

**Before the  
FLORIDA PUBLIC SERVICE COMMISSION**

---

In the Matter of )  
)  
)

Application of TracFone Wireless, Inc. )  
for Designation as an Eligible Telecommunications )  
Carrier in the State of Florida )  
)  
)

---

Docket No. \_\_\_\_\_

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

TracFone Wireless, Inc. (“TracFone”), by its undersigned counsel, and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Communications Act”), and Section 364.100 Florida Statutes, hereby submits this Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Florida. TracFone seeks ETC designation solely to provide Lifeline service to qualifying Florida consumers; it will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high cost areas.<sup>1</sup> As demonstrated herein, and as certified in Exhibit 1 to this Application, TracFone meets all the statutory and regulatory requirements for designation as an ETC in the State of Florida. TracFone respectfully requests that the Florida Public Service Commission (“Commission”) grant this Application and that it do so expeditiously so that TracFone may

---

<sup>1</sup> Given that TracFone only seeks Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to TracFone. See, e.g., PSC Order No. PSC-05-0824-TL, Docket No. 010977-TL, August 15, 2005 (adopting criteria set forth in Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005)).

provide Lifeline service to low income households at the earliest practicable time.<sup>2</sup>

### **I. TracFone's Universal Service Offering**

TracFone is incorporated under the laws of the State of Delaware and is headquartered at Miami, Florida. Its corporate offices are located at 9700 N.W. 112<sup>th</sup> Avenue, Miami, FL 33178. TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States, including the State of Florida. TracFone provides service through a "virtual network" consisting of services obtained from numerous licensed operators of wireless networks. TracFone has provided CMRS service throughout the State of Florida continuously for over ten years. In Florida, TracFone obtains service from the following underlying carriers: Alltel; AT&T Mobility; T-Mobile, US Cellular; and Verizon Wireless. TracFone's arrangements with these providers enable it to offer services wherever any of those providers offer service in the State of Florida. Indeed, TracFone service is available wherever wireless service is available in Florida. With more than eight million customers nationwide, TracFone is the leading provider of prepaid wireless service in the United States.

TracFone, through its arrangements with the underlying carriers identified in the preceding paragraph, has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the FCC's Rules (47 C.F.R. § 54.101(a)) throughout Florida. Upon designation as an ETC, TracFone will make available to

---

<sup>2</sup> TracFone filed a Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida with the Federal Communications Commission ("FCC") on July 21, 2004. After more than three years, the petition remains pending. TracFone filed its petition for ETC designation with the FCC, rather than this Commission, because, at that time, the Commission did not regulate CMRS providers for the purpose of making ETC determinations. However, as explained in this Petition, a subsequently-enacted Florida statute, Fla. Stat. § 364.011, authorizes the Commission to act under Section 214(e)(2) of the Communications Act and grant TracFone's request for designation as an ETC in Florida. Therefore, TracFone determined that the Commission is the appropriate forum for its petition for designation as an ETC.

consumers Lifeline offerings which will provide consumers with all of the functionalities and features currently provided by TracFone to existing customers. TracFone will provide Lifeline service to qualifying customers requesting this service throughout Florida pursuant to the universal service program.

TracFone's Lifeline offerings will differ from other ETCs' Lifeline programs in several very important respects. For one thing, TracFone will offer low income consumers the convenience and portability of wireless services. TracFone believes that many Lifeline-eligible consumers not currently enrolled in Lifeline will enroll when afforded the opportunity to obtain subsidized wireless service. In addition, unlike any other ETC's Lifeline program, TracFone's Lifeline service will provide quantities of wireless usage at no charge to the consumer. Stated simply, TracFone's Lifeline service will be free! Typically, Lifeline programs provide discounts below standard rates. However, participating customers still must pay the discounted rates and face service disconnection if they fail to pay the amounts owed. For example, if a provider's standard monthly charge is \$30.00 and the Lifeline customer receives a \$13.50 discount funded by the USF, the customer still receives an invoice for \$16.50, plus additional charges incurred during the billing period. With TracFone's Lifeline plans, customers will be able to initiate and receive calls from their wireless phones at no charge. Those plans are described at Section II.3 of this Application.

Indeed, even without classification as an ETC, TracFone currently operates in accordance with the spirit of universal service. Because TracFone utilizes the networks of many licensed CMRS providers, TracFone service is available virtually nationwide (including throughout the State of Florida). Moreover, TracFone service is available at nationally-uniform rates. TracFone service is priced the same at all locations in Florida, and throughout the United States. This is so

despite the fact that TracFone's agreements with smaller, independent CMRS providers who serve rural areas require TracFone to incur substantially higher costs to serve those areas. In fact, in some markets, TracFone's cost per minute of service in rural areas is higher than the nationally uniform rates it charges its customers in those areas.

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

Section 254(e) of the Communications Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support." Section 214(e)(2) of the Communications Act authorizes state commissions, such as the Commission, to designate ETC status for federal universal service purposes and authorizes the Commission to designate wireless ETCs.<sup>3</sup> TracFone is permitted to seek designation as an ETC.

As demonstrated below, and as set forth in the Declaration of F.J. Pollak, Exhibit 1, TracFone meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of the Communications Act. In addition, TracFone complies with the standards established by the FCC for determining whether applicants for ETC status to serve areas served by rural local exchange carriers would serve the public interest.<sup>4</sup> TracFone recognizes that Section 214(e)(1)(A) of the Communications Act states that ETCs shall offer services, at least in part, over their own facilities and that Section 54.201(i) of the FCC's Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another

---

<sup>3</sup> See Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) ("USF Order").

<sup>4</sup> See Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 6422 (2004); Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 1563 (2004).

carrier's services. However, as described at Section II.B of this Application, on June 8, 2004, TracFone filed with the FCC a petition requesting that the FCC exercise its forbearance authority under Section 10 of the Communications Act (47 U.S.C. § 160) with respect to the facilities-based service requirement.<sup>5</sup> The FCC granted the petition for forbearance in an Order dated September 8, 2005.<sup>6</sup> The Forbearance Order is no longer subject to appeal and is a final order. Therefore, TracFone is eligible to be designated as an ETC.

**A. The Florida Public Service Commission Has Jurisdiction to Designate Wireless ETCs.**

On September 23, 2003, the Commission issued Order No. PS03-1063-DS-TP. The Order found that the Commission did not have jurisdiction over CMRS providers, and therefore, lacked jurisdiction to designate CMRS providers as eligible telecommunications providers under 47 U.S.C § 214(e). However, in response to a petition for designation as an ETC filed by Alltel Communications, Inc. ("Alltel"), the Commission issued an Order dated April 3, 2007 finding that Section 364.011 of the Florida Statutes granted the Commission authority over CMRS providers for those matters specifically authorized by federal law.<sup>7</sup> Section 364.011 of the Florida Statutes exempts wireless telecommunications, including CMRS providers, from the Commission's jurisdiction, but sets forth an exception, which allows the Commission oversight to the extent "specifically authorized by federal law." Federal law, specifically Section 214(e)(2)

---

<sup>5</sup> See TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004, as amended by TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed August 16, 2005 and TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004 ("Petition for Forbearance").

<sup>6</sup> Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order"). A copy of the TracFone Forbearance Order is attached hereto as Exhibit 2.

<sup>7</sup> See Notice of Proposed Agency Action Order Finding Authority to Consider Applications by CMRS Providers for ETC Designation, Order No. PSC-07-0288-PAA-TP, Docket Nos. 060581-TP and 060582-TP, April 3, 2007 ("CMRS ETC Order").

of the Communications Act, authorizes state commissions, including the Commission, to designate CMRS providers as ETCs.

Moreover, Section 10 of the Communications Act, 47 U.S.C. § 160, authorizes the FCC to forbear from applying or enforcing provisions of the Communications Act and the FCC's rules with respect to specific telecommunications carriers, classes of carriers, or telecommunications services. That authority includes forbearance from application or enforcement of the requirement of Section 214(e)(1)(A) of the Communications Act and Section 54.201(i) of the FCC's Rules that an ETC must provide service either using its own facilities or using a combination of its own facilities and resale of other providers' facilities. As stated above, the FCC has exercised such forbearance authority with respect to TracFone. The FCC's TracFone Forbearance Order, being a final FCC order is itself part of "federal law" within the ambit of the "authorized by federal law" provision of Section 364.011. Accordingly, Section 364.011 empowers the Commission to designate TracFone as an ETC, notwithstanding the fact that it provides service by the resale of other providers' networks. Therefore, in accordance with the CMRS ETC Order, the Commission has the authority under Section 364.011 to act under Section 214(e)(2) of the Communications Act and to grant TracFone's request for designation as an ETC throughout the State of Florida.

**B. TracFone Will Provide Service Through Resale**

In the TracFone Forbearance Order, the FCC granted TracFone's Petition for Forbearance subject to certain conditions. The FCC explained that requiring "TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout

the nation, regardless of where they live.”<sup>8</sup> The FCC also stated that grant of TracFone’s petition for forbearance “serves the public interest in that it should expand participation of qualifying consumers” in the under-utilized low-income [Lifeline] program.<sup>9</sup>

The FCC’s grant of forbearance is subject to the following conditions: (a) TracFone providing Lifeline customers with basic 911 and enhanced 911 (“E911”) access regardless of activation status and availability of prepaid minutes; (b) TracFone providing its new Lifeline customers with E911-compliant handsets and replacing any existing customers’ non-compliant handsets at no additional charge; (c) TracFone complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) TracFone obtaining a certification from each Public Service Answering Point (“PSAP”) where TracFone provides service confirming that TracFone complies with condition (a); (e) TracFone requiring its customers to self-certify at the time of service activation and annually thereafter that they are the heads of the households and receive Lifeline-supported service only from TracFone; and (f) TracFone establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address. The FCC required TracFone to submit a plan describing the measures it would take to implement each of these conditions.<sup>10</sup> In accordance with the TracFone Forbearance Order, TracFone filed its compliance plan with the FCC on October 11, 2005. In that compliance plan, TracFone described how it would comply with each of the FCC’s stated conditions. A copy of its compliance plan is attached to this Application as Exhibit 3. TracFone commits to providing Lifeline service in Florida in accordance with the compliance plan.

---

<sup>8</sup> TracFone Forbearance Order, ¶ 23.

<sup>9</sup> Id. ¶ 24.

<sup>10</sup> Id. ¶ 6.

### **C. TracFone Offers All Required Services and Functionalities**

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

#### **1. Voice Grade Access to the Public Switched Network.**

Voice grade access to the public switched telecommunications network ("PSTN") means the ability to make and receive traditional voice phone calls between the approximately 500 Hertz and 4,000 Hertz for a bandwidth of approximately 3500 Hertz.<sup>11</sup> The voice grade access provided by TracFone enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

#### **2. Local Usage.**

As part of the voice grade access to the PSTN, an ETC must provide local calling. TracFone provides subscribers the ability to send and receive local phone calls wherever it provides service. Moreover, local usage is included in all of TracFone's calling plans, including those plans which will comprise its Lifeline offerings. FCC Rule 54.202(a)(4) requires an ETC applicant to "demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation." The FCC has explained that an ETC applicant's local usage plans should be reviewed on a case-by-case basis to ensure that each ETC provides a local usage component in its universal service offering that is comparable to the plan offered by the incumbent LEC in the area.<sup>12</sup> The FCC has not adopted any minimum

---

<sup>11</sup> See USF Order, at 8810-11.

<sup>12</sup> Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005).



local usage requirements.<sup>13</sup> As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the FCC. More importantly, as will be described below, TracFone's Lifeline offerings will go beyond those of other ETCs in a very important respect: TracFone's Lifeline customers will receive as part of Lifeline service specified amounts of free wireless service. That is, Lifeline customers will be able to use TracFone's service to initiate and receive specified amounts of wireless calling -- local and long distance -- with no charge to the customers.

**3. Dual Tone Multi-Frequency ("DTMF") Signaling or Its Functional Equivalent.**

DTMF signaling allows carriers to provide expeditious call set-up and call detail information and enables modem usage.<sup>14</sup> The FCC permits carriers to provide signaling that is functionally equivalent to DTMF to satisfy the DTMF requirement. All telephone handsets provided by TracFone are DTMF-capable.

**4. Single-party service or Its Functional Equivalent.**

Single-party service means that only one party will be served by a subscriber line or access loop in contrast to a multi-party line.<sup>15</sup> TracFone provides customers with single-party access for the duration of every phone call. TracFone does not provide "multi-party" or "party line" services.

**5. Access to 911 and E911 Emergency Service.**

The FCC has declared that access to emergency services is essential.<sup>16</sup> TracFone provides universal access to the 911 system for its customers. TracFone has implemented and

---

<sup>13</sup> Id. ¶ 32.

<sup>14</sup> USF Order, 12 FCC Rcd at 8814.

<sup>15</sup> Id., at 8810.

<sup>16</sup> Id. at 8815.

will continue to implement enhanced 911 (“E911”) services consistent with the FCC’s Rules and orders when such services are made available by the carriers from whom TracFone purchases services. In particular, TracFone will fully comply with the FCC’s E911 requirements applicable to wireless resellers.<sup>17</sup> Pursuant to the FCC’s E911 Order, providers that use other carriers’ facilities to provide wireless voice service to customers have an obligation to comply with the FCC’s E911 rules “to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP [public service answering point].”<sup>18</sup> TracFone will make available access to E-911 service in accordance with applicable FCC requirements.

**6. Access to Operator Services.**

TracFone offers all of its customers access to operator services, in accordance with the FCC’s requirements.

**7. Access to Interexchange Service (“IXC”).**

TracFone customers can use TracFone’s services to complete toll calls. In fact, TracFone does not impose separate charges for interexchange calls. Long distance calling is included in TracFone’s service with no additional charge.

**8. Access to Directory Assistance.**

All TracFone customers receive access to directory assistance service through the TracFone virtual network. Specifically, all TracFone customers, including those customers located in Florida, have access to directory assistance services provided by TracFone’s vendors.

---

<sup>17</sup> See Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340 (2003) (“E911 Order”).

<sup>18</sup> Id. ¶ 91.

**9. Toll Limitation for Qualified Low-Income Customers.**

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

**D. TracFone Will Advertise the Availability of Supported Services**

TracFone will advertise the availability of its Lifeline services and the associated charges using media of general distribution, in accordance with the requirements of Section 54.201(d)(2) of the FCC's Rules (47 C.F.R. § 54.201(d)(2)). TracFone plans to utilize such marketing and outreach efforts as necessary and appropriate to ensure that as many eligible consumers as possible avail themselves of TracFone's prepaid wireless Lifeline offering. TracFone understands that it will be competing with other ETCs in Florida, including the incumbent local exchange carriers, to be chosen by consumers to be their Lifeline service provider. TracFone will utilize traditional means for promoting the availability of its Lifeline program. These means will include print and radio advertising in media outlets most likely to reach consumers eligible

for Lifeline. These would include national publications as well as local and community newspapers, and commercial radio stations, especially those stations whose programming is targeted to significant lower income communities including, for example, Spanish language radio stations.

In addition, TracFone will utilize its network of retail outlets to help promote the availability of its Lifeline plans, especially those retail outlets which are frequented by lower income consumers. Retail vendors such as Rent-a-Center, Dollar General Stores, Walgreen's, CVS, and even Wal-Mart are important shopping venues for many Lifeline-eligible consumers. Retailers will be provided with signage to be displayed where TracFone products are sold, and with printed materials describing TracFone's Lifeline program and will be encouraged to assist consumers in applying for Lifeline service if qualified. Given the relationship which exists between TracFone, lower income consumers, and retail outlets which are often visited by lower income consumers, TracFone expects to be able to inform consumers of the availability of Lifeline service in a manner which will result in significantly higher participation in the Lifeline program by qualified consumers than has been the case in the past.

Further, TracFone will work with appropriate Florida state agencies, including the Commission and the Department of Families and Children (DFC), to provide for automatic enrollment in accordance with the automatic enrollment plan being implemented by the Commission and DFC. TracFone has always maintained a customer service center with multilingual capabilities. TracFone will continue to make available Spanish-speaking persons specially trained in the Lifeline eligibility and certification requirements to assist Spanish-speaking Lifeline eligible consumers in enrolling in the Lifeline program.

The Commission should be aware that TracFone has had previous experience marketing Lifeline service and was profoundly successful. In October 2005, following the devastation caused by Hurricane Katrina, the FCC established a special Lifeline program which enabled wireless providers to be designated as ETCs to offer a one-time Lifeline service to persons in the states of Louisiana, Mississippi, and Alabama who had been displaced by the hurricane.<sup>19</sup> TracFone was one of the first providers to be designated as an ETC under the FCC's Hurricane Katrina program. Within a period of several months, TracFone was able to enroll nearly 30,000 hurricane victims in its Lifeline program using marketing efforts similar to those proposed herein as well as other methods intended to address the special challenges of reaching out to potential Lifeline customers who had lost their homes, and were residing in temporary locations -- often far away from their home communities.

TracFone believes that its advertising and outreach efforts detailed above will result in increased participation in the Lifeline program. The importance of TracFone's proposed Lifeline service to Floridians was communicated to the FCC in a November 2004 letter from former Governor Jeb Bush to then-FCC Chairman, Michael K. Powell. A copy of that letter is attached to this Application as Exhibit 4. As noted by Governor Bush, "[i]n Florida, the federal Lifeline program is vastly underutilized." Indeed, according to the Commission's 2006 Lifeline Report, as of September 2006 only 12.7% of Florida's households eligible for the Lifeline program actually participate in Lifeline.<sup>20</sup> The Governor further stated that if TracFone was granted ETC status, "TracFone could significantly increase the level of Florida consumer's participation in

---

<sup>19</sup> Federal-State Joint Board on Universal Service, 20 FCC Rcd 16883 (2005).

<sup>20</sup> See A Report to the Governor, President of the Senate, Speaker of the House of Representatives - Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation, December 2006, at p. 11, Table 2.

Lifeline” and “TracFone’s Lifeline service would bring to Florida’s consumers the convenience, flexibility and security of wireless service.”<sup>21</sup>

In addition, during a Commission meeting concerning Alltel’s ETC petition, Members of the Commission stated the importance of increasing Lifeline participation. Commissioner Edgar expressed her interest in having Lifeline registration increase.<sup>22</sup> Moreover, Commissioner Carter noted that the Lifeline participation rate in Florida is “abysmal” and that the Commission should do anything that will increase participation.<sup>23</sup> The Commission’s grant of TracFone’s ETC Application will promote the important goal of increasing Lifeline participation.

**E. TracFone Will Comply with the Lifeline Certification and Verification Requirements in 47 C.F.R. § 54.410**

Section 54.410 of the FCC’s Rules requires ETCs to comply with certification of eligibility and verification of continued eligibility requirements for Lifeline participation. TracFone will certify and verify consumer eligibility in accordance with the FCC’s requirements and with applicable Commission rules governing certification and verification of Lifeline eligibility. TracFone provided a copy of its certification and verification compliance policy to the FCC on July 13, 2005.<sup>24</sup> TracFone will implement the certification and verification procedures described in that statement of compliance policy upon designation as an ETC in Florida.

---

<sup>21</sup> Letter from Governor Bush to Honorable Michael K. Powell, FCC, dated November 9, 2004, filed in Docket No. 96-45, November 16, 2004.

<sup>22</sup> See Petition of Alltel Communications, Inc. for designation as eligible telecommunications carrier (ETC) in certain rural telephone company study areas located entirely in Alltel’s licensed area, Agenda Conference, June 19, 2007, Tr. at 31.

<sup>23</sup> See id. at 39; see also id. at 40-42.

<sup>24</sup> TracFone’s Plans for Compliance with the Lifeline Certification and Verification Requirements Codified at Section 54.410 of the Commission’s Rules, CC Docket No. 96-45, filed July 13, 2005 (attached as Exhibit 5).

**F. TracFone Requests Designation Throughout Its Licensed Service Area in Florida**

TracFone is not a rural telephone company as defined in Section 153(37) of the Communications Act (47 U.S.C. § 153(37)). Accordingly, TracFone is required to describe the geographic area(s) within which it requests designation as an ETC. TracFone requests designation as an ETC for its entire service area in Florida. TracFone, through its resale of wireless services provided by its underlying vendors in Florida, provides service in every zip code in the State of Florida. Accordingly, TracFone seeks ETC status throughout the entire State of Florida. However, TracFone reiterates the fact that it is applying for ETC designation solely to utilize USF funding to provide Lifeline service to qualified low income consumers. It does not seek and will not accept high cost support. Therefore, its designation as an ETC will cause no growth in the high cost portions of the USF and will not erode high cost support from any rural telephone company.

**1. Non-Rural Areas**

For non-rural service areas, there are no restrictions on how a state commission defines the "service area" for purposes of designating a competitive ETC. TracFone's authorized service area covers the following non-rural telephone company service areas:

BellSouth Telecommunications, Inc. d/b/a AT&T Florida  
Verizon Florida, Inc.

The Commission may designate TracFone as an ETC in areas that TracFone serves without redefining the service areas of the non-rural telephone companies set forth above.

**2. Rural Areas**

TracFone's authorized service area covers the following rural telephone company service areas in their entirety:

Embarq Florida, Inc.  
Frontier Communications of the South, Inc.  
GTC, Inc. d/b/a GT Com  
ITS Telecommunications Systems, Inc.  
Northeast Florida Telephone Company d/b/a NEFCOM  
Quincy Telephone Company d/b/a TDS Telecom/Quincy Telephone  
Smart City Telecommunications, LLC d/b/a Smart City Telecom  
Windstream Florida, Inc.

The Commission may designate TracFone as an ETC in these rural telephone company service areas upon a finding that such designation would serve the public interest.<sup>25</sup>

### **III. Designation of TracFone as an ETC for the Designated Areas in the State of Florida Would Serve the Public Interest**

As noted above, TracFone seeks certification as an ETC in areas served by rural telephone companies, as well as in areas served by non-rural telephone companies. Consequently, the Communications Act requires that the Commission determine that TracFone's designation as an ETC would serve the public interest.<sup>26</sup>

The FCC has determined that “[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”<sup>27</sup> This is particularly applicable in the rural areas served by TracFone within the State of Florida -- areas that in most cases are not presently served by competitive wireline carriers that could provide an alternative to the incumbent LECs. Designation of TracFone as an ETC will provide a valuable alternative to the existing telecommunications services available in these areas. Those public interest benefits include larger local calling areas, the convenience and security afforded by mobile telephone service, the opportunity for customers to control their costs by purchasing in advance only the volumes of

---

<sup>25</sup> See 47 C.F.R. § 54.207(c).

<sup>26</sup> 47 U.S.C. § 214(e)(2).

<sup>27</sup> See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, *Memorandum Opinion and Order*, 16 FCC Rcd 48, 55 (2000).



service which they need and supplementing those quantities on an “as needed” basis after exhausting their monthly supply of free service, and, availability of E-911 service in accordance with the FCC’s E-911 requirements. In addition, TracFone’s inclusion of toll calling within its calling plans will enable consumers to avoid the risk of becoming burdened with large and unanticipated charges for toll calling.

Designation of TracFone as an ETC will also provide an incentive to the incumbent LECs in the designated rural areas to improve their existing networks to remain competitive, resulting in improved services to consumers. Designation of TracFone as an ETC will also benefit consumers because support to services provided by TracFone will help assure that quality services are available at “just, reasonable, and affordable rates” as envisioned in the Communications Act.<sup>28</sup>

In its Highland Cellular decision, the FCC identified several factors to be considered in determining whether designation of an additional ETC in a rural area would serve the public interest. These factors require the Commission to weigh whether the benefits of an additional ETC in specific rural areas would outweigh potential harms. The factors to be considered include: 1) the benefits of increased competitive choice; 2) the impact of the designation on the universal service fund; 3) the unique advantages of the applicant company’s service offerings; 4) commitments made regarding the quality of services to be provided; and 5) the ETC applicant’s ability to satisfy its obligation to serve the designated areas within a reasonable time frame.<sup>29</sup> As described in the following paragraphs, TracFone meets each of those criteria.<sup>30</sup>

---

<sup>28</sup> See 47 U.S.C. § 254(b)(1).

<sup>29</sup> Highland Cellular, ¶ 22.

<sup>30</sup> In light of the fact that TracFone seeks ETC designation only for the purpose of offering Lifeline service and does not seek high cost support, it is questionable whether the factors listed

## 1. The Benefits of Competitive Choice

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the FCC for more than three decades<sup>31</sup> and by the Commission since the early 1980s. However, the benefits of competitive choice are especially valuable in situations in which wireless providers like TracFone seek to provide service to rural communities and elsewhere. As the FCC recognized in Highland Cellular, some households in rural communities do not have access to the public switched network through the incumbent local exchange carrier. Moreover, the availability of a wireless competitive alternative benefits those rural consumers who often must drive significant distances to work, schools, stores, and other community locations.<sup>32</sup> TracFone's prepaid wireless service alternative will provide consumers with convenient and affordable service, both from their residences and when they are away from their homes.

TracFone believes that many consumers, including qualified Lifeline customers, view the portability and convenience of wireless service as a modern necessity, not a luxury. Parents need to be able to reach their children wherever they may be (and vice versa); persons seeking work need to be reachable by potential employers; persons need to call for emergency assistance while away from home. With the statewide Lifeline participation rate below thirteen percent of eligible households, TracFone expects that many such consumers will elect to participate in Lifeline if a wireless option is available.

## 2. Impact on the Universal Service Fund

Whatever impact classification of TracFone as an ETC will have on the universal

---

by the FCC in Highland Cellular are relevant to TracFone's application. Notwithstanding their questionable utility in evaluating this application, TracFone will address those factors.

<sup>31</sup> See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

<sup>32</sup> Highland Cellular, ¶ 23.

service fund will be negligible. TracFone seeks ETC designation solely to enable it to offer Lifeline service to eligible low income consumers. TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. As noted in the TracFone Forbearance Order, “the potential growth of the fund associated with high-cost support distributed to competitive ETCs” is not relevant to carriers seeking support associated with the Lifeline low-income program.<sup>33</sup> In 2005, low-income support accounted for only 12.4 percent of the distribution of the total universal service fund, while high-cost support accounted for 58.7 percent.<sup>34</sup> “Any increase in the size of the fund [associated with granting TracFone’s ETC petition] would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”<sup>35</sup>

In this regard, it is important to recognize the differences between Lifeline funding and high cost funding. With Lifeline, ETCs only receive USF support for those Lifeline customers they obtain. If TracFone acquires Lifeline customers currently served by other ETCs, TracFone will gain the Lifeline support for those customers, but the ETCs losing the customers will lose the support. TracFone will only increase the amount of USF Lifeline funding in situations where it obtains new Lifeline customers, *i.e.*, customers not currently enrolled in other ETCs’ Lifeline programs. This is consistent with the specific intent of those funds. In contrast, with high cost support, when new ETCs enter the market and capture customers from the existing ETCs, both the incumbent ETC and the new ETC receive high cost support -- based on the incumbent LECs’ costs, thereby increasing the size of the USF.

---

<sup>33</sup> TracFone Forbearance Order, ¶ 17.

<sup>34</sup> Wireline Competition Bureau, Federal Communications Commission, Trends in Telephone Service, Table 19.1 and Chart 19.1 (2007).

<sup>35</sup> TracFone Forbearance Order, ¶ 17.

### 3. Unique Advantages of TracFone's Service Offerings

As described elsewhere in this Application, TracFone's entire business model is predicated on providing easy to use, pay-as-you-go, affordable wireless telecommunications service to consumers to whom wireless service is otherwise unavailable or impracticable. TracFone offers consumers an opportunity to acquire wireless service using state-of-the-art handsets and such features as caller ID, voice mail, call forwarding, and long distance calling without toll charges. Because TracFone's service requires no term contracts, no minimum service periods or volume commitments, no credit checks, the service is available to everyone – irrespective of age; irrespective of residency; irrespective of creditworthiness. Moreover, TracFone's prepaid service is unique in that usage information and remaining balance information is stored in the handsets and is thus available to consumers on a "real-time" basis. As noted by Consumer Action, an organization that advocates for consumer rights, consumers "are concerned with access, quality and price", not whether service is offered by a reseller or facilities-based provider. TracFone's prepaid service "offers Lifeline-qualified customers all three."<sup>36</sup> None of the incumbent providers nor those other non-incumbent ETCs serving the areas covered by TracFone in Florida offer service to consumers under comparable conditions.

TracFone will offer two Lifeline plans to its customers. Under both plans, TracFone's customers receive free monthly service, including 50 or 100 minutes per month of airtime, depending on the plan. A description of the two available Lifeline plans is as follows:

a) TracFone Pay-As-You-Go Wireless

New handsets may be purchased from retail vendors for as little as \$15.00 depending on vendor's retail price. Refurbished handsets will be provided to eligible Lifeline

---

<sup>36</sup> See Letter from Consumer Action and National Grange of the Order of Patrons of Husbandry to FCC, August 14, 2007 (attached as Exhibit 6).

customers without charge, depending upon availability. TracFone offers a Value Plan for \$9.99 per month. That plan entitles customers to 50 minutes per month of airtime. Unused minutes purchased under this plan do not expire at the end of the month, and are "carried over" to the following month. Lifeline customers who enroll in this plan would not be required to pay the \$9.99 monthly charge. That is, Lifeline customers will receive 50 minutes of airtime per month free! Lifeline customers who desire additional minutes of use above the 50 minute monthly allotment would be allowed to purchase such minutes at the standard rate of \$0.20 per minute. The TracFone plan includes calling to more than 60 countries with no additional charges.

b) NET10 Pay-As-You-Go Wireless

Lifeline customers who enroll in this plan will receive 100 minutes of service per month at no charge. Since the standard rate for NET10 service is \$0.10 per minute, that will be \$10.00 of service per month free to the Lifeline customer. Lifeline customers will be entitled to purchase additional minutes at the standard NET10 rate of \$0.10 per minute. Handsets will be available to NET10 customers for prices starting at \$30.00, depending on the retail vendor from whom the handset is purchased.

Lifeline customers with lower volume calling requirements are likely to select the TracFone plan with its generous handset subsidy; Lifeline customers with higher volume calling requirements may prefer the NET10 plan with its lower per minute rate. Both plans will offer text messaging. The TracFone text messaging rate is \$0.06 per message; the NET10 text message rate is \$0.05 per message. Under both plans, the per minute rate will be the same for local, long distance and roaming calling. The NET10 plan contains an additional charge of \$0.05 per minute for international calling.

**4. Service Quality Commitments Made**

As a reseller of other carriers' wireless services, TracFone's service is of the same

quality and reliability as that of its underlying vendors. TracFone cannot assure the Commission that it will never experience service disruptions. Occasional dropped calls and inconsistent coverage depending on atmospheric conditions are a fact of life in the wireless industry. TracFone believes that its service is as reliable as that of any other wireless provider serving the Florida market. To demonstrate its commitment to high service quality, TracFone will comply with the CTIA - The Wireless Association® Consumer Code for Wireless Service. In addition, it is willing to report to the Commission information regarding the number of consumer complaints per 1,000 handsets on an annual basis.

**5. TracFone Will be Able to Serve the Designated Areas Within a Reasonable Time**

TracFone provides service in Florida by reselling service which it obtains from underlying facilities-based providers. Each of those providers' networks are operational and are largely built out. Thus, TracFone will be able to provide service to all locations served by any of those underlying carriers immediately upon grant of this application. Indeed, it already serves those areas.

**6. Designation of TracFone as an ETC Will Benefit the Public Interest of Consumers Throughout Florida**

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

means of many consumers.

Moreover, grant of TracFone's Application is consistent with the Commission's goal of increasing the number of ETCs in Florida. In a Commission Memorandum concerning a proposed agency action to grant Alltel's petition for designation as an ETC, Commission staff noted:

increasing the number of carriers eligible for federal USF money may increase the amount of federal USF dollars brought into Florida. As Floridians are the largest net contributors to the federal universal service programs, it only seems equitable that a greater share of this support makes its way to Florida.<sup>37</sup>

Furthermore, during a Commission meeting concerning Alltel's ETC petition, Commissioner Argenziano expressed her concern that "a lot of money is coming out of the state of Florida which hurts the consumers if it is not coming back."<sup>38</sup> Commissioner Argenziano further stated that the amount of money going to the universal service fund from Floridians as compared to the of money received for the benefit of Floridians "seems very lopsided."<sup>39</sup> By granting ETC status to TracFone, the Commission will enable TracFone to increase the number of Florida residents receiving Lifeline support, thereby increasing the amount of USF money flowing into Florida.

Finally, designation of TracFone as an ETC will serve the public interest by further promoting the extensive role TracFone plays in the provision of communications services to lower income and lower volume users, transient users, as well as other consumers who either choose not to enter into long-term service commitments or who are unable to meet the credit requirements necessary to obtain service from other wireline or wireless carriers. TracFone's "pay-as-you-go" wireless plans enable consumers to enjoy the convenience and security of

---

<sup>37</sup> Petition of Alltel Communications, Inc. for designation as eligible telecommunications carrier (ETC) in certain rural telephone company study areas located entirely in Alltel's licensed area, Proposed Agency Action, Docket No. 060582-TP, June 7, 2007, at 14.

<sup>38</sup> See Hearing Tr. at 25-26.

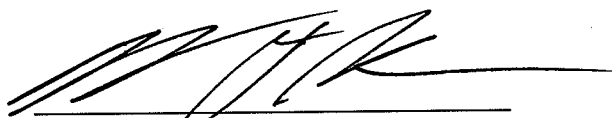
<sup>39</sup> Id. at 27.

wireless telecommunication without being subject to extensive credit reviews and long-term service commitments which historically have limited the availability of wireless service to many Americans, including many Floridians. For all the reasons described herein, designation of TracFone as an ETC will serve the public interest.

### CONCLUSION

Based on the foregoing, TracFone contends that the requirements for eligibility for designation as an ETC have been met. Accordingly, TracFone requests that the Commission promptly grant its Application.

Respectfully submitted,



Mitchell F. Brecher  
Debra McGuire Mercer

GREENBERG TRAUERIG, LLP  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006  
(202) 331-3100

*Counsel for TracFone Wireless, Inc.*

September 6, 2007



# Exhibit 1

**AFFIDAVIT OF TRACFONE WIRELESS, INC.**

F.J. Pollak, after first being sworn on oath, states as follows:

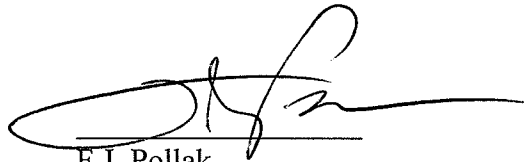
1. I am President and Chief Executive Officer of TracFone Wireless, Inc. ("TracFone"). My business address is 9700 NW 112 Ave., Miami, Florida 33178.

2. In my capacity as President and Chief Executive Officer of TracFone, I am an authorized representative of the Company. I have read the Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Florida for the Limited Purpose of Offering Lifeline Service to Qualified Households. I confirm that the information contained therein is true and correct to the best of my knowledge.

I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Executed on September 5<sup>th</sup>, 2007

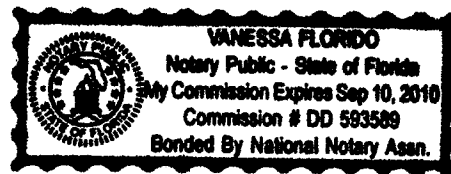
F.J. Pollak



F.J. Pollak  
President and Chief Executive Officer

Subscribed and sworn to before me  
this 5 day of September 2007.

  
Notary Public



# Exhibit 2

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

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

**ORDER**

**Adopted: September 6, 2005**

**Released: September 8, 2005**

By the Commission: Commissioner Abernathy issuing a statement.

**I. INTRODUCTION**

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

**II. BACKGROUND**

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

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

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

<sup>3</sup> 47 U.S.C. § 214(e).

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

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

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

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

---

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

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

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

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

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

<sup>10</sup> 47 U.S.C. § 254(e).

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

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

---

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

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

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

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

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

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

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

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

### III. DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

<sup>26</sup> 47 U.S.C. § 160(a).

<sup>27</sup> 47 U.S.C. § 160(b).

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



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

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

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

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

---

<sup>29</sup> 47 U.S.C. § 254(b)(3).

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

---

<sup>47</sup> See 47 C.F.R. § 54.712.

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

---

<sup>59</sup> 47 C.F.R. § 54.401.

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

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

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

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

<sup>64</sup> 47 U.S.C. § 254(e).

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

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

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

#### IV. ORDERING CLAUSE

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

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

**STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

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

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

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



# Exhibit 3

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

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

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

Mitchell F. Brecher  
Debra McGuire Mercer

GREENBERG TRAURIG, LLP  
800 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20006  
(202) 331-3100  
*Its Counsel*

October 11, 2005

**TABLE OF CONTENTS**

SUMMARY ..... ii

BACKGROUND ..... 1

COMPLIANCE PLAN ..... 3

    I.    Policy .....3

    II.   Unrestricted Access to Basic and E911 Services and Certification of Such  
          Access .....4

        A.    Underlying carrier uses a network-based solution to provide E911  
              service .....7

        B.    Underlying carrier uses a handset-based solution to provide E911  
              service .....8

    III.  E911-Compliant Handsets .....10

    IV.  TracFone Seeks Permission to Offer Lifeline Service Wherever 911  
          Service is Available, Irrespective of Deployment of E911 by PSAPs .....11

    V.    Certification and Verification of Lifeline Customers' Eligibility.....14

        A.    Policy .....14

        B.    Certification Procedures.....14

        C.    Verification Procedures .....17

CONCLUSION..... 18

## SUMMARY

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

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

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

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

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

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

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

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

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

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

**BACKGROUND**

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

---

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

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

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

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

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

---

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

<sup>4</sup> Forbearance Order, ¶ 23.

<sup>5</sup> Id., ¶ 24.

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

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

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

### **COMPLIANCE PLAN**

#### **I. Policy**

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



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

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

---

<sup>7</sup> Forbearance Order, ¶ 16.

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

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

<sup>10</sup> Id., ¶ 16.

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

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

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

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

---

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

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

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

---

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

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

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

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

<sup>17</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, Order to Stay, 17 FCC Rcd 14841, ¶ 29 (2002).

As the Commission has recognized, TracFone is only able to provide its customers with access to basic and E911 service if its underlying carriers have deployed the facilities necessary provide such service.<sup>18</sup> The carriers' quarterly reports, supported by affidavits, disclose whether E911 service has been deployed to each PSAP that has requested such service. TracFone will institute the following procedures to ensure that all Lifeline customers have access to basic and E911 service starting immediately upon activation of service and at all times that the customer owns a handset obtained from TracFone, including when the handset has no remaining prepaid minutes or when the customer is no longer considered to be an active customer. TracFone's proposal accounts for the fact that some of its underlying carriers use a network-based solution to provide E911 service while other underlying carriers use a handset-based solution.

**A. Underlying carrier uses a network-based solution to provide E911 service**

TracFone's underlying carriers that use GSM (Global System for Mobile Communications) technology to provide wireless service (e.g., Cingular Wireless LLC and T-Mobile USA, Inc.), tend to utilize network-based solutions to provide E911 service. In markets where TracFone utilizes the services of an underlying carrier which has deployed a network-based solution, it will do the following prior to offering Lifeline service:

1. TracFone will confirm that the underlying carrier has on file with the Commission a current verified quarterly carrier report that includes the data required by the E911 Public Notice;
2. TracFone will review the underlying carrier's most recent quarterly report to ascertain whether the underlying carrier has deployed basic and E911 service to the PSAPs located in that market;

---

<sup>18</sup> Forbearance Order, ¶ 16, n. 3.

3. TracFone will certify to the Commission that all Lifeline customers served in that market are being served over the network(s) of underlying carrier(s) who have on file current verified quarterly reports which indicate that 911 and E911 have been deployed.

**B. Underlying carrier uses a handset-based solution to provide E911 service**

TracFone's underlying carriers that use CDMA Code-Division Multiple Access) technology to provide wireless service (e.g., Alltel Communications, Inc., United States Cellular Corporation, Verizon Wireless), tend to utilize handset-based solutions to provide E911 service. In those markets where TracFone offers service to Lifeline customers using the services of underlying carriers which have deployed handset-based E911 solutions, TracFone will do the following prior to offering Lifeline service:

1. TracFone will confirm that the carrier has on file with the Commission a current verified quarterly carrier report that includes the data required by the E911 Public Notice;
2. TracFone will review the underlying carrier's most recent quarterly report to ascertain whether the underlying carrier has deployed E911 service to the PSAPs located in that market;
3. TracFone will certify to the Commission that all Lifeline customers served in that market are being served over the network(s) of the underlying carrier(s) who have on file current verified reports which indicate that 911 and E911 service have been deployed;
4. TracFone will provide the Commission with a certification from the handset manufacturer (e.g., Nokia, Motorola, etc.) that the handsets used to provide Lifeline service contain GPS chips and are E911-compliant; and

5. TracFone will certify to the Commission that all Lifeline customers in markets served by such underlying carriers will be provided with E911-compliant handsets which have been certified as E911-compliant by the manufacturer. Existing TracFone customers who are eligible for Lifeline service and who choose to enroll in TracFone's Lifeline program will be provided with E911-compliant handsets at no additional charge if their existing handsets are not E911-compliant.

TracFone's plan will provide greater assurance to the Commission and to the public that it will offer basic and E911 access to customers than would certifications from PSAPs. A PSAP can only certify that TracFone's underlying carrier has deployed E911 in response to its request – information that is readily available to the Commission and to the public in the underlying carriers' quarterly reports. A PSAP would have no direct knowledge about whether TracFone is providing service over a particular underlying carrier's network and would have to rely on TracFone's representation that it is utilizing a carrier's service. Under TracFone's certification proposal, the Commission would receive a direct certification from TracFone that it is providing service to Lifeline customers using a specific underlying carrier's network, and/or that it is providing E911-compliant handsets, and that the relevant underlying carrier has filed verified quarterly reports disclosing the status of E911 deployment for each PSAP that has requested E911 service. The Commission has determined that the best way for it and PSAPs to monitor carriers' compliance with E911 requirements is to require Tier I and Tier II carriers to file with the Commission verified quarterly reports. TracFone's plan to provide certifications to the Commission regarding its customers' access to basic and E911 service based upon those Commission-required verified quarterly reports of those underlying carriers and TracFone's certified commitment to provide Lifeline service using those carriers' services, will not

compromise public safety or the deployment of E911 service. Indeed, it will provide the Commission and, more importantly, TracFone's Lifeline customers, with assurances that Basic 911 and E911 service will be available to those customers.

### **III. E911-Compliant Handsets**

The Commission also conditioned its forbearance determination on TracFone providing only E911-compliant handsets to its Lifeline customers and replacing any non-compliant handsets owned by existing customers who obtain Lifeline-supported service from TracFone with an E911-compliant handset, at no charge to the customer.<sup>19</sup> Although Commission rules do not impose an independent obligation on resellers to ensure that all handsets are capable of transmitting E911 information to the appropriate PSAP until December 31, 2006, TracFone will be required to meet the obligation at the time it commences Lifeline service.<sup>20</sup> As explained in Section II of this Compliance Plan, prior to offering Lifeline service in a particular market TracFone will provide the Commission with (1) a certification from the handset manufacturer that the handset used to provide Lifeline service contains a GPS chip and is E911-compliant, and (2) a certification that all Lifeline customers in the market served by such underlying carrier will be provided with E911-compliant handsets which have been certified as E911-compliant by the manufacturer, including existing Lifeline customers. If an existing TracFone customer is Lifeline-eligible and elects to participate in TracFone's Lifeline program, that customer will be provided by TracFone with an E911-compliant handset at no additional charge if its current TracFone handset is not E911 compliant. TracFone knows which handsets have been provided to each of its customers. Any TracFone customer whose existing handset is not E911-compliant

---

<sup>19</sup> Id., ¶ 16.

<sup>20</sup> Id., ¶ 16 & n.41 (citing 47 C.F.R. § 20.18(m)).

will receive a replacement phone which is E-911 compliant at the time of enrollment in the Lifeline program.

For new customers, TracFone will make available only E911-compliant handsets in markets where TracFone offers service through underlying carriers which have deployed handset-based technology. Under this plan, all TracFone Lifeline customers will be provided with handsets which enable them to use E911 service where E911 is available.<sup>21</sup>

#### **IV. TracFone Seeks Permission to Offer Lifeline Service Wherever 911 Service is Available, Irrespective of Deployment of E911 by PSAPs**

TracFone's plan for compliance with the condition that TracFone's Lifeline customers have access both to 911 and to E911 service is described above. However, TracFone believes that its Lifeline program will offer significant public safety benefits even in markets where only basic 911 service is available. For that reason, TracFone respectfully proposes that it be allowed to offer Lifeline service conditioned on making available basic 911 service in markets where PSAPs have not yet deployed E911. In the Forbearance Order, the Commission stated that if "TracFone's underlying facilities-based licensee has not deployed the facilities necessary to deliver E911 information to the appropriate PSAP, TracFone will not be able to offer Lifeline-supported services to customers residing in that area."<sup>22</sup> For the reasons described herein, availability of E911 should not be a condition precedent to the availability of TracFone's Lifeline service.

TracFone's existing customers that use their handsets in areas in which E911 service is not available have access to basic 911 service. All of TracFone's existing and potential

---

<sup>21</sup> Recently, several facilities-based wireless carriers (Sprint Nextel and Alltel) petitioned the Commission for waiver of the requirement that 95 percent of handsets be E911-compliant by December 31, 2005. TracFone takes no position on the merits of those waiver requests. However, it hastens to note that under its Compliance Plan, 100 percent of TracFone handsets will be E911 compliant on the date that it commences offering Lifeline service.

<sup>22</sup> Forbearance Order, ¶ 16 n.43.



customers, including those that qualify for Lifeline support, should have the ability to access basic 911 when E911 service is not available. Access to basic 911 provides substantial benefits to an individual seeking emergency assistance. If an individual dials 911 in a location which has basic 911 service (but not E911 service), the individual will have the call answered by a PSAP and can inform the PSAP attendant of his or her location and can request emergency assistance.

“Congress . . . established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911.”<sup>23</sup> Limiting TracFone’s ability to offer Lifeline supported service only in areas with E911 service unnecessarily will deny consumers in such areas the option of choosing TracFone’s wireless prepaid service.<sup>24</sup> Moreover, TracFone’s proposal to allow it to offer Lifeline service in areas with basic 911 service is consistent with the Commission’s mandate from Congress to “promot[e] safety of life and property through the use of wire and radio communications”<sup>25</sup> and with what TracFone believes to be the purpose underlying the Commission’s condition in the Forbearance Order that TracFone provide its Lifeline customers with basic and E911 service.<sup>26</sup>

The recent devastation caused by Hurricanes Katrina and Rita demonstrate why TracFone believes that its service should be available to qualified Lifeline customers in areas where 911 is available, but where E911 service has not yet been deployed. During the hurricanes, many consumers had no sources of emergency communication other than their wireless phones. For

---

<sup>23</sup> IP-Enabled Services, *First Report and Order and Notice of Proposed Rulemaking*, WC Docket Nos. 04-36, 05-196, FCC 05-116, ¶ 4 (released June 3, 2005) (citing 47 U.S.C. § 251(e)).

<sup>24</sup> As the Commission noted, “the prepaid feature may be an attractive alternative for such customers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts.” Forbearance Order, ¶ 15.

<sup>25</sup> 47 U.S.C. § 151.

<sup>26</sup> See Forbearance Order, ¶ 6.

those many consumers who lost their homes or who had to abandon their homes, the wireline phones in their homes (if they had wireline telephone service) provided no assistance at all. If such consumers had wireless phones, they could have dialed 911, identified where they were and sought help. Whether or not basic 911 provides the same level of public safety as E911 service (clearly it does not), the availability of basic 911 service to persons with wireless phones who are displaced from their homes is a far superior option to having no 911 service at all in emergency situations. Many years ago, the United States Court of Appeals for the District of Columbia Circuit, in an entirely different context, stated that “[t]he best must not become the enemy of the good.”<sup>27</sup> So it is with emergency communications. In requesting Commission approval to offer Lifeline service where E911 or basic 911 service is available, TracFone does not seek to weaken or relax the emergency service condition set forth in the Forbearance Order. Rather, it seeks to make its Lifeline service available to consumers who would benefit from the additional protection afforded by basic 911 in areas where E911 has not yet been deployed.

In the Forbearance Order, the Commission quite properly noted that for those Lifeline customers who select TracFone service, that service will be the customer’s only means of accessing emergency personnel.<sup>28</sup> In areas where PSAPs are not yet E911-capable and where consumers for whatever reason are unable to utilize wireline phones (even if wireline E911 is available), those customers would not have E911 access irrespective of whether they obtain service from a wireline or wireless provider, or whether their wireless provider is facilities-based or, like TracFone, provides service via resale. As recent events have shown, while availability of E911 service is important to public safety, in the absence of E911, the ability to dial 911 and reach a PSAP provides a measure of protection that is itself highly important. For that reason,

---

<sup>27</sup> MCI Telecommunications Corporation v. FCC, 627 F.2d 322, 341 (D.C. Cir. 1980).

<sup>28</sup> Forbearance Order, ¶ 16.

TracFone respectfully urges the Commission to allow it to offer Lifeline service wherever its service can be used to reach a 911 responder.

**V. Certification and Verification of Lifeline Customers' Eligibility.**

In the Forbearance Order, the Commission directed TracFone to require its Lifeline customers to self-certify under penalty of perjury upon service activation and annually thereafter that they are the heads of their households and only receive Lifeline-supported service from TracFone.<sup>29</sup> The Commission also required TracFone to track each Lifeline customer's primary address and prohibit more than one supported TracFone service at each residential address. TracFone proposes the following plan to implement these certification and verification conditions:

**A. Policy**

TracFone will comply with all certification and verification requirements for Lifeline eligibility established by states where it is designated as an ETC. In states where there are no state-imposed requirements (e.g., Florida), TracFone will comply with the certification and verification procedures in effect in that state as reflected on the website of the Universal Service Administrative Company. However, for any states which do not mandate Lifeline support and/or which do not have established rules or procedures in place, TracFone will certify at the outset and will verify annually consumers' Lifeline eligibility in accordance with the Commission's requirements.

**B. Certification Procedures**

TracFone will implement certification procedures that enable consumers to demonstrate their eligibility for Lifeline assistance by contacting TracFone via telephone, facsimile, or the Internet. At the point of sale, consumers will be provided with printed information describing

---

<sup>29</sup> Id., ¶ 18.

TracFone's Lifeline program, including eligibility requirements, and with instructions for enrolling. Consumers will be directed to toll-free telephone numbers and to TracFone's Internet website ([www.tracfone.com](http://www.tracfone.com)) which will contain a link to the Lifeline program. The Lifeline link will describe the program in detail for each state, including state-specific eligibility criteria, and will contain all enrollment forms. In the Forbearance Order, the Commission expressly rejected the proposal that TracFone retail outlets receive Lifeline qualifying information from customers.<sup>30</sup> TracFone understands and accepts the Commission's requirement that TracFone have direct contact with all customers applying for participation in the Lifeline program. As described more fully below, all Lifeline applications will be processed by TracFone. Retailers will have no role in the Lifeline application process other than to provide customers with printed information regarding the program.

Consumers accessing the program through the Internet will be able to access the Lifeline application for their state. Applicants for enrollment in TracFone's Lifeline program will be required to provide proof of residence in that state, including specific residential address information. Consumers may either complete the form "on-line" or print out the form, complete it, and fax it to a toll-free fax number provided by TracFone. Those consumers who prefer to submit the enrollment materials to TracFone via U.S. mail will be allowed to do so. However, that will delay completion of the enrollment process. In states where documentation is required to prove eligibility, either under program-based eligibility or income-based eligibility, applicants will be encouraged to return the completed forms and documentation to TracFone via fax. Processing of consumers' applications, including review of all application forms and relevant

---

<sup>30</sup> Id., ¶ 19.

documentation, will be performed by TracFone personnel under the immediate supervision of managers specially trained in the Lifeline program.

The enrollment form will include a place where the applicant must certify by his/her signature under penalty of perjury that the applicant meets the relevant criteria. For program-based eligibility, the form will list each of the qualifying programs, and the applicant will be required to check off the program(s) in which he/she participates. For income-based eligibility, the applicant will be required to certify under penalty of perjury that his/her household income does not exceed the relevant threshold (e.g., 135% of the Federal Poverty Guidelines for federal default states) and will be required to provide proof of income-based eligibility.<sup>31</sup> In addition, each applicant will be required to certify under penalty of perjury that he or she is the head of the household and that he or she receives Lifeline-supported service only from TracFone. As required by the Forbearance Order, the penalties for perjury will be clearly stated on the certification form.<sup>32</sup>

Finally, the enrollment form will require each applicant to list a primary residential address and a contact telephone number. TracFone's customer information data base contains information about each of its customers, including name, contact telephone number, and address. Prior to offering Lifeline service, TracFone will add an information field in its data base that identifies whether the customer receives Lifeline-supported service. When a consumer submits a Lifeline service enrollment form, the TracFone employee responsible for processing that application will search TracFone's customer records for the address listed on the form. If the

---

<sup>31</sup> For each state with its own Lifeline/Link-Up program where TracFone has been designated an ETC, an appropriate officer of TracFone will certify under penalty of perjury that TracFone is in compliance with each state's income certification procedures and that, to the best of that officer's knowledge, documentation of income for all enrolled Lifeline customers was presented. See Lifeline Order, ¶ 31.

<sup>32</sup> Forbearance Order, ¶ 18.

address is already in TracFone's data base, the TracFone employee will review the name, telephone number and service plan associated with the address to determine whether the applicant is attempting to receive Lifeline-supported service for more than one handset associated with the address. If an address submitted by a Lifeline applicant is associated with a customer that already receives Lifeline service, TracFone will deny the Lifeline application and advise the applicant of the basis for the denial. TracFone shares the Commission's stated concern about abuse of the Lifeline program and that the potential for multiple Lifeline-supported services per consumer is an industry-wide problem.<sup>33</sup> However, TracFone believes that the procedures which it will implement as described herein will prevent TracFone customers from engaging in such abuse of the program. In this regard, it is important to recognize that no applicant for TracFone's Lifeline program will receive Lifeline-supported service until the certification process has been completed and the consumer's eligibility for participation in Lifeline has been confirmed by TracFone using the processes described above.

### **C. Verification Procedures**

TracFone will require every consumer enrolled in its Lifeline program to verify his/her continued eligibility on an annual basis, or more frequently if required by the applicable state. In states where verification more often than annually is not required, TracFone will notify each participating Lifeline consumer on the anniversary of his/her enrollment that the consumer must confirm his or her continued eligibility in accordance with the state's requirements. In addition, TracFone will send mailings to Lifeline participants notifying them of the need to verify their continued eligibility. Such verification will be required in order for the consumer to continue to purchase prepaid airtime from TracFone at the discounted rates only available to those customers who are enrolled in its Lifeline program.

---

<sup>33</sup> Id.

**CONCLUSION**

TracFone's Compliance Plan plans meets the conditions set forth in the Forbearance Order and promotes public safety by ensuring that Lifeline customers have access to 911 service and, if required, access to E911 service. TracFone requests that the Commission approve TracFone's Compliance Plan and grant its pending ETC Petitions so that TracFone may begin providing the benefits of Lifeline service to qualifying low-income consumers.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



Mitchell F. Brecher  
Debra McGuire Mercer

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

October 11, 2005

**CERTIFICATE OF SERVICE**

I, Michelle D. Guynn, a Legal Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that a true and correct copy of the foregoing Tracfone Wireless, Inc.'s Compliance Plan has been served via electronic mail, on the following:

**COPY** of the foregoing served via electronic mail to the **FCC's Electronic Comment File Submission** on this 11th day of October, 2005 to:

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**COPY** of the foregoing served via **Electronic Mail** this 11th day of October, 2005 to:

Ms. Michelle Carey  
Office of Chairman Kevin Martin  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. Thomas Navin, Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. Russell Hanser  
Office of Commissioner Kathleen  
Abernathy  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Ms. Narda Jones, Chief  
Telecommunications Access Policy Division,  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Ms. Jessica Rosenworcel  
Office of Commissioner Michael Copps  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Ms. Carol Pomponio  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. Scott Bergmann  
Office of Commissioner Jonathan Adelstein  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Mr. Marc Seifert  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554



Mr. Jeremy Marcus  
Telecommunications Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Ms. Julie Veach  
Telecommunications Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**COPY** of the foregoing served via U. S.  
**Postal Mail** this 11th day of October, 2005 to:

Angela N. Brown, Esq.  
Richard M. Sbaratta, Esq.  
BellSouth Corporation  
675 West Peachtree Street, NE  
Suite 4300  
Atlanta, GA 30375-0001

Mr. Brent Wilkes  
Executive Director  
League of United Latin American Citizens  
2000 L Street, NW  
Washington, DC 20036

Ms. Susan Grant  
Vice President, Public Policy  
National Consumers League  
1701 K Street, NW  
Suite 1200  
Washington, DC 20006

Mr. Paul W. Cooper  
Fred Williamson & Associates, Inc.  
2921 East 91st Street  
Suite 200  
Tulsa, OK 74137-1618

James W. Olson, Esq.  
Indra Sehdev Chalk, Esq.  
Michael T. McMEnamin, Esq.  
Robin E. Tuttle, Esq.  
United States Telecom Association  
1401 H Street, NW  
Suite 600  
Washington, D.C. 20005

Mr. Paul Kevin Saville  
Frontier  
2378 Wilshire Boulevard  
Mound, MN 55364

TCA, Inc. – Telecom Consulting Associates  
1465 Kelly Johnson Boulevard  
Suite 200  
Colorado Springs, CO 80920

Gerard J. Waldron, Esq.  
Mary Newcomer Williams, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2401

Mark D. Wilkerson, Esq.  
Leah S. Stephens, Esq.  
Wilkerson & Bryan, P.C.  
405 South Hull Street  
Montgomery, AL 36104

Edward Shakin, Esq.  
Ann H. Rakestraw, Esq.  
Verizon  
1515 North Court House Road  
Suite 500  
Arlington, VA 22201

Mr. Thomas A. Coates  
Vice President, Corporate Development  
Dobson Cellular systems, Inc.  
14201 Wireless Way  
Okalahoma City, OK 73134

Gregg C. Sayre, Esq.  
Associate General Counsel - Eastern Region  
Frontier Communications of Rochester, Inc.  
180 South Clinton Avenue  
Rochester, NY 14646-0700

Ms. Rebecca Weber  
Executive Director  
New York Public Interest Research Group  
Nine Murray Street  
3rd Floor  
New York, NY 10007

Mr. Robert R. Puckett, President  
Louis Manuta, Esquire  
New York State Telecommunications  
Association, Inc.  
100 State Street  
Suite 650  
Albany, NY 12207

Ms. Tracy Peel  
Sustainable Markets Foundation  
80 Broad Street  
Suite 1710  
New York, NY 10004-3307

Jeffrey S. Lanning, Esquire  
Associate General Counsel  
USTelecom  
607 14th Street, NW  
Suite 400  
Washington, D.C. 20005

  
Michelle D. Guynn

# Exhibit 4



JEB BUSH  
GOVERNOR

STATE OF FLORIDA

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com  
850-488-7146  
850-487-0801 fax

November 9, 2004

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: CC Docket No. 96-45 Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Florida

Dear Chairman Powell:

TracFone Wireless, Inc., a provider of prepaid wireless telecommunications services headquartered in Miami, Florida, has petitioned the Commission for designation as an Eligible Telecommunications Carrier in the State of Florida. TracFone has also asked the Commission to forbear from application or enforcement of Section 214(e)(1)(A) of the Communications Act which requires that Eligible Telecommunications Carriers provide service either using their own facilities or using their own facilities and resale of other carriers' services. TracFone seeks to be designated as an Eligible Telecommunications Carrier so that it can offer low-income consumers in Florida an opportunity to acquire affordable wireless telephone service.

On behalf of the citizens of the State of Florida, I strongly encourage the Commission to grant TracFone's petitions at the earliest opportunity. TracFone has proposed to utilize support from the federal Universal Service Fund to offer low-income consumers eligible to participate in the Lifeline program a state-of-the-art full-featured wireless service offering at a very affordable rate.

In Florida, the federal Lifeline program is vastly underutilized. According to Commission data, only 13.5 percent of Florida's nearly 1.1 million eligible households participate in the Lifeline program. If granted Eligible Telecommunications Carrier status, I am confident that TracFone could significantly increase the level of Florida consumers' participation in Lifeline. Moreover, TracFone's Lifeline service would bring to Florida consumers the convenience, flexibility and security of wireless service.



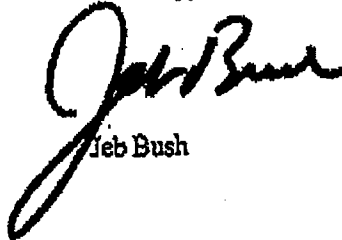
Governor's Mentoring Initiative  
BEA MENTOR. BEA BIG HELP.  
1-800-825-3786

Chairman Michael K. Powell  
Federal Communications Commission  
Page 2

In view of the recent developments in the nation's telecommunications policy and the dramatic advances in communications technology, I have given great thought to how we can best provide affordable and modern means of communications to all our citizens, including the most disadvantaged. Rather than tying the availability of Lifeline to the outdated wireline services, our nation should be looking ahead to bridging the technological divide that prevents our poorest citizens from participating fully in the benefits of our amazing technological advances.

If the FCC designates a wireless carrier such as TracFone to be an Eligible Telecommunications Carrier, our citizens' access to affordable telecommunications services would no longer be limited to their homes. Job seekers could be reached by potential employers; parents would be able to know the whereabouts of their children, and participating consumers would have E-911 access from anywhere at any time. As you are aware, Florida has recently suffered four hurricanes over a period of several weeks. As a result of those hurricanes, many of our citizens lost their homes and their wireline telephone service. Those persons without wireless phones (including many low income residents) were unable to communicate for many days. These recent events demonstrate the importance of affordable wireless telecommunications service for all of our citizens. These are important benefits to the citizens of our state and I hope that you will give TracFone's proposal the favorable consideration that it deserves.

Sincerely,



Jeb Bush

cc: attached list

**FCC Commissioners:**

The Honorable Michael K. Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 8B201  
Washington, D.C. 20554  
Michael.Powell@fcc.gov

Mr. Christopher Libertelli, Legal Advisor to Chairman  
Christopher.Libertelli@fcc.gov

The Honorable Michael J. Copps, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 8A302  
Washington, D.C. 20554  
Michael.Copps@fcc.gov

Ms. Jessica Rosenworcel, Legal Advisor to Commissioner Copps  
Jessica.Rosenworcel@fcc.gov

The Honorable Jonathan S. Adelstein, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
8<sup>th</sup> Floor  
Washington, D.C. 20554  
Jonathan.Adelstein@fcc.gov

Mr. Scott Bergmann, Legal Advisor to Commissioner Adelstein  
Scott.Bergmann@fcc.gov

The Honorable Kathleen Q. Abernathy, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 8B115  
Washington, D.C. 20554  
Kathleen.Abernathy@fcc.gov

Mr. Matthew Brill, Legal Advisor to Commissioner Abernathy  
Matthew.Brill@fcc.gov

The Honorable Kevin J. Martin, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 8A204  
Washington, D.C. 20554  
Kevin.Martin@fcc.gov

Mr. Daniel Gonzalez, Legal Advisor to Commissioner Martin  
Daniel.Gonzalez@fcc.gov

Mr. Samuel Feder, Legal Advisor to Commissioner Martin  
Samuel.Feder@fcc.gov

**FCC Wireline Competition Bureau:**

Mr. Jeffrey Carlisle, Bureau Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 5C450  
Washington, D.C. 20554  
Jeffrey.Carlisle@fcc.gov

Mr. Richard Lerner, Associate Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
5<sup>th</sup> Floor  
Washington, D.C. 20554  
Richard.Lerner@fcc.gov

Ms. Anita Cheng, Assistant Division Chief  
Telecommunications Access Policy Division

Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 5A445  
Washington, D.C. 20554  
Anita.Cheng@fcc.gov

Mr. Thomas Buckley, Attorney Advisor  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554  
Thomas.Buckley@fcc.gov

Ms. Narda Jones,  
Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554  
Narda.Jones@fcc.gov

Margaret Dailey, Legal Counsel  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 5C433  
Washington, D.C. 20554  
Margaret.Dailey@fcc.gov



# Exhibit 5

# Greenberg Traurig

Mitchell F. Brecher  
(202) 331-3152  
BrecherM@gtlaw.com

July 13, 2005

## VIA ELECTRONIC FILING

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation in CC Docket No. 96-45 – Petition of TracFone Wireless, Inc. for Forbearance; Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Florida, Massachusetts, New York, Tennessee and Virginia

Dear Ms. Dortch:

On July 13 2005, F. J. Pollak, President and Chief Executive Officer of TracFone Wireless, Inc., and I met with Narda Jones, Carol Pomponio, Pam Slipakoff, and Mark Seifert, all of the Wireline Competition Bureau's Telecommunications Access Policy Division.

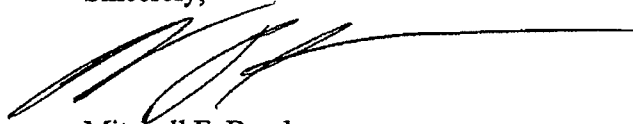
During this meeting, we discussed TracFone's proposal to offer Lifeline service if its petition for forbearance is granted and if its petitions for designation as an Eligible Telecommunications Carrier are approved. Specifically, we discussed TracFone's plans to ensure that it would comply with the certification of eligibility and verification of continued eligibility requirements for Lifeline participation which are codified at Section 54.410 of the Commission's rules. TracFone's certification and verification compliance plan is articulated in a document which was provided to each attendee at today's meeting. A copy of that compliance plan description is enclosed herewith.

ALBANY  
AMSTERDAM  
ATLANTA  
BOCA RATON  
BOSTON  
CHICAGO  
DALLAS  
DENVER  
FORT LAUDERDALE  
LOS ANGELES  
MIAMI  
NEW JERSEY  
NEW YORK  
ORANGE COUNTY, CA  
ORLANDO  
PHILADELPHIA  
PHOENIX  
SILICON VALLEY  
TALLAHASSEE  
TYSONS CORNER  
WASHINGTON, D.C.  
WEST PALM BEACH  
WILMINGTON  
ZURICH

Ms. Marlene Dortch  
July 13, 2005  
Page 2

Pursuant to Section 1.1206(b) of the Commission's Rules, this notice is being filed electronically in the above-captioned docket. If you have any questions regarding this matter, please feel free to contact undersigned counsel for TracFone.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Brecher', with a long horizontal line extending to the right.

Mitchell F. Brecher

Enclosures

cc: Ms. Narda Jones  
Ms. Carol Pomponio  
Mr. Mark Seifert  
Ms. Pam Slipakoff

**TRACFONE WIRELESS, INC.**

**PETITION FOR FORBEARANCE**

**PETITIONS FOR DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER IN THE STATES  
OF ALABAMA, CONNECTICUT, FLORIDA, MASSACHUSETTS,  
NEW YORK, TENNESSEE, NORTH CAROLINA, TENNESSEE,  
AND VIRGINIA  
(CC Docket No. 96-45)**

**TRACFONE'S PLANS FOR COMPLIANCE WITH THE LIFELINE  
CERTIFICATION AND VERIFICATION REQUIREMENTS  
CODIFIED AT SECTION 54.410 OF THE COMMISSION'S RULES**

**Mitchell F. Brecher  
Greenberg Traurig, L.L.P.  
800 Connecticut Avenue, NW  
Suite 500  
Washington, D.C. 20006  
(202) 331-3100**

## 1. COMPLIANCE POLICY

TracFone will comply with all certification and verification requirements for Lifeline eligibility established by states where it is designated as an Eligible Telecommunications Carrier.

In states where there are no state-imposed requirements (e.g., Florida), TracFone will comply with the certification and verification procedures in effect in that state as reflected on the website of the Universal Service Administrative Company.

None of the states for which TracFone has sought ETC designation are "federal default states" as listed at Appendix G of the FCC's April 29, 2004 Lifeline Order (Lifeline and Link-Up, FCC 04-87). However, for any states which do not mandate Lifeline support and/or which do not have established rules or procedures in place, TracFone will certify and verify consumer eligibility in accordance with the FCC requirements.

## 2. CERTIFICATION PROCEDURES

TracFone will implement certification procedures which enable consumers to demonstrate their eligibility for Lifeline assistance, either at the point-of-sale (i.e., any the retail locations where TracFone handsets and prepaid wireless service are sold), or by contacting TracFone via telephone or via the Internet.

### A. Point of Sale Certification

TracFone retailers will be provided with Lifeline enrollment forms designed for each state where the retailer is located (e.g., Wal-Mart or RadioShack stores in Florida will be provided with the Florida forms; Wal-Mart or RadioShack stores in New York will be provided with the New York forms). Where self-certification is required, the form will contain a place where the applicant must certify by his/her signature under penalty of perjury that the applicant meets the relevant criteria. For program-based eligibility, the form will list each of the qualifying programs, and the applicant will be required to check off the program(s) in which he/she participates. For income-based eligibility, the applicant will be required to certify under penalty of perjury that his/her household income does not exceed the relevant threshold (e.g., 135% of the Federal Poverty Guidelines for federal default states) and will be required to provide proof of income-based eligibility.

In states where documentation of eligibility is required, consumers claiming entitlement to participate in TracFone's Lifeline program will be required to produce the relevant documentation – either proof of participation in qualifying programs or proof of household income. In addition, consumers will be required to produce a photo identification and proof of residency in the applicable state.

All completed forms obtained by TracFone's retail vendors, identification, and documentation of eligibility where required will be transmitted by the vendor to TracFone's corporate offices where properly-trained personnel will review the forms and documentation and enroll the applicant in the Lifeline program.

#### B. Certification by TracFone

TracFone recognizes that some retail vendors may not want to become involved in the Lifeline certification process and that some customers will choose not to provide information regarding their financial status at a retail outlet. In such circumstances, TracFone will enable customers to submit their applications and eligibility documentation (where required) directly to TracFone.

At point of sale, customers will be provided with information describing the Lifeline program and with instructions for enrolling. Customers will be directed to toll-free telephone numbers and to TracFone's Internet website ([www.tracfone.com](http://www.tracfone.com)) which will contain a link to the Lifeline program. The Lifeline link will describe the program in detail for each state and will contain all enrollment forms.

Customers accessing the program through the Internet will be able to access the Lifeline application for their state (they will be required to provide proof of residence in that state). Customers may either complete the form "on-line" or print out the form, complete it, and fax it to a toll-free fax number provided by TracFone. In states where documentation is required to prove eligibility, either under program-based eligibility or income-based eligibility, consumers will be encouraged to return the completed forms and documentation via fax.

Whether consumers choose to enroll in TracFone's Lifeline program at the point of sale or by contacting TracFone, all processing of consumers' applications, including review of all application forms and relevant documentation will be performed by TracFone personnel under the immediate supervision of managers specially trained in the Lifeline program.

### 3. AUTOMATIC ENROLLMENT

TracFone recognizes that the Commission has encouraged states to adopt automatic enrollment procedures. In states which have implemented such procedures, TracFone is prepared to participate with the appropriate state agencies so that customers choosing to do so may be automatically enrolled in the TracFone Lifeline program. For example, in Massachusetts, consumers who qualify for the Low Income Home Energy Assistance Program may elect at the time of enrollment in that program to have eligibility information provided to participating ETCs which enable the consumers to enroll in Lifeline. TracFone is prepared to accept that same information from the state which would facilitate enrollment in its Lifeline program. In short, TracFone will make

enrollment in its program as convenient for consumers as permissible under applicable state law.

4. VERIFICATION OF CONTINUED ELIGIBILITY

TracFone will require every consumer enrolled in its Lifeline program to verify his/her continued eligibility on an annual basis, or more frequently if required by the applicable state.

In states where verification more often than annually is not required, TracFone will notify each Lifeline participating consumer on the anniversary of his/her enrollment that they must confirm their continued eligibility in accordance with the state's requirements. Although TracFone does not normally contact its customers via mailings it will send mailings to Lifeline participants notifying them of the need to verify their continued eligibility. Such verification will be required in order for the consumer to continue to purchase prepaid airtime from TracFone at the discounted rates only available to those customers who are enrolled in its Lifeline program.

5. TRACFONE OFFICER CERTIFICATION

TracFone will comply with the officer certification requirement set forth at paragraph 31 of the Lifeline Order. Specifically, for each state with its own Lifeline/Link-Up program where TracFone has been designated an ETC, an appropriate officer of TracFone will certify under penalty of perjury that TracFone is in compliance with each state's income certification procedures and that, to the best of that officer's knowledge, documentation of income for all enrolled Lifeline customers was presented.

# Exhibit 6



# Consumer Action

Education and Advocacy Since 1971



Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

August 14, 2007

**Re: Federal Communications Commission [CC Docket No. 96-45]**  
*Support for the petition by TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) in the states of VA, FL, MA and NY*

Dear Ms. Dortch:

Telecommunications services have a profound impact on modern living. From connecting us to family and friends, to helping us obtain work, manage daily routines or call for emergency assistance, it is clear that these services are a necessity in everyday life. Given the importance of phone service, it's astonishing that FCC data reveals that approximately two-thirds of all eligible Lifeline households in the U.S. do not participate in the Lifeline support program. Only 6.8 million out of 21 million eligible Americans currently receive Lifeline support for their telephone service, based on 2005 forecasts.

As organizations dedicated to protecting and helping consumers, Consumer Action<sup>1</sup> and the National Grange of the Order of Patrons of Husbandry<sup>2</sup> believe that all carriers able to meet the service obligations of Lifeline should be permitted to serve Lifeline customers so that low-income Americans have the same access to wireless and competitive services as do other consumers. That is why we are writing today to support the petition by TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) in the states of Virginia, Florida, Massachusetts and New York (FCC Docket 96-45).

Wireless telephone service has become an essential for most Americans as well as their families and friends overseas. However, for low-income Americans struggling to pay their monthly bills for landline service, wireless service may be unaffordable. In addition, a negative credit history

---

<sup>1</sup> Consumer Action ([www.consumer-action.org](http://www.consumer-action.org)) is a national non-profit consumer education and advocacy organization founded in San Francisco in 1971. Consumer Action serves consumers, community-based agencies and its members nationwide by advancing consumer rights, referring consumers to complaint-handling agencies and training community group staff on the effective use of its educational materials. Consumer Action also advocates for consumers in the media and before lawmakers and compares prices on telephone services, credit cards and bank accounts.

<sup>2</sup> The National Grange of the Order of Patrons of Husbandry (National Grange) is the oldest general farm and rural public interest organization in the United States. Founded in 1867, today the Grange represents nearly individual members affiliated with 2800 local, county and state Grange chapters across rural America. More than 70 percent of all local Grange chapters are located in communities of 5,000 persons or less.

or no fixed address can make even traditional land line service hard to obtain. In many instances, a wireless phone would be more practical—and appropriate—than a wire line phone, allowing for the freedom of mobility and convenience of modern day calling features.

As the future of communications moves to wireless, the disadvantaged members of our society should not be left behind. Payphones are almost extinct—and the ones that are available to consumers do not offer features that so many of us rely on today, voice and text messaging. Low-income consumers are experiencing not just a digital divide, but also a telephone fracture—without access to prevalent wireless technologies, they are not able to participate fully in society.

The FCC has stated that TracFone's request for ETC designation for "Lifeline-only services...would not affect the high-cost fund support." The FCC has said, "**Any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.**"

In this filing, Consumer Action and the National Grange strongly reiterate this FCC statement, offer our support for this concept and urge that the FCC not only approve the petition for regulatory forbearance and ETC designation, but also establish separate eligibility requirements and procedures for ETC designation for those carriers seeking to participate only in Lifeline. Low-income Americans deserve to have the same access to wireless and competitive services as do other consumers.

Prepaid wireless service is a good option for low-income consumers because there are no long-term contracts, no credit checks and no early termination penalties or late payment fees. With prepaid service, people pay only for the services they can afford. The proposal by TracFone Wireless, Inc. to offer Lifeline prepaid service would allow more low-income people to afford wireless service. Low-income consumers could enjoy the same services that other consumers currently receive with cell phones, including voice mail and other essential features.

This proposal would help to fulfill an important social imperative—ensuring that all Americans are able to communicate by telephone with family, support networks, employers and emergency services. From our viewpoint, consumers are not concerned with whether the telephone service they receive is through resellers or facilities-based providers. They are concerned with access, quality and price. The TracFone proposal offers Lifeline-qualified customers all three. We hope that your action in the near future to approve the pending TracFone ETC lifeline-only application will be approved quickly and that it will encourage other prepaid wireless providers to take the same initiative to pursue Lifeline ETC applications.

Sincerely,

Linda Sherry  
Director, National Priorities  
**Consumer Action**  
(202) 544-3088

Leroy Watson  
Legislative Director  
**National Grange of the Order of Patrons of Husbandry**  
(202) 628-3507 x114