7 prepaid wireless providers are legally obligated to pay any taxes, it should open a
8 separate proceeding to address that issue. TracFone faced a similar issue before the
9 Maine Public Utilities Commission (“Maine PUC”). In the Maine PUC proceeding
10 regarding TracFone’s ETC petition, the Maine PUC raised this issue of whether
11 TracFone was obligated to make contributions to certain Maine funds, including the
12 Maine USF and Maine Telecommunications Education Access Fund (“MTEAF”).
13 TracFone asserted that it was not obligated to contribute to those funds because under
14 applicable laws, contributions were based on billed intrastate revenues, and TracFone, as
15 a prepaid wireless carrier does not bill its customers, and therefore has not billed
16 intrastate revenues within the ambit of the applicable statutes. In the order designating
17 TracFone as an ETC, the Maine PUC noted that its designation of TracFone as an ETC
18 did not “absolve TracFone of any obligations it may have to abide by the Commission’s
19 rules regarding contributions to MUSF, MTEAF and payment of other regulatory fees.”
20 The Maine PUC decided to “open an investigation in a separate docket into whether
21 TracFone is required to contribute to MUSF and MTEAF, and whether TracFone is in
22 compliance with its obligations to pay other applicable regulatory fees.” The Maine
23 PUC’s Order designating TracFone as an ETC and the Maine PUC Notice of

1 Investigation are provided as Exhibit TracFone/4 and Exhibit TracFone/5. Like the
2 Maine PUC, this Commission should open a separate docket to address any statutory tax
3 issues within its jurisdiction, rather than resolve those issues in this ETC proceeding.

4 Moreover, while TracFone has not reviewed in detail the funding requirements for
5 911 services in Oregon, it is not clear to TracFone that additional funding for 911
6 services is required to be collected from TracFone's Lifeline customers. For example, the
7 2009 Oregon legislature swept \$3,612,497 from two subaccounts related to 911 services
8 in SB 581 (Sections 41 and 42) which funds I understand were derived from the 911 tax.¹
9 This is another reason why TracFone thinks this issue should be addressed by the
10 legislature, not by the Commission in this proceeding.

11 **Q. WHEN A TRACFONE SUBSCRIBER CALLS 911, IS TRACFONE IDENTIFIED**
12 **AS THE PROVIDER SO THAT THE RELEVANT PSAP CAN CONTACT**
13 **TRACFONE FOR EXIGENT CIRCUMSTANCES?**

14 A. Exigent circumstances exist when a PSAP receives a 911 call and understands that the
15 caller or others face immediate danger of death or serious physical injury. If the PSAP is
16 unable to identify the location of the caller, the PSAP contacts the carrier to learn the
17 name and address associated with the handset used to place the call. When a TracFone

¹ See <http://www.leg.state.or.us/09reg/measpdf/sb0500.dir/sb0581.en.pdf>. Both subaccounts appear to derive from the 911 tax. Section 41 of SB 581 directs \$3,112,497 from the Enhanced 9-1-1 Subaccount to the general fund for general government purposes. This subaccount stems from ORS 403.235(2) and represents 35% of the Emergency Communications Account. This account, in turn, receives the funds from the 911 tax, ORS 403.235(1). <http://www.leg.state.or.us/ors/403.html>. Section 42 of SB 581 directs \$500,000 from the Enhanced 9-1-1 Equipment Replacement Subaccount to the general fund for general government purposes. This subaccount once represented 2.5% of the Emergency Communications account, but the 2009 legislature appears to have eliminated this fund in Section 20 of HB 2168. <http://www.leg.state.or.us/09reg/measpdf/hb2100.dir/hb2168.en.pdf>. For coverage, see http://www.oregonlive.com/politics/index.ssf/2009/03/oregon_agencies_upset_as_state.html.

1 subscriber calls 911, the PSAP sees the name of the underlying carrier. The PSAP
2 contacts the underlying carrier to learn the caller was a TracFone subscriber and then
3 contacts TracFone in the event that exigent circumstances make such contact necessary.

4 **Q. DOES TRACFONE PROVIDE INFORMATION TO ITS LIFELINE**
5 **CUSTOMERS REGARDING ACCESS TO 911 SERVICES BY UNINITIALIZED**
6 **OR DEACTIVATED HANDSETS?**

7 A. TracFone provides all of its customers, including Lifeline customers, with handsets that
8 comply with the technical requirements for enhanced 911 services. TracFone's
9 customers, including its Lifeline customers, have access to 911 services so long as their
10 handsets are turned on and so long as they are in areas where there is wireless coverage.
11 TracFone's handsets, like all other wireless handsets offered by other wireless carriers,
12 are initialized so long as they are activated. When a TracFone Lifeline customer uses the
13 entire allotment of minutes, the handset remains active and the phone remains initialized.
14 911 calls from such phones will provide PSAPs with all needed telephone number and
15 location information. TracFone's Lifeline customers do not have uninitialized phones
16 that will prevent the customers from having meaningful access to emergency services.
17 Moreover, deactivated handsets can be used to call 911. Therefore, there is no need for
18 TracFone to advise its Lifeline customers about any limitations on access to 911 services
19 caused by having an uninitialized or deactivated handset.

20 **Q. WHY WOULD DESIGNATION OF TRACFONE AS AN ETC SERVE THE**
21 **PUBLIC INTEREST?**

22 A. The FCC has determined that designation of competitive ETCs serves the public interest
23 by promoting competition and benefits consumers by increasing customer choice,

1 innovative services, and new technologies. Designation of TracFone as an ETC will
2 provide a valuable alternative to the existing Lifeline wireline and wireless services
3 available in Oregon. TracFone's Lifeline service will provide important public interest
4 benefits, including larger local calling areas, the convenience and security afforded by
5 mobile telephone service, the opportunity for customers to control their costs by
6 purchasing in advance only the volumes of service which they need and supplementing
7 those quantities on an as-needed basis after exhausting their monthly supply of free
8 service, availability of important vertical features such as caller ID and voice mail at no
9 additional charge, and availability of E911 service in accordance with the FCC's E911
10 requirements. In addition, TracFone's inclusion of all distance calling (local and long
11 distance) and roaming within its calling plans will enable consumers to avoid the risk of
12 becoming burdened with large and unanticipated charges for toll calling.

13 **Q. IS TRACFONE ADDRESSING THE CURRENT ECONOMIC DOWNTURN?**

14 A. TracFone's SafeLink Wireless[®] Lifeline service offers important benefits that are
15 especially needed by low-income Oregon residents in this time of economic downturn.
16 According to the United States Bureau of Labor Statistics, as of November 2010, Oregon
17 experienced an unemployment rate of 10.6 percent. These conditions have had a
18 significant impact on Oregon residents. The availability of a mobile telephone is critical
19 to many unemployed Oregon residents' efforts to search for other employment
20 opportunities. Without a mobile telephone, unemployed individuals face extreme
21 difficulty in finding employment. A mobile telephone allows individuals to be reached at
22 any time and location and enables unemployed individuals to respond to potential
23 employers immediately. In addition, a mobile telephone assists employed low-wage

1 individuals by allowing those individuals to stay in contact with employers, manage
2 relationships with supervisors, and respond to requests to work additional shifts or hours.
3 TracFone's SafeLink Wireless® Lifeline program will enable thousands of Oregon
4 residents, including residents seeking employment and residents with low-wage
5 positions, to obtain a handset and wireless service which would otherwise be unavailable
6 to them.

7 **Q. WHY WOULD OREGON BENEFIT FROM ANOTHER ETC PROVIDING**
8 **LIFELINE SERVICE?**

9 A. As I will describe below, a significant number of Oregon residents who are eligible for
10 Lifeline benefits are not enrolled in a Lifeline program with an ETC. While TracFone
11 does not know the precise causes for the underutilization of a program established to
12 provide discounted telecommunications services to low-income households, based on its
13 experience in other states, it believes that its Lifeline service will attract a significant
14 number eligible low-income Oregon consumers.

15 **Q. WHAT ARE SOME BENEFITS OF INCREASED COMPETITIVE CHOICE?**

16 A. The benefits of competitive choice are especially valuable in situations in which wireless
17 providers like TracFone seek to provide service to rural communities and elsewhere. The
18 availability of a wireless competitive alternative benefits those rural consumers who often
19 must drive significant distances to work, schools, stores, and other community locations.
20 TracFone's prepaid wireless service alternative will provide all Lifeline qualified
21 consumers with convenient and affordable telecommunications service, both from their
22 residences and when they are away from their homes.

1 TracFone believes that many consumers, including qualified Lifeline customers,
2 view the portability and convenience of wireless service as a modern necessity, not a
3 luxury. Parents need to be able to reach their children wherever they may be, and vice
4 versa; persons seeking employment opportunities need to be reachable by potential
5 employers, even when they are away from home; persons need to be able to call for
6 emergency assistance while away from home, since not all emergencies requiring 911
7 access occur at home. TracFone recognizes that not all Lifeline-eligible low-income
8 Oregon consumers will select TracFone's SafeLink Wireless[®] offering. Some consumers
9 will prefer the traditional Lifeline plans of other ETCs, such as that of their incumbent
10 wireline local exchange carrier. For those consumers who would prefer the benefits of a
11 wireless Lifeline plan, SafeLink Wireless[®] will provide an important alternative.
12 According to most recent FCC data available, Oregon's statewide Lifeline participation
13 rate is 10.7 of eligible households and according to Universal Administrative Service
14 Company the statewide participation rate for 2009 was between 10 and 20 percent of
15 eligible households. In other words, more than 80 percent of low-income Oregon
16 household that are eligible to receive Lifeline are not receiving Lifeline benefits.
17 TracFone expects that many qualified low-income households will elect to enroll in its
18 SafeLink Wireless[®] Lifeline program, and that the availability of competing Lifeline
19 programs will encourage greater participation in Lifeline. In fact, since late 2008 when
20 TracFone commenced offering SafeLink Wireless[®] Lifeline service in three states
21 (Tennessee, Virginia, and Florida), TracFone has substantially increased the number of
22 Lifeline participants in each state where SafeLink Wireless[®] is offered. For example, in

1 each of those states, TracFone has increased Lifeline enrollment by more than one
2 hundred percent.

3 **Q. WHAT ARE THE POTENTIAL IMPACTS OF TRACFONE'S DESIGNATION**
4 **AS AN ETC ON ILECS AND OTHER ETCS?**

5 A. Based on recent USAC data, there are currently 40 ETCs in Oregon, 36 of which are
6 ILECs. As I testified, recent USAC data indicates that only between 10 and 20 percent of
7 households eligible for Lifeline service in Oregon are receiving Lifeline benefits.

8 TracFone does not know why the participation rate is so low. If TracFone is designated
9 as an ETC, it expects to substantially increase the Lifeline participation rate in Oregon.

10 However, given that at least 80 percent of qualified households are not receiving Lifeline
11 benefits, there is a significant number of qualified low-income Oregon households that no
12 current ETC is serving. Therefore, while the current ETCs will have to compete for
13 Lifeline customers with another ETC if TracFone commences Lifeline service in Oregon,
14 they will not necessarily lose any current Lifeline customers. In fact, the presence of
15 an additional competitor will provide those incumbent ETCs with incentives to more
16 aggressively market their Lifeline services and to engage in more effective consumer
17 outreach.

18 **Q. WHAT ARE THE ADVANTAGES OF TRACFONE'S SERVICE OFFERINGS?**

19 A. As described earlier in my testimony, TracFone's entire business model is predicated on
20 providing easy-to-use, pay-as-you-go, affordable wireless telecommunications service to
21 consumers to whom wireless service would be otherwise unavailable or unaffordable.

22 TracFone offers consumers an opportunity to acquire wireless service using state-of-the-
23 art handsets and such features as caller ID, voice mail, text messaging, and long distance

1 calling without toll charges, as well as international calling to more than 60 destinations.
2 Because TracFone's service requires no term contracts, no minimum service periods or
3 volume commitments, no credit checks, and no early termination fees, the service is
4 available to everyone – irrespective of age; irrespective of residency; irrespective of
5 creditworthiness. Moreover, TracFone's prepaid service is unique in that usage
6 information and remaining balance information is stored in the handsets and is thus
7 available to consumers on a "real-time" basis. TracFone's prepaid service offers
8 Lifeline-qualified customers access, quality and price.

9 **Q. WILL TRACFONE'S DESIGNATION AS AN ETC RESULT IN**
10 **CREAMSKIMMING IN THE RURAL ILEC AREAS IN WHICH IT SEEKS**
11 **DESIGNATION AS AN ETC?**

12 A. No. In Commission Order 06-292, at pages 10 and 11, the Commission stated that it
13 "will undertake a cream-skimming analysis for any ETC applicant that proposes to serve
14 less than an entire study area of a rural ILEC." A creamskimming analysis as part of the
15 Commission's consideration of TracFone's ETC application is neither not relevant nor
16 appropriate. TracFone is a reseller and will not seek support from the high-cost fund.
17 The FCC developed the "creamskimming" analysis requirement when it began to
18 designate wireless ETCs who sought support from this high-cost portion of the Universal
19 Service Fund to subsidize the costs of building alternative networks which would
20 compete with rural LECs. The FCC's concern was that such facilities-based wireless
21 ETCs would get high-cost support to build out competing networks with those of the
22 rural LECs but would actually deploy competing networks only in the most populous
23 areas of the rural ILECs service territories -- effectively "creamskimming" in the LECs'

1 territories since the ILECs had to build out throughout the entire territory including the
2 sparsely populated portions. Since TracFone is a reseller, it will not, and cannot, engage
3 in creamskimming as that term has been used by the FCC. It can provide Lifeline service
4 only wherever its underlying vendors have coverage. If its underlying vendors do not
5 have coverage, it cannot provide service.

6 **Q. DOES THE FACT THAT TRACFONE'S SAFELINK WIRELESS® LIFELINE**
7 **OFFERING IS FREE ENGENDER PROBLEMS ASSOCIATED WITH**
8 **ADMINISTRATION OR CUSTOMER FRAUD AND ABUSE?**

9 A. In the more than two years since TracFone commenced offering Lifeline service as an
10 ETC, it has been able to effectively detect attempted fraud and to prevent waste, fraud
11 and abuse of USF resources. TracFone has fraud prevention and detection systems in
12 place to ensure that only qualified individuals receive Lifeline benefits. For example,
13 TracFone relies on a third-party vendor to validate the identity and addresses of
14 applicants included on SafeLink Wireless® Lifeline service applications. TracFone
15 contracts with LexisNexis so that it can have access to a database to verify the identities
16 of Lifeline applicants. The database uses various public records to enable TracFone to
17 verify that a person with the applicant's name and Social Security Number lives at the
18 address listed on the application and to confirm that the address is associated with a
19 residential dwelling. TracFone's process of verifying applicants' personal information
20 ensures that only qualified individuals receive Lifeline service and that only one
21 TracFone Lifeline-supported service is provided to each qualified household.

22 TracFone has become aware from its own investigation, as well as from the FCC
23 and state utility commissions, that a limited number of its handsets have been made

1 available for resale on Internet sites, including www.eBay.com and www.craigslist.org.
2 TracFone has immediately investigated each of these very few situations, taken
3 appropriate action, and notified the FCC and appropriate state utility commissions of the
4 outcome of its investigations. TracFone's Loss Prevention department monitors and
5 searches classified postings and web blogs and establishes informational alerts in web
6 search engines to ensure that the SafeLink Wireless® brand name and products are not
7 used for resale or for fraudulent purposes. The Loss Prevention department investigates
8 any potentially improper or fraudulent activities and reports its findings to the Lifeline
9 operations team. Following an investigation, the Loss Prevention department will
10 deactivate the phone of any Lifeline customer who has engaged in such activities. To
11 date, fewer than twenty attempts to sell SafeLink Wireless® handsets have been
12 discovered.

13 **Q: WHAT SAFEGUARDS DOES TRACFONE HAVE IN PLACE TO ENSURE**
14 **THAT CUSTOMERS ARE NOT RECEIVING LIFELINE-SUPPORTED**
15 **SERVICE FROM ANOTHER ETC?**

16 TracFone, like all other telecommunications service providers, does not have access to
17 information regarding whether its customers are receiving Lifeline-supported service
18 from another ETC. Pursuant to a condition imposed on TracFone by the FCC, TracFone
19 must require each of its Lifeline customers to self-certify, under penalty of perjury, at the
20 time of service activation and annually thereafter, that he/she remains the head of
21 household and receives Lifeline-supported service only from TracFone. In accordance
22 with those requirements, TracFone requires and obtains such self-certifications. This
23 condition was imposed on TracFone by the FCC in 2005 as a condition of the FCC's

1 exercise of forbearance, and is not applicable to other ETCs. Thus, TracFone's procedures
2 for preventing customers already enrolled in other ETCs' Lifeline programs from also
3 enrolling in TracFone's program are more rigorous than those of other ETCs. Finally, in
4 Oregon, the Commission is responsible for certifying each applicant's initial eligibility
5 for Lifeline and verifying, on a monthly basis, each Lifeline customer's continued
6 eligibility for Lifeline. TracFone understands that the Commission is able to use its
7 database to ensure that each eligible household is only receiving Lifeline benefits from
8 one ETC.

9 **Q. WHAT KIND OF IMPACT WILL TRACFONE HAVE ON THE FEDERAL**
10 **UNIVERSAL SERVICE FUND IF GRANTED ETC STATUS?**

11 A. The FCC considered the impact on the USF when determining whether to grant
12 TracFone's petitions for designation as an ETC and concluded that designation of
13 TracFone as an ETC for the limited purpose of offering Lifeline would not have a
14 significant impact on the USF. The FCC noted in its decision granting TracFone
15 forbearance from the facilities requirement for ETCs: "Any increase in the size of the
16 fund would be minimal and is outweighed by the benefit of increasing eligible
17 participation in the Lifeline program, furthering the statutory goal of providing access to
18 low-income consumers." TracFone Forbearance Order, ¶ 17.

19 Whatever impact designation of TracFone as an ETC in Oregon will have on the
20 size of the universal service fund will be relatively modest and will be more than offset
21 by the fact that USF resources will be used for their most important purposes -- to make
22 available to all Americans, including low-income persons, affordable telecommunications
23 services. TracFone seeks ETC designation solely to enable it to offer Lifeline benefits to

1 eligible low-income Oregon consumers. TracFone does not seek access to funds from the
2 federal Universal Service Fund for the purpose of obtaining high-cost support. In 2008,
3 low-income support accounted for only 11.5 percent of the distribution of the total
4 universal service fund, while high-cost support accounted for 63 percent. It is important
5 to recognize the differences between low-income funding for the Lifeline program and
6 high-cost funding. With Lifeline, ETCs receive USF support only for customers they
7 obtain. If TracFone acquires Lifeline customers currently served by other ETCs,
8 TracFone will gain the Lifeline support for those customers, but the ETCs losing the
9 customers will lose the support. TracFone will only increase the amount of USF Lifeline
10 funding in situations where it obtains new Lifeline customers; that is, customers not
11 currently enrolled in other ETCs' Lifeline programs. In contrast, with high-cost support,
12 when new ETCs enter the market and capture customers from the existing ETCs, both the
13 incumbent ETCs and the new ETCs receive high-cost support -- based on the incumbent
14 LECs' costs, thereby increasing the size of the USF.

15 Significantly, TracFone's designation as an ETC will not increase the number of
16 persons eligible for Lifeline support. As stated in the Communications Act, the universal
17 service fund was established to ensure that quality services are available to all individuals
18 at just, reasonable, and affordable rates. TracFone's ability to increase the Lifeline
19 participation rate of qualified low-income individuals from the current participation rate
20 of less than 20 percent will further the goal of Congress to provide all individuals with
21 affordable access to telecommunications service.

22 **Q. WHAT IMPACT WILL TRACFONE HAVE ON THE SIZE OF THE RSPF IF**
23 **GRANTED ETC STATUS?**

1 A. TracFone will not be seeking any reimbursement from the RSPF. Therefore, there will
2 be no impact on the size of the RSPF if TracFone is designated as an ETC.

3 **Q. WHAT IMPACT WILL TRACFONE HAVE ON THE ADMINISTRATIVE**
4 **RESOURCES OF OTAP IF GRANTED ETC STATUS?**

5 A. As I testified earlier, TracFone should not be required to file monthly remittance reports
6 or reimbursement requests because it is not required to collect the RSPF surcharge and
7 will not be seeking any reimbursement from the RSPF. Therefore, OTAP's
8 administrative resources should not be impacted based on any reporting requirements if
9 TracFone is designated as an ETC. TracFone is not aware of whether and to what extent
10 OTAP's administrative resources are used to certify customers' eligibility for federal
11 Lifeline benefits or to verify customers' continued eligibility for federal Lifeline benefits.
12 Therefore, TracFone currently has no position as to how OTAP's administrative
13 resources would be impacted by certifying and verifying the eligibility of applicants for
14 TracFone's Lifeline service.

15 **Q. ARE THERE ANY OTHER WAYS IN WHICH TRACFONE'S DESIGNATION**
16 **AS AN ETC WILL BENEFIT THE PUBLIC INTEREST IN OREGON?**

17 A. As a national leader in prepaid wireless services, TracFone has done much to advance the
18 availability of wireless service for those portions of the population for whom wireless
19 service is otherwise unavailable or, if available, is too costly and requires term duration
20 and volume commitments which are beyond the means of many consumers.

21 Moreover, designation of TracFone as an ETC will serve the public interest by
22 further promoting the extensive role TracFone plays in the provision of communications
23 services to lower income and lower volume users, transient users, as well as other

1 consumers who either choose not to enter into long-term service commitments or who are
2 unable to meet the credit requirements necessary to obtain service from other wireline or
3 wireless carriers. TracFone's wireless service enables consumers to enjoy the
4 convenience and security of wireless telecommunication without being subject to
5 extensive credit reviews and long-term service commitments which historically have
6 limited the availability of wireless service to many Americans, including many Oregon
7 residents.

8 **Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD TO YOUR**
9 **TESTIMONY?**

10 A. Based on my testimony above, I would like to reiterate that TracFone meets all legal
11 requirements for designation as an ETC and that designation of TracFone as an ETC for
12 the limited purpose of providing Lifeline service to low-income Oregon households will
13 serve the public interest. Furthermore, TracFone requests that the Commission grant
14 TracFone's Waiver Request included with the Second Amended ETC Application.
15 Accordingly, the Oregon Public Utility Commission should unconditionally and promptly
16 grant TracFone's application for designation as an eligible telecommunications carrier so
17 that TracFone may commence providing its SafeLink Wireless[®] service to low-income
18 Oregon households at the earliest possible time.

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of January, 2011, served the foregoing TRACFONE WIRELESS, INC.'S FIRST AMENDED DIRECT TESTIMONY AND EXHIBITS upon all parties of record in this proceeding by causing a copy to be sent by electronic mail or U.S. mail to the following addresses (as indicated below):

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By



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Exhibit 2

CTIA

Consumer Code *for* Wireless Service

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

THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THIS CODE WILL:

ONE

DISCLOSE RATES AND TERMS OF SERVICE TO CONSUMERS

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

TWO

MAKE AVAILABLE MAPS SHOWING WHERE SERVICE IS GENERALLY AVAILABLE

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

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

T H R E E

PROVIDE CONTRACT TERMS TO CUSTOMERS AND CONFIRM CHANGES IN SERVICE

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

F O U R

ALLOW A TRIAL PERIOD FOR NEW SERVICE

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

F I V E

PROVIDE SPECIFIC DISCLOSURES IN ADVERTISING

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

S I X

SEPARATELY IDENTIFY CARRIER CHARGES FROM TAXES ON BILLING STATEMENTS

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

S E V E N

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

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

E I G H T

PROVIDE READY ACCESS TO CUSTOMER SERVICE

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

N I N E

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

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

T E N

ABIDE BY POLICIES FOR PROTECTION OF CUSTOMER PRIVACY

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

Exhibit 3

November 14, 2007

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

Dear Ms. Hilton:

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

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

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

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

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



ORS 401.792 states:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



K. Dane Snowden
Vice President,
External & State Affairs

Exhibit 4

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2009-263

February 9, 2010

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

ORDER GRANTING ETC
STATUS AND OPENING
SEPARATE INVESTIGATION

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners

I. SUMMARY

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

II. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. LEGAL STANDARDS

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

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

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

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

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

III. DISCUSSION

A. INITIAL APPLICATION

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

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

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

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

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

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

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

B. AMENDED APPLICATION

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

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

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

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

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

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

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

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

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

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

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

IV. DECISION**A. PETITION FOR WAIVER**

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

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

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

B. ETC DESIGNATION

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

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

C. INVESTIGATION INTO COMPLIANCE WITH REGULATORY FEE OBLIGATIONS

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

V. **CONCLUSION**

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

In light of the foregoing it is,

ORDERED

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

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

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

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

Exhibit 5

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2010-47

February 11, 2010

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

NOTICE OF INVESTIGATION;
OPPORTUNITY TO
PARTICIPATE; OPPORTUNITY
FOR COMMENT

I. SUMMARY

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

II. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

III. NOTICE OF INVESTIGATION

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

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

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

IV. OPPORTUNITY TO PARTICIPATE¹

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

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

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

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

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

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

V. OPPORTUNITY TO COMMENT

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

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

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

Jordan McColman
Hearing Examiner