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March 31, 2009

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SC PUBLIC SERVICE COMMISSION

VIA OVERNIGHT DELIVERY

Charles Terreni
Chief Clerk and Administrator
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Petition of TracFone Wireless Inc. for Designation as an Eligible Telecommunications Carrier

Dear Mr. Terreni:

Enclosed please find an original and ten copies of a Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of South Carolina for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households. An additional copy is included to be date-stamped and returned in the enclosed envelope. Please contact me if you have any questions about this submission.

Sincerely,

Debra McGuire Mercer

Debra McGuire Mercer

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Before the
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In the Matter of Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of South Carolina for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households	)	Docket No. 2009-144C

PETITION OF TRACFONE WIRELESS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF SOUTH CAROLINA FOR THE LIMITED PURPOSE OF OFFERING LIFELINE AND LINK UP SERVICE TO QUALIFIED HOUSEHOLDS

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SC PUBLIC SERVICE COMMISSION

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March 31, 2009

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Before the
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In the Matter of Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of South Carolina for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households	)	Docket No. _____

PETITION OF TRACFONE WIRELESS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF SOUTH CAROLINA FOR THE LIMITED PURPOSE OF OFFERING LIFELINE AND LINK UP 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"), S.C. Code § 58-11-100, and S.C. Reg. 103-690, hereby submits this Petition for Designation as an Eligible Telecommunications Carrier ("ETC") in the State of South Carolina. TracFone seeks ETC designation solely to provide Lifeline and Link Up service to qualifying South Carolina 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.[1] As demonstrated herein, and as certified in Exhibit 1 to this Petition, TracFone meets all the statutory and regulatory requirements for designation as an ETC in the State of South Carolina. TracFone respectfully requests that the South Carolina Public Service Commission ("Commission") grant this Petition and that it do so expeditiously so that TracFone may provide Lifeline and Link Up service to low income

[1] Given that TracFone only seeks Lifeline and Link Up 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.

households at the earliest practicable time.

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. 112th Avenue, Miami, FL 33178. TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States, including the State of South Carolina. 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 South Carolina continuously for the past ten years. In South Carolina, TracFone obtains service from the following underlying carriers: AT&T Wireless, 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 South Carolina. Indeed, TracFone service is available wherever wireless service is available in South Carolina. With more than eleven 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 Federal Communications Commission ("FCC") Rules (47 C.F.R. § 54.101(a)) throughout South Carolina. Upon designation as an ETC, TracFone will make available to consumers Lifeline and Link Up offerings which will provide consumers with all of the functionalities and features currently provided by TracFone to existing customers. TracFone will provide Lifeline and Link Up service to qualifying customers requesting these services throughout South Carolina pursuant to the universal service program and in accordance with 47 C.F.R. § 54.202(a)(1).

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 will take advantage of the opportunity to obtain subsidized wireless service. In addition, unlike any other ETC's Lifeline programs, 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 participating consumers with discounts below carriers' 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 $10.00 discount funded by the USF, the customer still receives an invoice for $20.00, plus additional charges incurred during the billing period. In addition, under TracFone's Link Up plan, qualified customers will receive a free wireless telephone handset. Thus, with TracFone's Lifeline and Link Up plans, customers will be able to initiate and receive calls from their wireless phones while incurring no activation or usage charges. TracFone's Lifeline and Link Up plans are described at Section III.3 of this Petition.

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 South Carolina). Moreover, TracFone service is available at nationally-uniform rates. TracFone service is priced the same at all locations in South Carolina, and throughout the United States.

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

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 provides that a State commission "shall . . . upon request designate a common carrier that meets the requirements of paragraph 1 [of Section 214(e)] as an eligible telecommunications carrier for a service area designated by the State commission."

As demonstrated below, and as set forth in the Affidavit of F.J. Pollak, TracFone's President and Chief Executive Officer, 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 serve the public interest.[2] 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 carrier's services.[3] However, as described at Section II.B of this Petition, on June 8, 2004, TracFone filed with the FCC a petition requesting that the FCC exercise its forbearance authority under Section 10 of the

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[2] See Federal-State Joint Board on Universal Service, *Report and Order*, 20 FCC Rcd 6371, ¶¶ 40-43 (2005).

[3] See also S.C. Reg. 103-690(C)(a)(6) (requiring ETC petitioner to certify that it will offer services using its own facilities or a combination of its own facilities and resale of another carrier's services).

Communications Act (47 U.S.C. § 160) with respect to the facilities-based service requirement.[4] The FCC granted the petition for forbearance in an Order dated September 8, 2005.[5] In an Order dated April 11, 2008, the FCC granted all of TracFone's pending petitions for designation as an ETC, subject to the conditions set forth in the TracFone Forbearance Order.[6]

A. The South Carolina Public Service Commission Has Jurisdiction to Designate TracFone as an ETC.

Section 214(e)(2) of the Communications Act authorizes state commissions, such as the South Carolina Public Service Commission, to designate ETC status for federal universal service purposes.[7] Indeed, "state commissions have the primary responsibility for the designation of eligible telecommunications carriers under Section 214(e)(2)."[8] Although Section 332(c)(3)(A) of the Communications Act prohibits states from regulating the entry of or the rates charged by any provider of commercial mobile service or any private mobile service, this prohibition does

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[4] 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").

[5] 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 as Exhibit 2.

[6] In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al., 23 FCC Rcd 6206 (2008) (granting TracFone's ETC Petitions for Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Virginia) ("TracFone ETC Order"). A copy of the TracFone ETC Order is attached as Exhibit 3.

[7] See Federal-State Joint Board on Universal Service, *First Report and Order*, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) ("USF Order").

[8] Federal-State Joint Board on Universal Service, *Twelfth Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, ¶ 93 (2000).

not allow states to deny wireless carriers ETC status.[9] Therefore, the South Carolina Public Service Commission is authorized to designate TracFone as an ETC.[10] In fact, the Commission has designated wireless carriers as ETCs.[11]

Section 214(e)(2) of the Communications Act provides that a State commission shall designate a common carrier as an ETC, if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) and S.C. Reg. 103-690(C)(a)(6) and (a)(7) require a carrier designated as an ETC to offer the services that are supported by Federal universal service support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier's services and to advertise the availability of such services and the related charges using media of general distribution. As discussed in Section II.D. of this Petition, TracFone will advertise the availability of its Lifeline and Link Up plans and the associated charges using media of general distribution.

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

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[9] USF Order, at 8858-59, ¶ 145.

[10] See S.C. Reg. 103-690(C).

[11] See Application of FTC Communications, Inc. DBA FTC Wireless for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, Order, Docket No. 2003-158-C (South Carolina Public Service Commission: Jan.. 7, 2005).

Indeed, the Florida Public Service Commission, the Georgia Public Service Commission, the Michigan Public Service Commission, and the West Virginia Public Service Commission already have complied with the FCC's Forbearance Order and have designated TracFone as an ETC in those states.[12]

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."[13] 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 program.[14] The low income program supported by the Universal Service Fund includes both the Lifeline and Link Up programs.

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

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[12] Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order, Docket No. 26282 (Georgia Public Service Commission: May 6, 2008); Application for Designation as an Eligible Telecommunications Carrier (ETC) by TracFone Wireless, Inc. for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order No. PSC-08-0418-PAA-TP, Docket No. 070586 (Florida Pub. Serv. Comm'n: June 23, 2008); Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996, Order, Case No. U-15625 (Michigan Pub. Serv. Comm'n: October 21, 2008); TracFone Wireless, Inc. Petition for consent and approval to be designated an eligible telecommunications carrier, Recommended Decision, Case No. 08-1605-C-PC (West Virginia Pub. Serv. Comm'n: February 25, 2009) (attached as Exhibits 4, 5, 6 and 7).

[13] TracFone Forbearance Order, ¶ 23.

[14] Id. ¶ 24.

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 Lifeline 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 describe how it would implement each of these conditions. In October 2005, TracFone described to the FCC how it would comply with each of the FCC's stated conditions. TracFone committed to providing all Lifeline customers with access to basic and E911 service even if the customer has no remaining prepaid minutes on his or her handset. TracFone further represented that it will provide new Lifeline customers with an E911-compliant handset and will replace any existing customers' non-E911-compliant handsets with a compliant handset free of charge at the time such customers enroll in Lifeline. TracFone also stated that its Lifeline enrollment forms will require each applicant to certify under penalty of perjury that he or she is the head of the household and that he or she receives Lifeline service only from TracFone. In addition, TracFone explained that its enrollment form will require each applicant to list a primary residential address which TracFone will use to check its customer records to ensure that the applicant is not receiving Lifeline service for more than one handset associated with a particular address. TracFone also will verify annually using FCC-approved sampling methods that its Lifeline customers are still heads of households and that they only

receive Lifeline service from TracFone. In the TracFone ETC Order, the FCC approved TracFone's plan for complying with those conditions.[15]

The PSAP certification condition imposed by the FCC was difficult to implement and resulted in delaying the availability of TracFone's SafeLink Wireless Lifeline service in several jurisdictions. On November 21, 2008, TracFone petitioned the FCC to modify the PSAP certification condition. On March 5, 2009, the FCC issued an Order granting TracFone's request to modify the requirement that TracFone obtain a certification from each PSAP where TracFone provides Lifeline service confirming that it provides its customers with access to basic and E911 service.[16] The FCC modified the PSAP certification to require the following: TracFone must still request such certification from each PSAP within its Lifeline service area; however, if within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements.

C. TracFone Offers All Required Services and Functionalities.

TracFone offers, or will offer upon designation as an ETC in South Carolina, all of the services and functionalities required by Sections 54.101(a) and 54.202(a) of the FCC's Rules (47

[15] TracFone ETC Order, ¶ 23.

[16] Federal -State Joint Board on Universal Service, et al., CC Docket No. 96-45, FCC 09-17 (released March 5, 2009) (attached as Exhibit 8).

C.F.R. §§ 54.101(a), 54.202(a)) including the following:[17]

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.[18] 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 pursuant to 47 C.F.R. § 54.101(a)(2). TracFone provides subscribers the ability to send and receive local phone calls wherever it provides service. Moreover, local usage is included in TracFone's calling plan. FCC Rule 54.202(a)(4) and S.C. Reg. 103-690(C)(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

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[17] The FCC's Rules (47 C.F.R. § 54.202(a)(1)(ii)) and S.C. Reg. 103-690(C)(a)(5) require an applicant for ETC status to demonstrate that it satisfies network build-out and improvement requirements and to provide a certification that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area (47 C.F.R. § 54.202(a). In the TracFone ETC Order, the FCC determined that TracFone was not required to make these showings because it is a pure reseller. See n.35. TracFone maintains that it also is not required to make these showings for this Petition.

[18] See USF Order, at 8810-11, ¶¶ 63-64; see 47 C.F.R. § 54.101(a)(1).

comparable to the plan offered by the incumbent LEC in the area.[19] Importantly, the requirement is that ETCs offer local usage plans "comparable" to those of the ILEC, not that the plans be identical. The FCC has not adopted any minimum local usage requirements.[20] As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the FCC.

Wireless and wireline services, though increasingly substitutable for each other, are different from each other and they are priced differently. Unlike any ILECs' or other ETCs' Lifeline plans, TracFone's Lifeline offerings will go beyond those of other providers 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.[21] 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 as required by 47 C.F.R. § 54.101(a)(3).

4. Single-party service or Its Functional Equivalent.

Single-party service means that only one party will be served by a subscriber line or

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[19] Federal-State Joint Board on Universal Service, *Report and Order*, 20 FCC Rcd 6371, 6385, ¶ 33 (2005).

[20] Id. ¶ 32.

[21] USF Order, 12 FCC Rcd at 8814, ¶ 71.

access loop in contrast to a multi-party line.[22] TracFone provides customers with single-party access for the duration of every phone call in accordance with 47 C.F.R. § 101(a)(4). 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.[23] TracFone provides universal access to the 911 system for its customers. TracFone has implemented and will continue to implement enhanced 911 ("E911") services consistent with the FCC's Rules, including 47 C.F.R. § 54.101(a)(5), 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.[24] 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]."[25] TracFone will make available access to E911 service in accordance with applicable FCC requirements.

In addition, in accordance with 47 C.F.R. § 54.202(a)(2) and S.C. Reg. 103-690(C)(a)(2), TracFone has the ability to remain functional in emergency situations. Given that TracFone is a reseller, it does not own or operate any facilities. Therefore, the requirement in S.C. Reg. 103-690(C)(a)(2) that TracFone demonstrate that it has a reasonable amount of back-up power, an

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[22] Id. at 8810, ¶ 62.

[23] Id. at 8815, ¶ 72.

[24] 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).

[25] Id. at 25378-79, ¶ 91.

ability to reroute traffic around damaged facilities, and a capability to manage traffic spikes is not applicable. As described in this Petition, TracFone provides service in South Carolina by reselling services of underlying wireless network carriers, including AT&T Wireless, T-Mobile, US Cellular, and Verizon Wireless. Those network operators have implemented state-of-the-art network reliability standards and TracFone and its customers benefit from their high standards. Throughout its ten years of existence, TracFone's service reliability has compared favorably with that of any facilities-based operator in the wireless telecommunications industry.

6. Access to Operator Services.

TracFone offers all of its customers access to operator services, in accordance with 47 C.F.R. § 54.101(a)(6).

7. Access to Interexchange Service.

TracFone customers can use TracFone's services to complete toll calls as required by 47 C.F.R. § 54.101(a)(7). 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 as required by 47 C.F.R. § 54.101(a)(8). Specifically, all TracFone customers, including those customers located in South Carolina, have access to directory assistance services provided by TracFone's vendors.

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 of use as any other usage and the customers are not charged separately for toll services. Inasmuch as all TracFone services are prepaid there is no danger that low income customers will incur large charges for heavy toll (or other) calling and no risk that they will be disconnected for nonpayment. 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 Be Able to Serve the Designated Areas Within a Reasonable Time.

TracFone provides service in South Carolina 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 commence offering its Lifeline service to all locations served by any of its underlying carriers very soon after receiving approval from the South Carolina Public Service Commission. Indeed, it already serves those areas. TracFone is also ready to commence providing handsets to qualified customers free of charge under its Link Up plan. The only delay will be the time needed to implement procedures and internal systems to offer the Lifeline and Link Up programs. Thus, TracFone will be able to provide Lifeline and Link Up service to all qualified customers on a timely basis in accordance with 47 C.F.R. § 54.202(a)(1) and S.C. Reg. 103-690(C)(a)(1)(A).[26]

[26] TracFone, as a reseller, does not own or operate a network. Therefore, the certifications required by S.C. Reg. (C)(a)(1)(A)(2) are not applicable.

E. Service Quality Commitments.

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 South Carolina market. To demonstrate its commitment to high service quality, TracFone will comply with the CTIA - The Wireless Association® Consumer Code for Wireless Service in accordance with 47 C.F.R. § 54.202(a)(3) and S.C. Reg. 103-690(C)(a)(3). In addition, TracFone's Privacy Policy is available to all customers on its website at http://www.tracfone.com and it is attached as Exhibit 9.

F. TracFone Will Advertise the Availability of Supported Services.

TracFone will advertise the availability of its Lifeline and Link Up services and the associated charges using media of general distribution, in accordance with the requirements of Section 214(e)(1)(A) of the Communications Act, Section 54.201(d)(2) of the FCC's Rules (47 C.F.R. § 54.201(d)(2)), and S.C. Reg. 103-690(C)(a)(1)(C). 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 and its free Link Up offering. TracFone understands that it will be competing with other ETCs in South Carolina, 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 and Link Up programs. These means will include print and broadcast advertising in media outlets most likely to reach consumers eligible for Lifeline and Link Up. These would

include national publications as well as local and community newspapers, and commercial broadcast stations, especially those stations whose programming is targeted to significant lower income communities including, for example, Spanish language stations in areas with significant Spanish-speaking populations. Examples of TracFone's print, radio, and television advertisements for Lifeline that have been created to date and the Lifeline webpage that will be available on TracFone's website are attached as Exhibit 10.

In addition, TracFone will utilize its network of retail outlets to help promote the availability of its Lifeline and Link Up 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 consumers eligible for Lifeline and Link Up. Retailers will be provided with signage to be displayed where TracFone products, including airtime cards, are sold, and with printed materials describing TracFone's Lifeline and Link Up programs, and will be encouraged to assist qualified consumers in applying for Lifeline and Link Up. Retailers are strongly encouraged to display all advertising materials provided by TracFone. While TracFone does not require retailers to use the TracFone-provided advertising materials in their stores, TracFone's past experience with retailers is that many retailers choose to display the advertising. 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 and Link Up in a manner which will result in significantly higher participation in these low income universal service programs by qualified consumers than has been the case in the past.

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.[27] 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, as well as increased participation in the Link Up program. The Commission's grant of TracFone's ETC Petition will promote the important goal of increasing Lifeline and Link Up participation.

G. TracFone Will Comply with the Lifeline and Link Up Certification and Verification Requirements in 47 C.F.R. §§ 54.410 and 54.416.

Sections 54.410 and 54.416 of the FCC's Rules require ETCs to comply with certification of eligibility and verification of continued eligibility requirements for Lifeline and Link Up participation. TracFone will certify and verify consumer eligibility in accordance with the FCC's requirements and with applicable South Carolina Public Service Commission rules governing certification and verification of Lifeline and Link Up eligibility.

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[27] Federal-State Joint Board on Universal Service, 20 FCC Rcd 16883 (2005). Under the Hurricane Katrina Lifeline program, ETCs provided $130.00 in support to qualified customers in the form of a free wireless handset and at least 300 free minutes. If the subscriber did not need a handset, then the subscriber could opt instead for a Lifeline-supported package of greater than 300 minutes. Id. ¶¶ 13, 22.

H. TracFone Requests Designation Throughout Its Service Area in South Carolina.

TracFone is not a rural telephone company as defined in Section 153(37) of the Communications Act (47 U.S.C. § 153(37)). Thus, TracFone is required to describe the geographic area(s) within which it requests designation as an ETC.[28] TracFone requests designation as an ETC for its entire service area in South Carolina. TracFone, through its resale of wireless services provided by its underlying vendors in South Carolina, provides service in every Zip Code in the State of South Carolina. Accordingly, TracFone seeks ETC status throughout the entire State of South Carolina.

TracFone reiterates the fact that it is applying for ETC designation solely to utilize USF funding to provide Lifeline and Link Up plans 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. TracFone's authorized service area covers the telephone company service areas of all ILECs operating in South Carolina.[29] The Commission may designate TracFone as an ETC in non-rural areas that TracFone serves without redefining the service areas of non-rural telephone companies. The Commission may designate TracFone as an ETC in rural telephone company service areas upon a finding that such designation would serve the public interest.[30]

III. Designation of TracFone as an ETC in the State of South Carolina Would Serve the Public Interest.

As noted above, TracFone seeks certification as an ETC in areas served by rural

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[28] Public Notice - Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, FCC 97-419, 12 FCC Rcd 22947 (1997).

[29] See South Carolina's ILECs (attached as Exhibit 10).

[30] See 47 C.F.R. § 54.207(c).

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.[31]

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."[32] This is particularly applicable in the rural areas served by TracFone within the State of South Carolina -- 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 service which they need and supplementing those quantities on an "as needed" basis after exhausting their monthly supply of free service, and, availability of E911 service in accordance with the FCC's E911 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.

TracFone's SafeLink Lifeline and Link Up service offers important benefits that are especially needed by low income South Carolina residents in this time of economic downturn.

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[31] 47 U.S.C. § 214(e)(2); see Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, ¶ 42 (2005) ("We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.").

[32] 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).

As the Commission is aware, the Dow Jones Industrial Average, a primary indicator of the health of the economy, is at a 12 year low. Thus, the savings accounts upon which many South Carolina residents depend for emergencies and for retirement have been significantly eroded. Both the number of unemployed persons (11.6 million) and the unemployment rate (7.6 percent) in the United States rose in January 2009. Over the past 12 months, the number of unemployed persons has increased by 4.1 million and the unemployment rate has risen by 2.7 percentage points.[33] In December 2008, South Carolina experienced an unemployment rate of 9.5 percent. These conditions have had a significant impact on South Carolina residents, as noted by U.S Senator Lindsey Graham: "These are not just numbers on a piece of paper. These are real people – our friends, neighbors, family members who are suffering in these difficult economic times. We see the signs of the economic slowdown in our towns and communities as businesses both big and small, lay off workers or simply shut their doors."[34]

As noted above, the availability of a mobile telephone will be critical to many of those unemployed South Carolina residents' efforts to search for other employment opportunities. Without a regular paycheck, wireless telephone service would be a luxury beyond the means of many of those persons. TracFone's SafeLink Lifeline and Link Up programs will enable thousands of South Carolina residents to obtain wireless service which would otherwise be unavailable to them. Finally, more than 2.3 million American homeowners faced foreclosure proceedings last year, an 81 percent increase from 2007.[35] The dire economic situation facing an

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[33] Bureau of Labor Statistics, Employment Situation Summary, USDL 09-0117, Feb. 6, 2009, at http://www.bls.gov/news.release/empsit.nr0.htm, viewed on Feb. 24, 2009.

[34] "South Carolina Unemployment Rates Hits 9.5 Percent", Senator Lindsey Graham Press Release, January 27, 2009, at http://lgraham.senate.gov, viewed on March 10, 2009.

[35] "Foreclosure Activity Increases 81 Percent in 2008," RealtyTrac Press Release, Jan. 15, 2009, at http://www.realtytrac.com/ContentManagement/pressrelease.aspx, viewed on Feb. 24, 2009.

increasing number of South Carolina residents indicates that now, more than ever, low income individuals can greatly benefit from the advantages offered by TracFone's SafeLink Lifeline and Link Up service. TracFone's Lifeline and Link Up service will allow low income South Carolina residents, including many who have been adversely impacted by the failing economy or job loss, to have access to free wireless service to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.

Designation of TracFone as an ETC will also provide an incentive to the incumbent LECs serving those portions of the state to improve their existing networks in order 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.[36]

The FCC has identified factors to be considered in determining whether designation of an additional ETC would serve the public interest. These factors require the Commission to weigh whether the benefits of an additional ETC would outweigh potential harms. The factors to be considered include: 1) the benefits of increased competitive choice; and 2) the unique advantages of the applicant company's service offerings.[37] As described in the following paragraphs, TracFone meets these criteria.

A. The Benefits of Increased 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

[36] See 47 U.S.C. § 254(b)(1).

[37] See 47 C.F.R. § 54.202(c).

decades[38] 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.[39] TracFone's prepaid wireless service alternative will provide consumers with convenient and affordable telecommunications service, both from their residences and when they are away from their homes.

TracFone believes that many consumers, including qualified Lifeline and Link Up 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. According to FCC data, South Carolina's statewide Lifeline participation rate is only 7.5 percent of eligible households.[40] In other words, over ninety percent of low income South Carolina households which are eligible to participate in Lifeline are not doing so. TracFone expects that qualified consumers will elect to participate in

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[38] See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

[39] Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 6422, ¶ 23 (2004).

[40] See In the Matter of Lifeline and Link-Up, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-87 (April 29, 2004) Table 1.A. The Universal Administrative Company estimates that in 2007 the participation rate for eligible households in South Carolina was between ten and twenty percent (10-20%). See 2007 Participation Rates by State, available at http://www.usac.org/li/about/participation-rate-information.aspx.

Lifeline, and take advantage of the free handset available under TracFone's Link Up plan, if a wireless option is available.

B. Unique Advantages of TracFone's Service Offerings.

As described elsewhere in this Petition, 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 would be otherwise unavailable or unaffordable. TracFone offers consumers an opportunity to acquire wireless service using state-of-the-art handsets and such features as caller ID, voice mail, text messaging, 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, and no early termination fees, 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. TracFone's prepaid service offers Lifeline-qualified customers access, quality and price. None of the incumbent providers nor those other non-incumbent ETCs serving the areas covered by TracFone in South Carolina offer service to consumers under comparable conditions.

TracFone will offer the following Lifeline and Link Up plans to its customers. Under the plans, TracFone's customers will receive free monthly service, free airtime each month, and a free handset. A description of the Lifeline and Link Up plans are as follows:

<u>TracFone SafeLink Wireless Lifeline Plan</u>

Each TracFone Lifeline customer will be provided with a specified number of minutes of use each month. The amount of free minutes of airtime to be provided will be based on the amount of federal USF low income support available pursuant to the rules of the FCC. TracFone

will calculate the number of minutes each Lifeline customer will receive per month to ensure that each Lifeline customer receives the full value of the Lifeline discount to which he or she is entitled, based upon the amount of the Lifeline discount required by the Commission. Those minutes will be automatically added to each customer's prepaid account balance each month. Unused minutes will roll over from month-to-month so long as the customer remains enrolled in the Lifeline program. In addition, Lifeline customers will be allowed to purchase special low volume usage cards. Those cards -- available only to Lifeline customers -- will be sold in denominations of $3.00, $5.00 and $10.00. The per minute rate for usage purchased with such low volume cards will be $0.20 per minute. That is TracFone's lowest per minute rate and is normally only available through the purchase of higher volume cards. The Lifeline low volume cards will be sold through retail vendors whose stores are frequented by lower income consumers. TracFone pledges that one hundred percent of the federal Lifeline support it receives will be flowed through to Lifeline customers in the form of free usage.[41]

TracFone Link Up Plan

The Link Up program reduces eligible low-income consumers' charges for commencing telephone service by one-half of the telephone company's charge, or $30.00, whichever is less.[42] Unlike wireline telephone service and traditional post-paid wireless service, the primary start-up cost or "connection" cost to a prepaid wireless customer is the acquisition of the wireless handset. TracFone will make available handsets to its participating Lifeline customers at no charge. TracFone's average cost of purchasing handsets is above $50.00 per unit. The provision

[41] TracFone reserves the right to modify its Lifeline and Link Up plans based on changes in market conditions or the amount of USF support available. However, under all Lifeline and Link Up plans, 100 percent of federal and state required Lifeline and Link Up support will be provided to Lifeline and Link Up customers in the form of free usage.

[42] 47 C.F.R. § 54.411(a)(1).

to Lifeline customers of those handsets at no charge to the customers will be funded through the Link Up program.

TracFone will pre-activate handsets provided to qualified customers,[43] enroll the customers in the Lifeline plan, and allocate the appropriate number of minutes of usage to the customers' accounts. The handsets will be delivered to customers upon enrollment in the program with the first month's free usage allotment already activated. The phones will remain active for one year even if no additional usage is purchased. Low income customers who have limited access to communications sources will gain immediate and free access to wireless telecommunications service simply by turning on the handsets provided by TracFone.

C. Impact on the Universal Service Fund.

The FCC has considered the impact on the USF when determining whether to grant TracFone's petitions for designation as an ETC.[44] Whatever impact classification of TracFone as an ETC will have on the universal service fund will be negligible. TracFone seeks ETC designation solely to enable it to offer Lifeline and Link Up benefits to eligible low income consumers. TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of obtaining high cost support. As noted in the FCC's 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 low-income program.[45] In 2007, low-income support accounted for only 11.8 percent of the distribution of the total

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[43] Customers who do not qualify for Lifeline must purchase a handset and then activate it by calling TracFone's Customer Care department from a landline telephone or by completing a form on TracFone's website.

[44] TracFone ETC Order, ¶ 16 n.47.

[45] TracFone Forbearance Order, ¶ 17.

universal service fund, while high-cost support accounted for 61.6 percent.[46] "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 and Link Up programs, furthering the statutory goal of providing access to low-income consumers."[47] Indeed, the FCC has acknowledged the benefits of designating a carrier as an ETC, when the carrier only seeks to participate in the USF's low income programs. The FCC included the following statement in a May 1, 2008 Order in which it established an interim cap on high-cost support:

> Moreover, there are advantages to obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support. In particular, the ability of competitive ETCs to receive low-income universal service support shows value in obtaining and maintaining ETC designation separate and apart from high-cost support. Indeed, TracFone Wireless, Inc. (TracFone) sought forbearance from section 214(e)(1) of the Act so that it could seek designation as an ETC eligible only to receive universal service Lifeline support. TracFone took this step because "offering prepaid plans which make wireless service available to low income users ... has been a critical component of TracFone's business strategy since the company's inception." Other ETCs may have similar business strategies. Further, by offering Lifeline and Link Up service, a competitive ETC may attract new subscribers that may not otherwise have taken telephone service. This would increase a competitive ETC's base of subscribers and, consequently, lower its average cost of serving all of its subscribers. Moreover, competitive ETCs may be eligible for separate universal service support at the state level.[48]

Furthermore, it is important to recognize the differences between low income funding for the Lifeline and Link Up programs and high cost funding. With Lifeline and Link Up, ETCs

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[46] Wireline Competition Bureau, Federal Communications Commission, Trends in Telephone Service, Table 19.1 and Chart 19.1 (2008).

[47] TracFone Forbearance Order, ¶ 17.

[48] High-Cost Universal Service Support, et al., *Order*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (released: May 1, 2008), ¶ 30.

only receive USF support for 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. TracFone will also gain Link Up funding for each new customer. In contrast, with high cost support, when new ETCs enter the market and capture customers from the existing ETCs, both the incumbent ETCs and the new ETCs receive high cost support -- based on the incumbent LECs' costs, thereby increasing the size of the USF.

D. Designation of TracFone as an ETC Will Benefit the Public Interest of Consumers Throughout South Carolina.

In addition to meeting the public interest factors, TracFone, if designated as an ETC, will also serve the public interest because TracFone will participate in the Lifeline and Link Up programs 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 term duration and volume commitments which are beyond the means of many consumers.

Moreover, 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 service enables consumers to enjoy the convenience and security of 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 South Carolina residents. 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 South Carolina promptly grant its petition for designation as an eligible telecommunications carrier.

Respectfully submitted,

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Counsel for TracFone Wireless, Inc.

March 31, 2009

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 N.W. 112th Avenue, Miami, FL 33178.

2. In my capacity as President and Chief Executive Officer of TracFone, I am an authorized representative of TracFone. I have read TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of South Carolina for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households. I confirm that the information contained therein is true and correct to the best of my knowledge.

3. In accordance with S.C. Reg. 103-690(C)(a)(7), I certify that TracFone will advertise the availability the services it provides that are supported by the federal universal service support mechanisms, including Lifeline services and the applicable charges, in a media of general distribution.

I hereby certify that, to the best of my knowledge, the foregoing is true and accurate.

F.J. Pollak

3.27.09
Date

Sworn to and subscribed before me this 27th day of March, 2009.

Notary Public

XIURAMYS RODRIGUEZ
Notary Public, State of Florida
My Comm. Expires July 11, 2010
No. DD573060

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)[1] pursuant to section 10 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act)[2] 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.[3] 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.[4]

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).[5] Contemporaneously with its Petition, TracFone filed

[1] 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).

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[3] 47 U.S.C. § 214(e).

[4] 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.

[5] 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 24th Public Notice were received

with the Commission petitions for ETC designation for several states.[6] 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.[7] 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.[8] 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.[9]

3. Applicable Statutes and Rules: The Act provides that only an ETC shall be eligible for universal service support.[10] 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 9th 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).

[6] 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.

[7] 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.

[8] TracFone Reply Comments, filed October 4, 2004, at 3-4 (October Reply Comments); August Reply Comments at 10.

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

[10] 47 U.S.C. § 254(e).

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

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.[14] Link-Up provides low-income consumers with discounts of up to $30.00 off of the initial costs of installing telephone service.[15] 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.[16] TracFone seeks eligibility to receive support only for the Lifeline portion of the low-income program.[17]

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[11] 47 U.S.C. § 214(e)(1)(A).

[12] 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).

[13] 47 C.F.R. §§ 54.401, 54.411.

[14] *See* 47 C.F.R. § 54.401(a)(2).

[15] *See* 47 C.F.R. § 54.411(a)(1).

[16] *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.

[17] 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.[18] 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.[19] 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.[20] 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.[21] 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.[22] 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.[23] 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.[24] 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

[18] *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).

[19] *1997 Universal Service Order*, 12 FCC Rcd at 8866, para. 161 and 8875, para. 178.

[20] *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.*

[21] *Id.* at 8875-6, para. 179.

[22] *Id.*

[23] 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.

[24] *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.[25] 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.[26]

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."[27] 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.[28] Forbearance is warranted, however, only if all three prongs of the test are satisfied. For the reasons explained below, we find that TracFone satisfies all three prongs.

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

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[25] 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 (6th 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.

[26] 47 U.S.C. § 160(a).

[27] 47 U.S.C. § 160(b).

[28] *Id.*

context of "low-income consumers."[29] 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.[30] 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.[31] 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."[32] 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.[33] 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.[34] 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.[35] 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

[29] 47 U.S.C. § 254(b)(3).

[30] 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).

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

[32] 47 U.S.C. § 254(b)(3) (emphasis added).

[33] *See CTIA v. FCC*, 330 F.3d 502, 512 (2003).

[34] *1997 Universal Service Order*, 12 FCC Rcd at 8861, 8873, 8875, paras. 151-152, 174, and 178.

[35] 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.[36] 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.[37] 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.[38] 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.[39]

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.[40]

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[36] *See* 47 C.F.R. § 251(c)(4).

[37] Forbearance Petition at 5.

[38] *See* 47 C.F.R. § 54.405(a) (requiring ETCs to offer Lifeline service).

[39] 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.

[40] 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.[41] 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.[42] 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.[43] 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.[44] 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.[45] 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.[46] 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

[41] 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.

[42] 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").

[43] 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.

[44] *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).

[45] *Id.*

[46] *See, e.g.*, Comments of TDS Telecommunications Corp., filed September 20, 2004, at 5-6 (TDS Comments).

customers.[47] 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.[48] 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.[49] 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.[50] 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.[51] These conditions are consistent with TracFone's representations in the record.[52] 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.[53] We recognize, however, that the potential for more than one

[47] *See* 47 C.F.R. § 54.712.

[48] *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).

[49] 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).

[50] 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.

[51] *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*).

[52] *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).

[53] *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.[54] 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.[55]

19. USTelecom raised concerns about the fact that TracFone distributes its service through retail outlets.[56] 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.[57] 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.[58] We find that this concern is more properly addressed in any order resolving TracFone's petitions for designation as an ETC. In the ETC designation proceedings, if TracFone's petitions are granted, we will address how Lifeline support will be calculated and distributed if the prepaid nature of TracFone's service offering requires such clarification.

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

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

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

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[54] *See* Verizon *Ex Parte* at 1; USTelecom August 17 *Ex Parte* at 2, 4.

[55] *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*).

[56] *See* USTelecom August 17 *Ex Parte* at 4.

[57] TracFone July 13 *Ex Parte* at 2-3.

[58] 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.[59] Presently only about one-third of households eligible for low-income assistance actually subscribe to the program.[60] We recently expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.[61] 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.[62] 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.[63] 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 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."[64] 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.[65] 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."[66] The next sentence, which USTelecom quotes, then

[59] 47 C.F.R. § 54.401.

[60] *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.

[61] *Id.* at 8305, para 1.

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

[63] *1997 Universal Service Order*, 12 FCC Rcd at 8972, para. 370.

[64] 47 U.S.C. § 254(e).

[65] USTelecom August 17 *Ex Parte* at 5 n.1.

[66] 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.[67] 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

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

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
	)	
TracFone Wireless, Inc.	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of New York	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited	)	

Purpose of Offering Lifeline Service to Qualified Households	)
	)
	)
Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households	)

ORDER

Adopted: April 9, 2008 **Released: April 11, 2008**

By the Commission: Commissioners Copps, Adelstein and Tate issuing separate statements.

I. INTRODUCTION

1. In this Order, we conditionally grant the petitions of TracFone Wireless, Inc. (TracFone) to be designated as an eligible telecommunications carrier (ETC), eligible only to receive universal service Lifeline support, in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).[1] Due

[1] TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 8, 2004) (New York Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45 (filed July 21, 2004) (Virginia Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45 (filed Nov. 9, 2004) (Connecticut Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45 (filed Nov. 9, 2004) (Massachusetts Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (filed Nov. 9, 2004) (Alabama Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45 (filed Nov. 9, 2004) (North Carolina Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45 (filed Nov. 9, 2004) (Tennessee Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Nov. 28, 2007) (Delaware Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Nov. 28, 2007) (New Hampshire Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Dec. 11, 2007) (Pennsylvania Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Jan. 18, 2008) (District of Columbia Petition). TracFone filed an erratum to its New York Petition correcting, from four to five, the number of underlying carriers it uses to serve subscribers in that state. Erratum to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 14, 2004). TracFone later amended its request for ETC designation in New York and Virginia to limit its eligibility for federal universal service support to the Lifeline program only. Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, 2 (filed Aug. 16, 2004); Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, 2 (filed Aug. 16, 2004). TracFone's petitions for ETC designation in the remaining states, other than Florida, as discussed below, were limited to eligibility for Lifeline support as originally filed. TracFone does not seek eligibility for high-cost support.

to the Florida Public Service Commission's assertion of jurisdiction over wireless ETC designations, we dismiss without prejudice TracFone's petition for designation as an eligible telecommunications carrier in Florida.[2] On September 8, 2005, the Commission conditionally granted TracFone's petition for forbearance from the facilities requirement of section 214(e)(1).[3] As discussed below, we now conclude that TracFone has satisfied the remaining eligibility requirements of section 214(e)(1) and the Commission's rules to be designated as an ETC eligible only for Lifeline support (limited ETC).[4] We also approve TracFone's plan for complying with the conditions imposed in the *Forbearance Order*.[5]

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[6] Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.[7]

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.[8] Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."[9] Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).[10] Before

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[2] TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed July 21, 2004) (Florida Petition). TracFone later amended its request for ETC designation in Florida to limit its eligibility for federal universal service support to the Lifeline program only. Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, 2 (filed Aug. 16, 2004); *see* para. 10 *infra* (discussing jurisdiction of the Florida Public Service Commission).

[3] *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*Forbearance Order*). Under section 214(e)(1)(A) of the Act, an ETC must offer service using its own facilities or a combination of its own facilities and resale of another carrier's service. 47 U.S.C. § 214(e)(1)(A).

[4] Lifeline is the universal service low-income program that provides discounts to qualified low-income consumers on their monthly telephone bills. *See* 47 C.F.R. §§ 54.401-54.409.

[5] Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(l)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Compliance Plan (filed Oct. 11, 2005) (TracFone Compliance Plan); Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(l)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Erratum to Compliance Plan (filed Oct. 17, 2005) (Erratum to Compliance Plan) (correcting its characterization of Florida to identify it as a state with state-imposed certification and verification requirements for Lifeline eligibility).

[6] 47 U.S.C. § 254(e).

[7] 47 U.S.C. § 214(e)(1); *see also* 47 C.F.R. § 54.201(d).

[8] 47 U.S.C. § 214(e)(2); *see Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

[9] 47 U.S.C. § 214(e)(6).

[10] *Id.*

designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.[11]

B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of the [supported] services and the charges therefore using media of general distribution;" and (5) if the petitioner meets the definition of a "rural telephone company" under section 3(37) of the Act, the identity of its study area, or, if the petitioner is not a "rural telephone company," a detailed description of the geographic service area for which it requests an ETC designation from the Commission.[12]

5. In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.[13] Specifically, consistent with the recommendation of the Federal-State Joint Board on Universal Service, the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.[14] These additional requirements are mandatory for all ETCs designated by the Commission.[15] ETCs already designated by the Commission or ETC applicants that submitted applications prior to the effective date of the *ETC Designation Order* must make such showings in their annual certification filings.[16]

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[11] *Id.*

[12] *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*).

[13] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*); *see also Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438, paras. 1, 33 (2004) (*Highland Cellular Order*).

[14] *See ETC Designation Order*, 20 FCC Rcd at 6380, para. 20 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, para. 5 (Fed-State Jt. Bd. 2004)).

[15] 47 C.F.R. § 54.202(a). Because TracFone is a pure reseller eligible for Lifeline support only, we do not require TracFone to demonstrate that it satisfies the network build-out and improvement requirements or to provide a certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

[16] 47 C.F.R. §§ 54.202(b); 54.209.

6. In addition, prior to designating an ETC pursuant to section 214(e)(6) of the Act, the Commission determines whether such designation is in the public interest.[17] In the *ETC Designation Order*, the Commission adopted one set of criteria for evaluating the public interest for ETC designations for both rural and non-rural areas.[18] Specifically, in determining the public interest, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering are considered.[19] As the Commission noted in the *ETC Designation Order*, however, the same factors may be analyzed differently or may warrant a different outcome depending on the specifics of the proposed service area and whether it is rural or non-rural.[20]

C. TracFone's Petitions

7. TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider that offers prepaid wireless telecommunications services.[21] On June 8, 2004, TracFone filed a petition seeking forbearance from section 214(e)(1) of the Act, which requires that an ETC be facilities-based, at least in part.[22] Beginning on that date, TracFone filed with the Commission petitions seeking designation as an ETC only for the purpose of being eligible to receive universal service Lifeline support in its licensed service areas in New York, Virginia, Florida, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.[23]

8. In the *Forbearance Order*, the Commission conditionally granted TracFone's request for forbearance from the facilities-based requirements of section 214(e)(1)(A) of the Act and section 54.201(i) of its rules for the purpose of considering TracFone's petitions for limited ETC designation.[24] The *Forbearance Order* required that TracFone file a compliance plan with the Commission explaining how TracFone will implement the conditions imposed by the *Forbearance Order*.[25] TracFone filed its compliance plan on October 11, 2005.[26]

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[17] 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c). *See also ETC Designation Order*, 20 FCC Rcd at 6388-96, paras. 40-57; *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21. The Commission places the burden on the ETC applicant to demonstrate that the public interest is served. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44.

[18] *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43.

[19] 47 C.F.R. § 54.202(c).

[20] *ETC Designation Order*, 20 FCC Rcd at 6390, para. 43. In analyzing the public interest factors in this instance, there is no rural/non-rural distinction because Lifeline support, unlike high-cost support, is not determined based on whether the service area is rural or non-rural. *See* 47 C.F.R. § 54.403.

[21] *See, e.g.*, Massachusetts Petition at 2, 3.

[22] 47 U.S.C. § 214(e)(1).

[23] *See supra* notes 1 and 2.

[24] *Forbearance Order*, 20 FCC Rcd at 15098-99, para 6. Additionally, on its own motion, the Commission forbore from section 54.201(d)(1) of its rules, which mirrors section 214(e) of the Act, requiring that ETCs be facilities-based, at least in part. *Id.* at 15098, n.23.

[25] *Id.* at 15105, para. 25.

[26] *See generally* TracFone Compliance Plan; Erratum to Compliance Plan.

III. DISCUSSION

A. Commission Authority to Perform the ETC Designation

9. TracFone has demonstrated that, except for the Florida Public Service Commission, the relevant state commissions lack authority to perform the requested limited ETC designations, and the Commission has authority to consider TracFone's petitions under section 214(e)(6) of the Act. Each petition includes an affirmative statement from the relevant state commission providing that ETC designation should be sought from the Commission.[27] Accordingly, we find the relevant state commissions lack jurisdiction to designate TracFone as an ETC and that this Commission therefore has authority to perform the requested limited ETC designations under section 214(e)(6).[28]

10. In April of this year, the Florida Public Service Commission found that, due to a change in Florida state law, it "now ha[s] jurisdiction to consider CMRS applications for ETC designation."[29] In light of this development, and because section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations, we dismiss without prejudice the petition filed by TracFone seeking designation as an ETC in Florida. TracFone may re-file its petition with the Florida Public Service Commission. Should the Florida Public Service Commission consider granting a petition by TracFone for designation as a limited ETC in Florida, we would encourage it to require TracFone to adhere to the compliance plan we approve herein.

B. Analysis of the Eligibility Requirements

11. Offering the Services Designated for Support. TracFone has demonstrated, through the required certifications and related filings, that it now offers or will offer upon designation as a limited ETC the services supported by the Lifeline program.[30]

12. Offering the Supported Services Using a Carrier's Own Facilities. The Commission previously granted TracFone forbearance from the facilities requirement for purposes of this limited ETC designation, permitting TracFone to offer the supported services via resale only.[31]

13. Advertising the Supported Services. TracFone has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the related charges "using media of general distribution."[32] TracFone has also stated that, in compliance with the

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[27] *E.g.*, New York Petition at 4 and Exhibit 2.

[28] 47 U.S.C. § 214(e)(6).

[29] *Petition of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier (ETC) in Certain Rural Telephone Company Study Areas Located Partially in Alltel's Licensed Area and for Redefinition of those Study Areas*, PSC-07-0288-PAA-TP, Notice of Proposed Agency Action Order Finding Authority to Consider Applications By CMRS Providers For ETC Designation, 2007 WL 1029436 (Fla. P.S.C. Apr. 3, 2007). The April order was a proposed agency action, which was made final by a consummating order on June 7, 2007. *See Petition of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier (ETC) in Certain Rural Telephone Company Study Areas Located Partially in Alltel's Licensed Area and for Redefinition of those Study Areas*, PSC-07-0481A-CO-TP, Amendatory Order, 2007 WL 1774614 (Fla. P.S.C. June 7, 2007).

[30] 47 C.F.R. §§ 54.410(a), 54.101(a)(1)-(a)(9); *see, e.g.*, New York Petition at 5-8. In particular, we disagree with commenters who argued that TracFone cannot offer toll limitation service. *See, e.g.*, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, Comments of TDS Telecommunications Corp., at 9-11 (filed July 26, 2004). We find that the prepaid nature of TracFone's service offering works as an effective toll control. *See infra* para. 15.

[31] *Forbearance Order*, 20 FCC Rcd at 15098, para. 6.

[32] 47 U.S.C. § 214(e)(1)(B); *see, e.g.*, New York Petition at 8.

Commission's Lifeline rules, it will advertise the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for those services.[33]

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

C. Public Interest Analysis

15. We find that TracFone's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers including increased consumer choice,[36] high-quality service offerings,[37] and mobility.[38] In addition, the prepaid feature, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts. The Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association Keystone Chapter assert, however, that TracFone is not complying with Pennsylvania's Public Safety Emergency Telephone Act (the Pennsylvania Act), which requires that wireless providers collect a wireless E911 surcharge and remit the money to Pennsylvania's Wireless E-911 Emergency Fund.[39] The National Emergency Numbers Association (NENA) further asserts that TracFone's actions in Pennsylvania reflect "patterns of behavior" evidenced "in several other states."[40] TracFone's reply asserts, *inter alia*, that the allegations set forth in the NENA Keystone/PAOCA Joint Comments are not relevant to TracFone's qualifications to be designated as an ETC and are a question of

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[33] 47 C.F.R. § 54.405(b); *see, e.g.*, Petitions for Designation as an Eligible Telecommunications Carrier in the State of Connecticut and the Commonwealth of Massachusetts, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at 10 (filed Dec. 29, 2004).

[34] *See supra* para. 5.

[35] *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20; 47 C.F.R. §§ 54.202(a), 54.209. For example, TracFone has committed to provide high-quality service, as demonstrated by committing to comply with the Consumer Code for Wireless Service of the Cellular Telecommunications Industry Association (CTIA), and to serve the designated areas within a reasonable time. *See, e.g.*, New York Petition at 13-14. Because TracFone is a pure reseller, eligible for universal service Lifeline support only, we do not require it to demonstrate that it satisfies the network build-out and improvement requirements, or to provide a certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

[36] For example, TracFone's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. *See, e.g.*, New York Petition at 12, 14.

[37] For example, TracFone committed that it will comply with the Consumer Code for Wireless Service of the CTIA. *See, e.g.*, New York Petition at 13.

[38] *See e.g.*, New York Petition at 10-14. As noted in the *PSC Alabama Order*, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. *Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, CC Docket No. 96-45, Order, 20 FCC Rcd 6854, 6861, para. 25 (Wireline Comp. Bur. 2005) (*PSC Alabama Order*). Moreover, the availability of a wireless universal service offering also provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. *Id.*

[39] TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Joint Comments of the Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association, Keystone Chapter, CC Docket No. 96-45, 5-6 (filed Feb. 8, 2008) (NENA Keystone/PAOCA Joint Comments).

[40] *See* Letter from James R. Hobson, Counsel for the National Emergency Numbers Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, 1-3 (filed Apr. 3, 2007) (NENA Apr. 3, 2008 *Ex Parte* Letter).

state law, not commission regulation.[41] TracFone further denies that it is in violation of the Pennsylvania Act, and asserts that the larger question of state 911 funding requirements is more appropriately addressed "at the national level."[42]

16. We disagree with TracFone and find compliance with 911/E911 requirements relevant to the public interest in this instance. In the *Forbearance Order*, the Commission expressly conditioned its grant of forbearance from the facilities requirement of section 214(e) of the Act on TracFone's compliance with E911 requirements applicable to wireless resellers.[43] The Commission adopted these conditions because of the unique circumstances presented by TracFone's petitions for limited ETC designation for Lifeline support.[44] The Commission further required TracFone to submit a plan outlining measures to implement the conditions imposed in the *Forbearance Order*, and stated the Commission would consider the plan in deciding whether to grant TracFone's petitions for limited ETC designation.[45] Given these circumstances, and in light of the concerns raised by NENA and the Pennsylvania Office of Consumer Advocate, we condition TracFone's designation as an ETC eligible for Lifeline support in each state on TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support, of 911 and E911 service.[46] Subject to this condition, we find, on balance, that the advantages of designating TracFone as a limited ETC in the designated service areas outweigh any potential disadvantages.[47]

D. Designated Service Areas

17. Based on the foregoing, we hereby designate TracFone as a limited ETC, eligible only for Lifeline support, in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.[48] In designating TracFone as a limited ETC, we clarify that TracFone's designated service areas do not encompass federally-recognized tribally-owned lands.[49]

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[41] Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Reply Comments of TracFone Wireless, Inc., CC Docket No. 96-45, 2-5 (filed Feb. 25, 2008).

[42] *Id.* at 5-9.

[43] *See Forbearance Order*, 20 FCC Rcd at 15102, para 16; *infra* at paras. 20-22.

[44] *See Forbearance Order*, 20 FCC Rcd at 15102, para 16. The Commission noted that TracFone's Lifeline-supported service may well be the customers' only means of accessing emergency personnel. *Id.* Given the potential gravity of the harm if TracFone's Lifeline customers cannot obtain access to emergency services, the Commission adopted the conditions to protect Lifeline customers. *Id.*

[45] *Id.* at 15105, para. 25.

[46] *See* NENA Keystone/PAOCA Joint Comments; NENA Apr. 3, 2008 *Ex Parte* Letter.

[47] The Commission has already found that any effect on the universal service fund would be minimal, limited to the Lifeline program, and outweighed by the benefit of increasing eligible participation in the Lifeline program. *Forbearance Order*, 20 FCC Rcd 15103-04, para. 17. In addition, we need not perform a creamskimming analysis because TracFone is seeking to be eligible for Lifeline support only.

[48] Under this limited ETC designation, TracFone will not be eligible for support for Link Up or toll-limitation service under the low-income program, nor will it be eligible for high-cost support, or for schools and libraries and rural health care support as an ETC. Non-ETCs, however, may participate in certain aspects of the schools and libraries or rural health care programs. *See Forbearance Order*, 20 FCC Rcd at 15097, para. 3 & n.12.

[49] TracFone expressly states that it does not request ETC designation for tribal lands. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, North Carolina, and Tennessee, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at n.22 (filed Feb. 2, 2005).

E. Regulatory Oversight and Compliance Plan

18. Under section 254(e) of the Act, TracFone is required to use the specific universal service support it receives "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[50] An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.[51] Lifeline assistance shall be made available to qualifying low-income consumers as soon as the universal service fund Administrator certifies that TracFone's Lifeline service offering satisfies the criteria in our rules and complies with the conditions imposed under the *Forbearance Order*.[52] In addition, TracFone must report certain information to the Commission and the Universal Service Administrative Company (USAC) pursuant to section 54.209 of the Commission's rules.[53]

19. We find that reliance on TracFone's commitments to meet these requirements is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.[54] These requirements will further the Commission's goal of ensuring that TracFone satisfies its obligation under section 214(e) of the Act to provide the services supported by the Lifeline program throughout its designated service areas.

20. In addition, we note that, in the *Forbearance Order*, the Commission imposed additional requirements on TracFone, and ordered that TracFone file a compliance plan detailing how it will adhere to these requirements. The additional requirements obligate TracFone to implement certain 911 and E911 requirements and to establish certain administrative procedures to safeguard against waste, fraud, and abuse in the Lifeline program.

21. Specifically, the Commission conditioned forbearance from the facilities requirement for limited ETC designation upon TracFone: (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtaining a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) requiring its customers to self-certify at time of service

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[50] 47 U.S.C. § 254(e). Because TracFone is not eligible to receive high-cost support, we do not require it to provide high-cost certifications under §§ 54.313 and 54.314 of our rules. *See* 47 C.F.R. §§ 54.313, 54.314.

[51] *See Forbearance Order*, 20 FCC Rcd at 15105-06, para. 26.

[52] *See* 47 C.F.R. §54.401(d). As noted above, we find that TracFone's service offering meets the criteria for service and functionality contained in our rules. *See supra* para. 11 & n.29. We also approve TracFone's compliance plan, finding that it is adequate to implement the conditions of the *Forbearance Order*. *See infra* para. 21.

[53] *See* 47 C.F.R. § 54.209(a) (specifying the information to be included in the annual reports submitted by ETCs); *ETC Designation Order*, 20 FCC Rcd at 6400-6402, paras. 68-69; *see also Virginia Cellular Order*, 19 FCC Rcd at 1584, para. 46 & n.140 (anticipating that annual submissions will encompass only the ETC's designated service areas). As noted above, as a pure reseller eligible for Lifeline support only, we do not require TracFone to report on network build-out and improvements or to certify that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. *See supra* note 15.

[54] In *TOPUC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) (*TOPUC*). Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

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

22. The Commission carefully crafted the conditions of the *Forbearance Order* to meet important regulatory goals. We decline, therefore, to modify these conditions as requested by TracFone in granting the ETC designation requests at issue herein.[56] Consequently, TracFone must obtain the required certification from each PSAP where it will provide Lifeline service.[57] Moreover, TracFone must continue to provide access to "basic *and* enhanced 911 service" as described in section 20.18(m) of our rules.[58] Finally, TracFone must "distribute its Lifeline service directly to its Lifeline customers."[59]

23. After careful review of the compliance plan and the record, we find the compliance plan adequate to implement the original and unmodified conditions of the *Forbearance Order*.[60] We, therefore, approve the compliance plan as discussed in this Order.

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[55] *Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6.

[56] In its compliance plan, TracFone requests two modifications to the public safety conditions. First, TracFone requests that, in lieu of obtaining certification from each PSAP confirming access to 911 and E911, that it be permitted to rely on the underlying carrier's current quarterly E911 report filed with the Commission together with a certification from TracFone that its Lifeline customers in the relevant market will be served only by such carrier(s). TracFone Compliance Plan at 7-10. Second, TracFone requests that it be allowed to offer Lifeline service where either 911 *or* E911 service is available. *Id.* at 11-14. Further, TracFone states in its applications that it will implement, upon designation as an ETC, the Lifeline certification and verification procedures set forth in an *ex parte* presentation dated July 13, 2005. *See, e.g.*, Delaware Petition at 12; District of Columbia Petition at 12-13; Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, WC Docket 96-45, Attach. (July 13, 2005). TracFone does not explicitly note, however, that the procedures set forth in that document were rejected, in part, in the *Forbearance Order*. *See Forbearance Order*, 20 FCC Rcd at 15104, para. 19; District of Columbia Public Service Commission Reply Comments, CC Docket No. 96-45, at 4-5 (filed Mar. 13, 2008) (District of Columbia Reply). Out of an abundance of caution, we treat this omission as a request for modification of the conditions of the *Forbearance Order*.

[57] *See Forbearance Order*, 20 FCC Rcd at 15102, para. 16. We believe this requirement is sufficient to address the District of Columbia Public Service Commission's concern that the District of Columbia Office of Unified Communications be notified that TracFone is providing Lifeline service in the District of Columbia. *See* District of Columbia Reply at 4.

[58] 47 U.S.C. § 20.18(m) (emphasis added). We also note that CMRS providers are required to "transmit all wireless 911 calls without respect to their call validation process. . . ." *See* 47 C.F.R. § 20.18(b). This rule addresses the concerns of the District of Columbia Public Service Commission regarding the 911 capability of TracFone handsets "regardless of activation status or minute availability." *See* District of Columbia Reply at 3; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18691-99, paras. 29-46 (1996).

[59] *Forbearance Order*, 20 FCC Rcd at 15104, para. 19.

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

(continued....)

24. Finally, we note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support an ETC receives is being used for the purpose for which it was intended.[61] TracFone will be required to provide such records and documentation to the Commission and USAC upon request. If TracFone fails to fulfill the requirements of the Act, our rules, the terms of this Order, or the conditions imposed under the *Forbearance Order* after it begins receiving universal service Lifeline support, the Commission may revoke its limited ETC designation.[62] The Commission may also assess forfeitures for violations of its rules and orders.[63]

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

25. Under section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued under section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.[64] TracFone has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.[65] We find that TracFone has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.[66]

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), TracFone Wireless, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER eligible only for Lifeline support in its licensed

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will be calculated and distributed because we are confident that USAC is capable of handling any administrative issues presented by TracFone's Lifeline offering. *See Forbearance Order*, 20 FCC Rcd at 15104, para. 20 (stating that the ETC designation order would address how Lifeline support will be calculated and distributed if the prepaid nature of the offering requires such clarification). The *Forbearance Order* also addressed the issue of double recovery, noting that, although the Commission has in the past declined to extend ETC status to pure resellers due to concerns about double recovery of universal service support, TracFone's CMRS wholesale providers are not subject to section 251(c)(4) wholesale obligations and so the resold services presumably do not reflect a reduction in price due to Lifeline support. *See id.* at 15100-01, para. 12. We, therefore, dismiss comments to the contrary. *See, e.g.*, Comments of Verizon, Federal-State Joint Board on Universal Service, TracFone Wireless Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, Petition for Forbearance from Application of Section 214, CC Docket No. 96-45 at 9 (filed July 26, 2004).

[61] 47 U.S.C. §§ 220, 403.

[62] *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); 47 U.S.C. § 254(e); *see also Forbearance Order*, 20 FCC Rcd at 15099, para. 6, n.25.

[63] *See* 47 U.S.C. § 503(b).

[64] 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)-(b). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of the petitioner; and (3) If the application is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C. F. R. § 1.2002(b). *See Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

[65] *See e.g.*, New York Petition at Exhibit 1.

[66] 47 C.F.R. §§ 1.2001-2003.

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

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Exhibit 4

FILED
MAY 21 2008
EXECUTIVE SECRETARY
G.P.S.C.

Georgia Public Service Commission

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DOCKET # 26282
DOCUMENT # 111984

Docket No. 26282

In Re: Docket No. 26282: Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households

ORDER ON APPLICATION FOR DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS CARRIER

Background

On October 30, 2007, TracFone Wireless, Inc. ("TracFone") filed with the Georgia Public Service Commission ("Commission") its Application for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households ("ETC Application"). TracFone is not seeking Universal Service Fund ("USF") support for the purpose of providing service to high cost areas.

TracFone has provided commercial mobile radio service ("CMRS") in Georgia for over nine years through resale arrangements with facilities-based wireless providers, such as Alltel Communications, Inc., AT&T Wireless, T-Mobile, and Verizon Wireless, among others. TracFone has over eight million customers nationwide and claims to be the leading provider of prepaid wireless service in the United States.

TracFone asserts that it meets all the requirements of the Federal Communications Commission ("FCC") for designation as an ETC. 47 C.F.R. § 54.101(a) requires the following services and functionality: (1) Voice grade access to the public switched telephone network, (2) Local usage, (3) Dual tone multi-frequency signaling or its functional equivalent, (4) Single-party service or its functional equivalent, (5) Access to 911 and E911 emergency service, (6) Access to operator services, (7) Access to

interexchange service, (8) Access to directory assistance, and (9) Toll limitation for qualified low-income customers.

TracFone requests ETC designation for the entire state of Georgia. Through resale of other wireless carriers' service, TracFone provides service in every zip code in the state.

TracFone intends to offer two different Lifeline products: "TracFone Pay-As-You-Go Wireless" and "NET10 Pay-As-You-Go Wireless." Under either plan, the customer would incur no monthly service charges. The differences between the plans lie in the handset, the monthly allotment of minutes, and the cost of additional minutes. If the customer elects the TracFone Pay-As-You-Go plan, that customer would receive a free refurbished handset and 50 minutes of local and long distance per month. Additional minutes can be purchased at a rate of $0.20 per minute. Under the "NET10 Pay-As-You-Go Wireless" plan, the customer would purchase a handset (prices start at $30) and would receive 100 minutes of local and long distance per month. Additional minutes can be purchased for $0.10 per minute.

On March 20, 2008, TracFone filed a letter responding to concerns raised by Staff that customers who run out of minutes might run up large bills. TracFone stated that because the company offers prepaid service and does not issue bills, any call in progress when the customer runs out of minutes will be dropped. However, the customer will be notified several times during the call that the balance of minutes is low. Also, a TracFone customer who has run out of minutes will still be able to make 911 calls and check voicemail.

In its October 15, 2007 order in Docket No. 10396 approving Alltel Communications, Inc. ("Alltel")'s ETC application, the Commission adopted the Staff's recommendation. In that docket, the Staff recommendation was as follows:

> Staff finds that Alltel has met all statutory and regulatory requirements for designation as an ETC. The Staff also concludes that the Commission has the authority to grant ETC status to a wireless carrier. Although the Commission has previously not exerted authority over wireless ETC applications, Federal and State law allow the Commission to do so. 47 U.S.C. § 214(e)(2) states that a state commission "may" designate a requesting carrier if it meets the requirements outlined in the law. The Georgia Competitive Emerging Communications Technologies Act of 2006, which eliminates any authority the Commission may have had "over setting of rates or terms and conditions" for wireless service, specifically states that it has no effect on "(a)ny authority of the Public Service Commission to act in accordance with federal laws or regulations of the Federal Communications Commission." O.C.G.A. §46-5-222(b)(3). Therefore, the Staff recommends that the Commission approve Alltel's Application with the following conditions and filing requirements:

- The Commission reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes.

- Alltel's ETC designation may at any time be suspended or revoked by order of the Commission.

- Alltel shall make all service offerings, including Lifeline/ Link-Up available on its internet website.

- Alltel shall file within 30 days of approval of its ETC application its terms and conditions of service, and rate plans including its Link-Up and Lifeline discounts available to qualifying low-income customers. Further, Alltel shall have the ongoing obligation to notify the Commission of any future changes to its rates, terms, or conditions.

- Alltel shall file within 30 days of approval of its ETC application proposed language to be used in all advertising of Lifeline/ Link-Up services and on its website. The language should include information directing customers to the Commission's Consumer Affairs unit for complaints regarding any service issues. The Staff shall have the right to review and make changes to any proposed language.

- Alltel shall file the following information on March 31, 2008 (and updated information every March 31 thereafter, unless otherwise ordered by the Commission):

    1. A map showing Alltel's actual January 2007 service area, and a map showing the January 2008 estimated service area *increase or decrease*. Additionally, the map should include locations of all new facilities constructed.

    2. Alltel shall report all instances in which the company refuses to serve a customer. Alltel shall be required to provide information regarding the specific location of the customer (street address), the company's rationale for refusal of service, and the company's progress with establishing interconnection arrangements which permit resale of either wireless or Incumbent Local Exchange Carrier ("ILEC") services in the customer's location.

    3. Estimated total 2007 federal funds, actual total federal funds received in 2007, and estimated total funds to be received in 2008.

4. A spreadsheet listing each wire center, the name of the ILEC associated with that wire center, estimated 2007 expenses (from trade secret filing made with the Application), actual 2007 expenses, and estimated 2008 expenses.

Staff Recommendation

The Staff recommends that the Commission designate TracFone as an ETC throughout the State of Georgia for the limited purpose of providing Lifeline service. The Staff recommends that the Commission apply the same conditions to TracFone as it did Alltel, to the extent those conditions apply to Lifeline service.

The Staff further recommends that the Commission condition the grant of ETC designation to TracFone upon the company's satisfactory resolution of complaints filed with the Commission in connection with TracFone's Lifeline service offering.

Because TracFone is strictly a reseller, the company requested, and was subsequently granted, forbearance by the FCC from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), which require that an ETC provide service either using its own facilities or using a combination of its own facilities and resale of other providers' facilities. In exchange for forbearance from the facilities requirement, the FCC required TracFone to: (a) provide its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes; (b) provide 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) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) require 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) establish safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.

In accordance with the FCC's forbearance order, TracFone filed a compliance plan in which, among other things, it details how the company will enroll Lifeline customers. TracFone itself will process all applications for Lifeline. Its retailers will have no role in the application process other than to provide customers with printed information regarding the program.

TracFone provided the following information regarding the application process:

> 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 programs(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 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 state on the certification form. *Emphasis in original, footnotes excluded.*

TracFone also committed to maintain a database of all its Lifeline customers' names, addresses, and contact numbers in order. The database would be used by TracFone to cross-check new applicants against existing Lifeline customers. A new applicant whose address already appears in the database will be denied. In addition, each customer will verify annually that he or she is still eligible for Lifeline service.

In its Highland Cellular decision, the FCC identified several factors to be considered in determining whether designation of additional ETC in a rural area would serve the public interest. These factors include: (1) the benefits of increased competitive choice, (2) the impact of the designation on the USF, (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 timeframe. The Staff finds that TracFone's application is in the public interest. TracFone's service not only provides customer choice, it is also unique in that the customer incurs no monthly fees. Further, the customer will enjoy the benefits of mobility and the ability to make local or long distance calls using the provided pool of minutes. TracFone asserts that its designation as an ETC will have a negligible impact on the USF, because only new Lifeline customers will increase the draw from USF. That is, Lifeline customers who switch from the Incumbent Local Exchange Carrier to TracFone would have zero net impact on the USF. Also, the FCC has determined that, "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 participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers." *TracFone Forbearance Order, ¶17*

On April 11, 2008, the FCC approved TracFone's applications for limited ETC designation in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia. In doing so, the FCC found that TracFone satisfied all the eligibility requirements of section 214(e)(1) and also approved TracFone's plan for complying with the conditions the FCC imposed in the TracFone Forbearance Order. Notably, the FCC dismissed without prejudice the Florida application, because the Florida Public Service Commission, like the Georgia Public Service Commission, has asserted jurisdiction over

wireless ETC designations. Thus, TracFone's application is properly before this Commission.

The Commission finds the Staff's recommendation reasonable and hereby adopts the Staff's recommendation.

* * * * *

WHEREFORE, it is

ORDERED, that TracFone is granted ETC designation for the limited purpose of providing Lifeline service.

ORDERED FURTHER, that the conditions imposed upon Alltel in Docket No. 10396 shall be imposed upon TracFone, to the extent those conditions apply to Lifeline service.

ORDERED FURTHER, that TracFone's ETC designation shall also be conditioned upon the satisfactory resolution of complaints filed with the Commission's Consumer Affairs Unit.

ORDERED FURTHER, that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 6th day of May 2008.

Reece McAlister
Executive Secretary

5-16-08
DATE

Chuck Eaton
Chairman

5/19/08
DATE

Exhibit 5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for designation as an eligible telecommunications carrier (ETC) by TracFone Wireless, Inc. for limited purpose of offering lifeline service to qualified households.	DOCKET NO. 070586-TP ORDER NO. PSC-08-0418-PAA-TP ISSUED: June 23, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS STATUS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Case Background

TracFone Wireless, Inc. (TracFone) has been seeking designation as an eligible telecommunications carrier (ETC) in order to provide Lifeline services to consumers beginning with its petition filed with the Federal Communications Commission (FCC) on June 8, 2004, seeking forbearance from the facilities-based requirements in Section 214(e)(1)(A), which requires that a carrier be at least, in part, facilities-based to be eligible for designation as an ETC. TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider that offers prepaid wireless telecommunications service, by using a "virtual network" consisting of services obtained from several licensed wireless networks.[1] Through the arrangements with the underlying carriers, TracFone is able to offer service wherever wireless service is available in Florida.

[1] The underlying carriers providing services to TracFone in Florida are Alltel, AT&T Mobility, T-Mobile, US Cellular, and Verizon Wireless.

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The FCC granted TracFone forbearance from the facilities-based requirement in Order 05-165, issued September 8, 2005, in Docket 96-45 (Forbearance Order). In TracFone's petition for Forbearance, it stated it will meet all ETC obligations, except for the facilities-based requirements. The Forbearance Order noted that TracFone would be a "limited ETC" eligible only for Lifeline support and would be required to conform to all rules applicable to Lifeline. TracFone is not entitled to receive Universal Service Fund (USF) support for high-cost, schools and libraries, or rural health-care and will not be seeking reimbursement from USAC for Link-up or toll limitation service monies.

The Forbearance Order required that TracFone file a compliance plan with the FCC stating how it intended to implement the conditions imposed by the Forbearance Order. The compliance plan was to contain a plan outlining the measures it will take to implement the following: (a) providing Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status or availability of prepaid minutes; (b) providing Lifeline customers with 911 and E911 compliant handsets, and replacing non-compliant handsets at no additional charge; (c) complying with conditions (a) and (b) prior to providing Lifeline service; (d) obtaining certification from each Public Service Access 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 then annually thereafter that they are the head of household and receive Lifeline-support service only from TracFone; and (f) establishing safeguards to prevent customers from receiving multiple TracFone Lifeline subsidies at the same address. The FCC required that TracFone provide the plan within 30 days of the order issuance. TracFone filed the compliance plan with the FCC on October 11, 2005.

In its 1997 Universal Service Order,[2] the FCC found it was appropriate to deny pure resellers designation as an ETC because pure resellers could receive double recovery of universal service support by purchasing wholesale services at a price that includes the universal service support received by the incumbent provider, and also receive reimbursement from the USF. However, TracFone, as a CMRS provider does not purchase Lifeline-supported services from ILEC providers. The resold services it purchases do not reflect a reduction in price due to Lifeline support. Allowing TracFone to receive Lifeline support from the Federal USF will not result in double recovery.

TracFone filed a petition with the FCC for designation as an ETC in Florida on July 21, 2004. TracFone also petitioned for ETC designation in several other states: New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia, between July 2004 and December 2007.

On March 13, 2007, we addressed the issue of whether or not this Commission has jurisdiction to designate CMRS providers as ETCs. On April 3, 2007, we issued Order No. PSC-07-0288-PAA-TP, in Docket Nos. 060581-TP and 060582-TP, finding that with the enactment of Section 364.011, Florida Statutes, the Florida Legislature has granted this Commission limited authority over CMRS providers for those matters specifically authorized by federal law.

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[2] In the matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 97-157, Released May 8, 1997.

Therefore, pursuant to §214(e)(2) of the Telecommunications Act of 1996, which authorizes states to designate ETC carriers, this Commission has jurisdiction over CMRS providers for the purpose of considering ETC petitions.

TracFone determined that this Commission would be an appropriate forum to petition for ETC designation in Florida. On September 6, 2007, TracFone filed an application with this Commission for designation as an ETC for the limited purpose of offering Lifeline service to qualified Florida consumers. TracFone is not seeking high-cost funds from the USF and is requesting designation strictly for the purpose of providing Lifeline in the State of Florida.

On April 1, 2008, TracFone filed an Ex Parte Presentation at the FCC, addressing the E911 funding requirements. TracFone stated it had become aware of the concern regarding E911 by some of the FCC Commissioners. Additional concerns were raised in comments regarding TracFone's ETC petition filed with the FCC for designation in Pennsylvania. TracFone is still actively working with Pennsylvania and other states to be sure it is compliant with all 911 requirements.

The FCC addressed TracFone's petition for ETC designation in several states on April 10, 2008. The FCC designated TracFone as an ETC in all states for which it had requested designation, except for Florida. The FCC recognized this Commission's authority by stating, "Due to the Florida Public Service Commission's assertion of jurisdiction over wireless ETC designations, we dismiss without prejudice TracFone's petition for designation as an eligible telecommunications carrier in Florida."

TracFone's FCC-approved compliance plan requires the following:

- Certification from each PSAP where TracFone provides Lifeline service, confirming that TracFone provides its customers with access to basic and E911 service;
- E911 compliant handsets must be provided to TracFone's new customers and TracFone must replace any non-compliant handsets for its existing customers at no charge;
- Self-certification of TracFone customers under penalty of perjury once service has been activated and also annual certification that the customer is the head of household and is only receiving a Lifeline discount from TracFone;
- Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Lifeline at each residential address; and
- TracFone must deal directly with its customers to certify and verify Lifeline eligibility.

The FCC agreed that this Commission is the appropriate jurisdiction to grant ETC status to TracFone by stating in FCC Order 08-100, "Should the Florida Public Service Commission consider granting a petition by TracFone for designation as a limited ETC in Florida, we would encourage it to require TracFone to adhere to the compliance plan we approve herein."

TracFone received support for its ETC petition to the FCC from former Florida Governor Jeb Bush while he was still in office. On November 9, 2004, Governor Bush sent a letter to former FCC Chairman Powell, on behalf of the citizens for Florida and stated that he "strongly encourages the Commission [FCC] to grant TracFone's petitions at the earliest opportunity." Governor Bush went on to mention that TracFone could significantly increase the level of Florida consumers' participation in Lifeline and TracFone's Lifeline service would bring to Florida consumers the convenience, flexibility and security of wireless service. Governor Bush expressed that the benefit of having a wireless carrier designated as an ETC would only mean more choices for Florida consumers. Florida Senator Bill Nelson sent a letter dated October 24, 2007, to Chairman Martin of the FCC noting that TracFone's petitions were pending before the FCC for approximately three years without action, and requested that the FCC provide an update on the status of TracFone's petition for designation as an ETC.

TracFone demonstrated its ability to provide service when it was designated as an ETC to provide temporary Lifeline support after Hurricane Katrina. On October 14, 2005, the FCC released the Hurricane Katrina Order,[3] where the FCC made available $211 million of targeted support from the Universal Service Fund (USF) for reconstruction and remediation relating to the restoration of telecommunications services in Alabama, Louisiana, and Mississippi.[4] On November 16, 2005, the FCC granted TracFone's petition for designation as a temporary ETC for the purpose of providing assistance to the victims of Hurricane Katrina. To ensure that it was indeed the victims of Hurricane Katrina that received the necessary assistance, any person approved for individual housing assistance by FEMA was provided with a handset that had 300 minutes of airtime, not to exceed an amount of $130 per household,[5] from November 2005 to March 1, 2006. Within months, TracFone enrolled nearly 30,000 hurricane victims into the Lifeline program.[6] TracFone used marketing techniques similar to what it has proposed in Florida.

The Public Utility Research Center (PURC) issued a report on Lifeline April 4, 2008, regarding low-income households in Florida and their telecommunications preferences. PURC presented its report to this Commission at the May 20, 2008 Internal Affairs meeting. The report notes that Lifeline was established by the FCC due to the belief that low-income households find that landline local telephone service is essential for their social and economic livelihoods, and that a Lifeline discount was necessary to make the service more affordable. In 2005, about 90 percent of low-income households in Florida subscribed to a landline telephone service, while only 13 percent of the households eligible for the Lifeline discount were using the discount. Further, approximately half of the low-income households were purchasing cellular telephone service.

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[3] Federal-State Board on Universal Service, CC Docket No. 96-45, Order FCC 05-178.
[4] FCC Order No. 05-178, CC Docket No. 96-45, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 03-109 p. 2
[5] FCC Order No. 05-178, CC Docket No. 96-45, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 03-109 pp. 6-7
[6] TracFone Application for designation as an ETC p. 13

The PURC report contains information obtained during surveys of low-income households and consumers using the following: 1) a survey of customers via landline telephone 2) a survey of customers via cellular telephone, and 3) an intercept survey, (i.e., an in-person interview) of individuals leaving two different DCF locations. In comparing the results from the three types of surveys, PURC found that cellular phones are becoming more popular and essential in low-income households. The report states that penetration of prepaid cellular phones has about doubled for low-income households in the past three years and that preference may suggest that Lifeline discounts might be beneficial to low-income households if applied to prepaid cellular phones. PURC noted that the primary motivation for using prepaid cellular, was the ability to control phone costs. It was found that lower-income households change residences more frequently than higher-income households, and that a cellular phone might be more suitable for many low-income households.

On May 1, 2008, the FCC issued Order 08-122, addressing the cap on high-cost universal service funds. In that order, the FCC stated "there are advantages to obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support." The order also mentions TracFone's forbearance from Section 214(e)(1) of the Act so that it could seek designation as an ETC eligible only to receive universal service Lifeline support and that TracFone took this step because "offering prepaid plans which make wireless service available to low-income users...has been a critical component of TracFone's business strategy since the company's inception." In addition to TracFone, other wireless carrier's may implement a similar business strategy and by offering Lifeline and Link-Up services, a competitive ETC may attract new subscribers that may not otherwise have taken telephone service.

Later in the order, the FCC states, "In April 2007, the Florida Public Service Commission found that, due to a change in Florida state law, it "now ha[s] jurisdiction to consider CMRS applications for ETC designation."" The Georgia Public Service Commission found in October 2007, that it has the authority to designate wireless carriers as ETCs. Further, the U.S. Virgin Islands in February 2008, granted its Public Services Commission the authority to grant requests for ETC designation by wireless carriers. In light of these developments, and because §214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations, we dismiss without prejudice the petitions filed by SouthernLINC seeking designation as an ETC in Florida and Georgia and the petition filed by Choice seeking designation as an ETC in the U.S. Virgin Islands (the Dismissed Petitions). SouthernLINC may re-file its petitions with the Florida Public Service Commission and the Georgia Public Service Commission, respectively, and Choice may re-file its petition with the U.S. Virgin Islands Public Services Commission.

The Center for Disease Control issued results of a survey taken July-December of 2007, by the National Health Interview Survey (NHIS). This survey showed that nearly one out of every six households (15.8%) did not have a landline telephone, but did have at least one wireless telephone. The survey also found that low-income people are likelier than the more affluent to have only cell phones.

We have jurisdiction pursuant to §214(e)(2) of the Telecommunications Act of 1996, Sections 364.10(2) and 364.11, Florida Statutes, to address a petition by a CMRS provider seeking designation as an ETC.

II. Analysis

Under FCC rules, the state commissions have the primary responsibility to designate providers as ETCs.[7] Designation as an ETC is required in order for a provider to be eligible to receive monies from the federal Universal Service Fund (USF). Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support."[8] According to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal Universal Service mechanisms throughout a designated service area.

ETC Certification Requirements

The Code of Federal Regulations addresses a state commission's responsibilities related to an ETC designation:[9]

> Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

To qualify as an ETC, a carrier must provide nine services identified in 47 CFR 54.101. The services are:

(1) Voice grade access to the public switched network "Voice grade access" is defined as a functionality that 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. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz – TracFone states that it complies with this requirement by enabling customers to transmit voice communications, including signaling to the network that a caller wishes to place a call, and enabling customers to receive voice communications, including receiving a signal indicating there is an incoming call;

[7] 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).
[8] 47 U.S.C. § 254(e)(2).
[9] 47 C.F.R. § 54.201(c)

(2) Local Usage "Local usage" means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users – Customers can send and receive local calls wherever TracFone provides service. TracFone includes local usage in all of its calling plans, including those that will be available for Lifeline discounts. While the FCC has not mandated minimum local usage requirements, TracFone states it will comply with any applicable requirements that may be established;

(3) Dual tone multi-frequency signaling or its functional equivalent "Dual tone multi-Frequency" (DTMF) is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time – All handsets provided by TracFone are DTMF-capable;

(4) Single-party service or its functional equivalent "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission – TracFone provides customers with single-party access for the duration of every call, and it does not provide "multi-party" or "party-line" services;

(5) Access to emergency services "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point (PSAP) operated y the local government. "Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems – TracFone provides access to the 911 system for its customers through its underlying carriers. TracFone has implemented and will continue to implement E911 services, consistent with the rules and orders when services are made available by the carriers from whom TracFone purchases service[10];

(6) Access to operator services "Access to operator services" is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call - TracFone customers have access to operator services;

(7) Access to interexchange service "Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier,

[10] TracFone's designation as an ETC in Florida to provide Lifeline service should be conditional on TracFone's ability to certify with each PSAP in Florida.

necessary to access an interexchange carrier's network – TracFone customers are able to complete toll calls and are not charged separately for interexchange calls. Long distance calling is included in TracFone's service, with no additional charge to the customer;

(8) Access to directory assistance "Access to directory assistance" is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings – TracFone customers have access to directory assistance provided through any of the vendors being used by TracFone; and

(9) Toll limitation for qualifying low-income consumers Toll limitation or blocking restricts all direct dial toll access – There will be no toll limitation because TracFone is a prepaid service, so there will be no disconnect for non-payment.

Additional ETC Certification Requirements

In addition to requiring the above services, the FCC, on March 17, 2005, issued a Report and Order that established additional criteria that all ETC applicants must satisfy in order to be granted ETC status by the FCC. In this Order, the FCC determined that an ETC applicant must also demonstrate:

1) a commitment and ability to provide the supported services throughout the designated area;[11]
2) the ability to remain functional in emergency situations;[12]
3) ability to satisfy consumer protection and service quality standards;
4) provision of local usage comparable to that offered by the incumbent LEC;[13] and
5) an acknowledgement that the applicant may be required by the FCC to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.[14]

The FCC encouraged states to also adopt these criteria, and we have done so in Docket No. 010977-TL, by Order No. PSC-05-0824-TL, issued August 15, 2005.

We have reviewed TracFone's petition for designation as an ETC in Florida, as well as additional documents filed with this Commission and with the FCC. We have verified that TracFone has complied with the above requirements to be eligible as an ETC in Florida and TracFone has demonstrated its ability to provide the nine services identified in 47 CFR 54.101.

TracFone has provided a plan to advertise the services supported by the Federal Universal Service mechanisms throughout the area where designated, as required in Section 214(e)(1), which requires ETCs to offer and advertise. TracFone provided an initial plan outlining their combined Mass and Grass roots media advertising. TracFone will use retail

[11] TracFone ETC Application pp. 21-22
[12] TracFone responses to Staff's 2nd data request, p. 13
[13] TracFone ETC Application p. 8 and Responses to Staff's 1st data request, pp. 8-9
[14] TracFone ETC Application pp. 16-17

outlets and other methods for Lifeline advertising and for customers to purchase its prepaid cards. As a safeguard to prevent more than one Lifeline-supported service per household, customers will not be able to receive Lifeline certification through a retail provider. Customers will have to contact TracFone directly to self-certify for Lifeline. Customers must self-certify, under penalty of perjury, that they qualify for Lifeline service either by being a participant of one of Florida's eligible programs such as Medicaid or Food Stamps. Customers may also be eligible for a Lifeline discount because they are within the relevant threshold of income level. TracFone has already advertised its Lifeline program when it was previously designated temporary ETC status after Hurricane Katrina.

TracFone has over nine million customers nationwide and is the leading provider of prepaid wireless service in the United States. TracFone is priced the same in all of its service locations. TracFone has been providing CMRS to the State of Florida for over ten years. TracFone's Lifeline offerings will differ from other landline Lifeline offerings in more than one way as described below.

TracFone offers customers the convenience of a wireless mobile phone, and can offer limited quantities of usage at no cost to qualifying consumers. This offers Florida consumers a pay-as-you-go plan with no credit checks, term contracts, or volume commitments. Consumers can purchase just what they deem necessary for their personal use for a reasonable price. Most Lifeline offerings provide discounts below the standard rates and participating customers pay the difference in the standard rate and the discounted rate. TracFone will credit each qualified Lifeline participant with a quantity of airtime at the beginning of each month automatically. If the customer uses all of the free Lifeline airtime, the account will remain active and an opportunity provided to purchase additional airtime. The customer can also choose to wait until the next month when free airtime is again provided. Customers will always be able to contact 911 from their wireless handset, regardless of whether they have depleted their free Lifetime minutes or additional airtime.

TracFone offers prepaid cards to its customers with different time amounts and Lifeline customers are able to purchase whichever card they choose. The lowest priced prepaid card is currently $18.99 for 70 minutes, and those 70 minutes are available for 60 days. Customers who are not on the Lifeline program must purchase additional minutes after they have utilized all minutes available, and/or purchase another card before the 60 day time-frame has expired. However, Lifeline customers will be automatically credited with airtime each month with no expiration period.

The TracFone plan includes long-distance calling to more than 60 countries at no additional charge. There are no toll charges on TracFone's plan. The "Pay-As-You-Go" wireless plan will provide qualifying Lifeline customers with access to the network for one year. Each Lifeline customer will receive 68 minutes of free airtime each month. TracFone's original petition stated that customers would receive 50 minutes of free airtime each month, consistent with the federally subsidized discount of $10.00 per month, per customer. However, due to the requirements in Florida that ETCs provide an additional $3.50 discount, TracFone made the necessary adjustments and came to the 68 minutes free per month, per Lifeline customer. Based on a rate of $0.20 per minute, $10.00 would provide 50 minutes of service for the customer. The

additional $3.50, calculates approximately an additional 18 minutes, totaling 68 free minutes a month. The cost to the consumer for these 68 minutes would be completely subsidized by the Lifeline support from the USF and TracFone's contribution of $3.50 a month.

In an effort to make the prepaid cards more affordable for Lifeline customers, TracFone will begin offering $2.00, $5.00 and $10.00 cards that are strictly for use by those customers that are certified as Lifeline customers. There will be no expiration on these prepaid cards and customers will receive a $0.20 a minute rate. The $2.00, $5.00 and $10.00 cards will not be available in all locations where TracFone service is sold, only certain locations in Florida, such as Dollar General, Family Dollar, Walgreens, CVS and Publix. TracFone believes that pharmacies and grocery stores are primary locations for sales of low volume cards. Lifeline customers will be notified of the locations where they can purchase the cards in "welcome packages" that will be sent to newly-enrolled Lifeline customers by TracFone. The locations will also be listed on the TracFone website (www.TracFone.com) with geographic listings as well. The $2.00, $5.00 and $10.00 cards, will be clearly marked strictly for use by customers receiving Lifeline. These cards will have no expiration date and will carry over to the next month if not utilized, like any unused Lifeline airtime.

For the first year a customer is certified as a Lifeline customer with TracFone, they will be eligible to receive one free handset, either refurbished or new, based on availability. TracFone handsets may have such features as caller ID, voicemail and call forwarding, depending on the handset model. Refurbished handsets will be given out first, however if there are no refurbished handsets available at the time a customer becomes eligible, TracFone will provide a new handset at no charge to the consumer. In accordance with the FCC compliance plan, TracFone handsets will be E911 compliant, and if a former customer becomes eligible for Lifeline and has a handset that is not E911 compliant, TracFone will replace that handset at no additional charge to the customer.

Once a customer has received its handset, the customer will receive 68 minutes of free airtime each month. It will be the responsibility of the customer to understand how TracFone works and that they need to have their handset on and charged on the first day of every month to receive those minutes to their phone. Once a customer has exceeded the first free 68 minutes, that handset will still have all 911 and E911 capabilities for the remainder of the month, but the customer also has the option to purchase additional minutes. For customers who do not use all 68 free minutes, or additional minutes they may have purchased, those minutes will carry-over to the next month, and that customer will still receive an additional 68 free minutes at the beginning of the next month. If for some reason the customer does not have their handset charged and ready on that day, when they do turn on their phone, the minutes will be credited.

To comply with the requirement of Transitional Lifeline[15], TracFone will offer customers who are no longer eligible for Lifeline, a 30 percent discount on any prepaid card for a 12-month period following ineligibility. As an example, if a Transitional Lifeline customer purchases a TracFone prepaid card containing 100 minutes, they will be credited 143 minutes when the card is activated (100 minutes divided by .7). Customers will also be able to purchase the $2.00, $5.00, and $10.00 prepaid cards for an additional year. There will be no expiration date on this airtime, however once the customer reaches the end of the Transitional Lifeline 12-month timeframe and has utilized all airtime, they will have to purchase additional prepaid cards, just as other customers who are not on the Lifeline program.

TracFone will be working directly with the Florida Department of Children and Families (DCF) and this Commission to provide for automatic enrollment. TracFone has specially trained Lifeline staff available that are Spanish-speaking to better assist customers. The TracFone customer can get certified for Lifeline through DCF, this Commission, or by contacting TracFone directly. TracFone will have a location on its website where customers can learn more about Lifeline and receive the information necessary to certify through the website as well.

III. Decision

TracFone states it is able to provide all services and functionalities supported by the universal service program, detailed in C.F.R. Section 54.101(a). TracFone understands all ETC requirements of the FCC and this Commission and has agreed to abide by all Florida Statutes and Rules. TracFone also understands that this Commission has the authority to both grant and revoke ETC designation if TracFone is non-compliant.

TracFone's Lifeline Offering Provides:

1) A free E911 handset to Lifeline eligible consumers.

2) 68 free minutes of airtime per month.

3) $2.00, $5.00, and $10.00 prepaid cards to Lifeline customers with airtime which rolls-over month-to-month.

4) Once Lifeline customers are determined to be ineligible, they are provided a 30% discount by receiving additional minutes on any TracFone prepaid card for a period of 12 months, during the Transitional Lifeline period.

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[15] Transitional Lifeline requires that each local exchange telecommunications company shall offer discounted residential basic local telecommunications service at 70 percent of the residential local telecommunications service rate for any Lifeline subscriber who no longer qualifies for Lifeline. A Lifeline subscriber who requests such service shall receive the discounted price for a period of one year after the date the subscriber ceases to be qualified for Lifeline. In no event, shall this preclude the offering of any other discounted services which comply with Sections 364.08, 364.09, and 364.10 Florida Statutes, per 364.105 Florida Statutes.

Therefore, we hereby grant TracFone limited ETC status in Florida to provide Lifeline services only. Tracfone's ETC designation shall be contingent on TracFone providing the following:

- Certification from every PSAP in Florida, confirming that TracFone provides its customers with access to basic and E911 service;
- E911 compliant handsets should be provided to TracFone's new customers and TracFone should replace any non-compliant handsets for its existing customers at no charge;
- Self-certification of TracFone customers under penalty of perjury once service has been activated and also annual certification that the customer is the head of household and is only receiving Lifeline discounts from TracFone;
- Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Lifeline at each residential address; and

TracFone should deal directly with its customers who do not utilize the Lifeline Automatic Enrollment function, to certify and verify Lifeline eligibility.

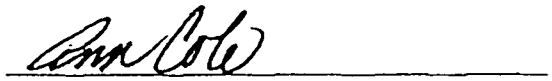
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that TracFone Wireless, Inc.'s Application for Eligible Telecommunications Status is hereby granted as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of June, 2008.



ANN COLE
Commission Clerk

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 14, 2008. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Exhibit 6

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **TRACFONE WIRELESS, INC.**, for designation as an eligible telecommunications carrier pursuant to Section 214(e) of the Telecommunications Act of 1996.	)	Case No. U-15625

At the October 21, 2008 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

On July 17, 2008, TracFone Wireless, Inc. (TracFone) filed an application under Section 214(e)(2) of the federal Telecommunications Act of 1996 (FTA), 47 USC § 214(e)(2), for designation as an eligible telecommunications carrier (ETC) for purposes of universal service fund (USF) support. On August 6, 2008, TracFone filed an erratum to the application.

TracFone requests that the Commission enter an order immediately designating it as an ETC solely for the purposes of providing Lifeline and Link Up service statewide to qualifying Michigan citizens. TracFone asserts that the Commission may act on its application without the necessity of a public hearing.

TracFone has operated as a non-facilities-based commercial mobile radio service (CMRS) provider furnishing prepaid wireless telecommunications services for the past ten years in

Michigan. Section 214(e)(1)(A) of the FTA provides that an ETC must offer services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." 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 carrier's services.

In 2004, TracFone filed a petition with the Federal Communications Commission (FCC) requesting forbearance with respect to both the facilities-based service requirement and the prohibition against state commissions designating 100% resellers as ETCs. The FCC granted TracFone's petition for forbearance on September 8, 2005.[1] The FCC also granted TracFone's petition requesting ETC designation in several states for Lifeline purposes on April 11, 2008.[2]

In exchange for forbearance from the facilities-based requirement, the FCC required TracFone to: (a) provide its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes; (b) provide its Lifeline customers with E911-compliant handsets and replacement, at no additional charge to the customer, of non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) require its customers to self-certify at the time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establish safeguards to prevent its customers from

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[1]CC Docket No. 96-45, FCC 05-165 (rel'd September 8, 2005).

[2]*See,* CC Docket No. 96-45, FCC 08-100 (rel'd April 11, 2008), granting TracFone's ETC petitions for Lifeline purposes for Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee and Virginia. TracFone has also been designated an ETC for Lifeline purposes in Florida and Georgia.

receiving multiple Lifeline subsidies at the same address. In accordance with the FCC's forbearance order, TracFone filed a compliance plan, stating that TracFone itself will process all applications for Lifeline.

The Commission has historically participated in determining whether to grant ETC status to a petitioning carrier[3] and, in doing so, the Commission has applied the FCC's standards and requirements. The Commission will again follow that precedent in this order, mirroring the above FCC requirements.

TracFone requests that the Commission enter an order immediately designating it as a limited ETC for Lifeline/Link Up purposes only, in the rural and non-rural telephone company wire centers identified in the exhibit filed by TracFone on September 29, 2008.

After reviewing TracFone's application, the Commission finds that it should be conditionally granted because the Commission is persuaded that ETC designation for TracFone promotes the availability of universal service and is in the public interest. Thus, the application filed by TracFone for ETC designation for purposes of receiving Low Income USF support for Lifeline/Link Up service is conditionally granted, with the understanding that the following conditions shall be met prior to TracFone's requesting USF support for Lifeline and Link Up reimbursement:

- E911 compliant handsets shall be provided to TracFone's new customers and TracFone shall replace any non-compliant handsets for its existing customers at no charge;

- TracFone shall submit certification from each 911 County Coordinator in Michigan[4] where TracFone provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 services;

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[3] *See*, 47 USC 214(e)(2).

[4] A list of Michigan 911 County Coordinators can be viewed at: http://www.michigan.gov/documents/msp/List_of_CountyCoordinators_175553_7.xls

- TracFone shall submit self-certifications from TracFone's Lifeline/Link Up customers, under penalty of perjury, once service has been activated, with annual certification that the customer is the head of household and is only receiving Lifeline discounts from TracFone;

- TracFone shall provide tracking of Lifeline customers' primary residential address and certification that there is only one customer receiving Lifeline at each residential address;

- TracFone shall notify the Commission of any future changes to its rates, terms and conditions regarding its Lifeline/Link Up offerings.

By June 1, 2009, TracFone will comply with enhanced service requirements, as required by the FCC's Report and Order 05-46, CC Docket 96-45, and the Commission's October 18, 2005 order in Case No. U-14530.

Moreover, the Commission concludes, as it did in its November 20, 2001 order in Case No. U-13145, that it need not solicit comment on the application, which would only further delay action on the application.

THEREFORE, IT IS ORDERED that the application filed by TracFone Wireless, Inc., for designation as an eligible telecommunications carrier for purposes of Lifeline universal service fund support is granted upon the satisfaction of the above conditions.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of October 21, 2008.

Mary Jo Kunkle, Executive Secretary

Exhibit 7

081605ALJ022509.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: February 25, 2009

FINAL

3/17/2009

CASE NO. 08-1605-C-PC

TRACFONE WIRELESS, INC.,
a corporation, Miami, FL
Petition for consent and approval to be designated
an eligible telecommunications carrier.

RECOMMENDED DECISION

On September 17, 2008, TracFone Wireless, Inc. (TracFone), a corporation, filed an application under §214(e)(2) of the Communications Act of 1934, as amended, seeking designation by the Public Service Commission of West Virginia as an eligible telecommunications carrier (ETC) for the sole purpose of providing "Lifeline" and "Link Up" service to qualifying low income West Virginia consumers. TracFone indicated that it will not seek access to funds from the federal Universal Service Fund (USF) for the purpose of providing service to high cost locales. TracFone is a reseller of commercial mobile radio service (CMRS) throughout the United States, including West Virginia, providing its services through a virtual network comprised of services provided by numerous licensed wireless networks. TracFone has continuously provided CMRS throughout West Virginia for the past ten years, and, with over 10,000,000 customers nationwide, is the leading provider of prepaid wireless service in the United States. TracFone stated that, through its virtual network, it is able to provide all services and functions supported by the universal service program, as detailed in the Federal Communications Commission (FCC) rules, 47 C.F.R. §54.101(a). TracFone proposed, upon receiving ETC designation, to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia.

On October 16, 2008, Staff Attorney C. Terry Owen filed the Initial Joint Staff Memorandum, attaching the October 10, 2008 Utilities Division Initial Recommendation from Telecommunications and Cable Television Supervisor Jerry L. Bennett. Staff highlighted all of the criteria it believes that TracFone must meet before being designated as an ETC and indicated that, once it had completed its investigation into this matter, Staff would submit a final substantive recommendation.

By the October 29, 2008 Commission Referral Order, the Commission referred this matter to the Division of Administrative Law Judges (ALJ Division) for decision on or before April 15, 2009.

On December 8, 2008, Staff Attorney Owen filed the Final Joint Staff Memorandum, attaching the December 2, 2008 Utilities Division Final Recommendation from Telecommunications and Cable Television Supervisor Bennett. Together, these Memoranda comprise Commission Staff's final substantive recommendation in this matter. Staff recommended that the Commission designate TracFone as an ETC, contingent upon TracFone obtaining and filing in this proceeding confirmations from every public safety answering point (PSAP) within West Virginia that TracFone's customers are and will continue to be provided access to basic 911 and enhanced 911 (E911) services; providing E911 compliant headsets to all new TracFone customers and replacing non-compliant headsets at no charge to existing customers; submit for Commission approval the number of Lifeline minutes that will be provided to its customers; establish an eligibility program for Lifeline services in conjunction with the West Virginia Department of Health and Human Resources (DHHR) and submit that program to the Commission for approval; and provide assurances to the Commission that TracFone can and will provide all of the functions required to be supported by federal universal services, including voice grade access to the public switched telecommunications network, dual tone multi-frequency signaling handsets, single party access, 911 access, operator access, interexchange service, directory assistance service, Lifeline service and Link Up service.

On December 18, 2008, TracFone submitted its response to Commission Staff's final substantive recommendation, taking exception to the Staff-recommended requirement that it provide verification from every PSAP within West Virginia that TracFone's customers are and will continue to be provided access to basic 911 and enhanced 911 (E911) services. TracFone argued that the FCC did not impose this requirement on TracFone in the proceeding which designated TracFone as an ETC in ten states. TracFone stated that the FCC only required it to provide the PSAP verification in those areas where it offers Lifeline service prior to receiving Lifeline support in those areas. TracFone argued that it is a prolonged and cumbersome process to obtain PSAP verification statewide, indicating that, in some states, it has not been possible to obtain such verification from every PSAP. Also, TracFone specified the manner in which it intended to comply with all of the other Staff recommendations.

By the Commission Order entered December 19, 2008, the Commission granted the request for admission *pro hac vice* of Mitchell F. Brecher, Esquire.

Responding to all of the above, by the December 30, 2008 Procedural Order, the Administrative Law Judge (ALJ) adopted a procedural schedule to process and resolve this matter, including a Wednesday, January 28, 2009 hearing date.

On January 21, 2009, Staff Attorney Owen submitted a Joint Stipulation duly executed by representatives of Staff and TracFone.

Responding to all of the above, by the January 26, 2009 Order Canceling Hearing, the ALJ canceled the procedural schedule adopted by the December 30, 2009 Order, including the Wednesday, January 28, 2009 hearing date.

DISCUSSION

Having considered all of the above, since no dispute remains to be resolved in this proceeding, the ALJ will consider the parties to have waived their rights under *West Virginia Code* §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding, or to a hearing.

The ALJ holds that, since the parties have entered into a Joint Stipulation which settles all matters in dispute, he will adopt the Joint Stipulation and approve the application accordingly.

FINDINGS OF FACT

1. TracFone Wireless, Inc., filed an application under §214(e)(2) of the Communications Act of 1934, as amended, seeking designation by the Commission as an ETC for the sole purpose of providing "Lifeline" and "Link Up" service to qualifying low income West Virginia consumers. TracFone indicated that it will not seek access to the USF for the purpose of providing service to high cost locales. TracFone is a reseller of CMRS throughout the United States, including West Virginia, providing its services through a virtual network comprised of services provided by numerous licensed wireless networks. TracFone has continuously provided CMRS throughout West Virginia for the past ten years, and, with over 10,000,000 customers nationwide, is the leading provider of prepaid wireless service in the United States. Through its virtual network, TracFone is able to provide all services and functions supported by the universal service program, as detailed in the FCC rules, 47 C.F.R. §54.101(a). Upon receiving ETC designation, TracFone will provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia. (See, September 17, 2008 application).

2. Staff recommended that the Commission designate TracFone as an ETC, contingent upon TracFone obtaining and filing in this proceeding confirmations from every PSAP within West Virginia that TracFone's customers are and will continue to be provided access to basic 911 and enhanced E911 services; providing E911 compliant headsets to all new TracFone customers and replacing non-compliant headsets at no charge to existing customers; submit for Commission approval the number of Lifeline minutes that will be provided to its customers; establish an eligibility program for Lifeline services in conjunction with the DHHR and submit that program to the Commission for approval; and provide assurances to the Commission that TracFone can and will provide all of the functions required to be supported by federal universal services, including voice grade access to the public switched telecommunications network, dual tone multi-frequency signaling handsets, single party access, 911 access, operator access, interexchange service, directory assistance service, Lifeline service and Link Up service. (See, Final Joint Staff Memorandum, with attachment, filed December 8, 2008).

3. TracFone responded to Commission Staff's final substantive recommendation by taking exception to the Staff-recommended requirement that it provide verification from every PSAP within West Virginia that TracFone's customers are and will continue to be provided access to basic 911 and E911 services. TracFone argued that the FCC did not impose this requirement on TracFone in the

proceeding which designated TracFone as an ETC in ten states. TracFone stated that the FCC only required it to provide the PSAP verification in those areas where it offers Lifeline service prior to receiving Lifeline support in those areas. TracFone argued that it is a prolonged and cumbersome process to obtain PSAP verification statewide, indicating that, in some states, it has not been possible to obtain such verification from every PSAP. Also, TracFone specified the manner in which it intended to comply with all of the other Staff recommendations. (See, December 18, 2008 response).

4. Staff Attorney Owen submitted a Joint Stipulation duly executed by representatives of Staff and TracFone. (See, Joint Stipulation, filed January 21, 2009).

5. The Joint Stipulation provides that TracFone will provide E911 compliant handsets to all Lifeline customers and that non-compliant handsets in the possession of existing TracFone customers will be replaced with E911 compliant handsets at no charge to the customers upon their enrollment in the Lifeline program. (See, Joint Stipulation, filed January 21, 2009).

6. Each of TracFone's Lifeline customers in West Virginia will receive 68 minutes of air time each month for all months in which the customers are enrolled in the program and any unused minutes will roll over to the following month. (See, Joint Stipulation, filed January 21, 2009).

7. Eligibility for participation in TracFone's Lifeline program will be based upon customer enrollment in certain public assistance programs. Under TracFone's Eligibility Plan, attached to the Joint Stipulation, applicants will be required to self-certify under penalty of perjury that they are enrolled in one of those qualifying public assistance programs. (See, Joint Stipulation, filed January 21, 2009).

8. TracFone has demonstrated that it will comply with each of Staff's final substantive recommendations. (See, Joint Stipulation, filed January 21, 2009).

CONCLUSIONS OF LAW

1. TracFone has demonstrated that it is a common carrier capable of offering and advertising all of the service offerings set forth in Section 214(e) of the Telecommunications Act of 1996 for eligible telecommunications carriers through the designated service areas, using either its own facilities or a combination of its own facilities and the resale of another carrier's services, for the sole purpose of providing Lifeline and Link Up services to all qualifying customers who request such service in West Virginia.

2. TracFone should be designated as an ETC to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia.

3. It is reasonable to require that the Commission's Executive Secretary provide the FCC and the Universal Service Administrative Company a certified copy of this Order designating TracFone as an ETC to provide Lifeline and Link Up services to all qualifying customers who request

such service in West Virginia, but that TracFone will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost locales.

4. It is reasonable to require that TracFone publish a Notice of the granting of its petition for designation as an ETC solely to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia, as a Class I legal advertisement once in a newspaper duly qualified by the Secretary of State, published and generally circulated in each of the 19 cities designated for statewide legal publications.

5. It is reasonable to approve the Joint Stipulation as the full and proper settlement of all issues joined in this filing and to approve the application accordingly.

ORDER

IT IS, THEREFORE, ORDERED that the application filed with the Commission on September 17, 2008, by TracFone Wireless, Inc., under §214(e)(2) of the Communications Act of 1934, as amended, seeking designation by the Commission as an Eligible Telecommunications Carrier for the sole purpose of providing "Lifeline" and "Link Up" service to qualifying low income West Virginia consumers, be, and hereby is, approved, as follows:

1. The Joint Stipulation filed on January 21, 2009, be, and hereby is, ratified, adopted and approved as the proper and complete settlement of this proceeding, including the following specific stipulations:

   (a) TracFone will provide E911 compliant handsets to all Lifeline customers and non-compliant handsets in the possession of existing TracFone customers will be replaced with E911 compliant handsets at no charge to the customers upon their enrollment in the Lifeline program;

   (b) Each of TracFone's Lifeline customers in West Virginia will receive 68 minutes of airtime each month for all months in which the customers are enrolled in the program and any unused minutes will roll over to the following month;

   (c) Eligibility for participation in TracFone's Lifeline program will be based upon customer enrollment in certain public assistance programs. Under TracFone's Eligibility Plan, attached to the Joint Stipulation and incorporated herein by reference, applicants will be required to self-certify under penalty of perjury that they are enrolled in one of those qualifying public assistance programs; and

   (d) Each of TracFone's Lifeline customers in West Virginia will receive 68 minutes of air time each month for all months in which the customers are

enrolled in the program and any unused minutes will roll over to the following month.

2. The Commission's Executive Secretary shall provide the Federal Communications Commission and the Universal Service Administrative Company a certified copy of this Order designating TracFone Wireless, Inc., as an Eligible Telecommunications Carrier solely to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia, and that TracFone will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost locales; and

3. TracFone Wireless, Inc., be, and hereby is directed, to publish the Notice of ETC Status, attached as Appendix A, as a Class I legal advertisement once in a newspaper duly qualified by the Secretary of State, published and generally circulated in each of the 19 cities designated for statewide legal publications.

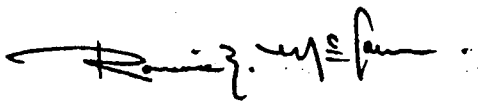
IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this Recommended Decision upon the Commission by hand delivery and upon all parties of record by United States Certified Mail, return receipt requested.

Leave hereby is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this Recommended Decision is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this Recommended Decision shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's recommended decision by filing an appropriate petition in writing with the Executive Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's recommended decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Ronnie Z. McCann
Deputy Chief Administrative Law Judge

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 08-1605-C-PC

TRACFONE WIRELESS, INC.,
a corporation, Miami, FL
Petition for consent and approval to be designated
an eligible telecommunications carrier.

NOTICE OF ETC STATUS

On September 17, 2008, TracFone Wireless, Inc. (TracFone), a corporation, filed an application under §214(e)(2) of the Communications Act of 1934, as amended, seeking designation by the Public Service Commission of West Virginia as an eligible telecommunications carrier (ETC) for the sole purpose of providing "Lifeline" and "Link Up" service to qualifying low income West Virginia consumers. TracFone indicated that it will not seek access to funds from the federal Universal Service Fund (USF) for the purpose of providing service to high cost locales. TracFone is a reseller of commercial mobile radio service throughout the United States, providing its services through a virtual network comprised of services provided by numerous licensed wireless networks. TracFone has continuously provided CMRS throughout West Virginia for the past ten years. TracFone is able to provide all services and functions supported by the universal service program, as detailed in the Federal Communications Commission (FCC) rules, 47 C.F.R. §54.101(a). Upon receiving ETC designation, TracFone will provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia.

According to the Commission's guidelines, a carrier seeking ETC status must advertise, on a quarterly basis, in media targeted to the general residential market throughout the carrier's service areas and substantially similar to the media in which the serving incumbent local exchange carrier advertises its service in the particular service area. In addition, such carriers must maintain an Internet site where members of the public can obtain information regarding services and rates provided by the carrier. The TracFone site is located at http://www.tracfone.com.

Also, carriers seeking ETC status must offer the supporting services required by §214(e)(2). These services include: voice-grade access to the public switched telephone network; local usage; dual tone multi-frequency signaling or its functional equivalent; single party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance service; and toll limitation for qualifying low income subscribers. TracFone is capable of providing all of these required service offerings and currently is offering them in its service territory.

By Recommended Decision entered on February 24, 2009, TracFone's petition was granted.

This Notice is being provided in accordance with the Commission's requirements and is not for the purpose of seeking public comment or protest.

TRACFONE WIRELESS, INC.

Exhibit 8

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

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

Purpose of Offering Lifeline Service to Qualified Households	)
	)
Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households	)

ORDER

Adopted: March 4, 2009 **Released: March 5, 2009**

By the Commission:

I. INTRODUCTION

1. In this order, we grant a petition for modification filed by TracFone Wireless, Inc. (TracFone). TracFone seeks modification of a condition imposed as part of the Commission's grant of TracFone's request for forbearance allowing it to be designated as an eligible telecommunications carrier (ETC) for the purposes of providing low-income universal service support to its customers under the Lifeline program.[1] Specifically, we grant TracFone's request to modify the requirement that TracFone obtain a certification from each public safety answering point (PSAP) where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service.[2] TracFone must still request such certification from each PSAP within its service area; however, if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements. Grant of this request will allow TracFone to provide Lifeline service to low-income consumers within its service areas in a timely manner, while also ensuring that TracFone's Lifeline customers have access to necessary 911 services.

[1] *See* Petition for Modification of Public Safety Answering Point Certification Condition by TracFone Wireless, Inc., CC Docket No. 96-45 (filed Nov. 21, 2008) (TracFone Petition); *see also Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*); *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*) (designating TracFone as an ETC for Lifeline support only in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia). Under the Lifeline program, low-income consumers receive discounts on their monthly charges for local phone service. 47 C.F.R. § 54.401. In its initial comments on the petition, the Pennsylvania Public Utility Commission (Pennsylvania Commission) sought an extension of the pleading cycle, seeking four additional weeks for comments and two more weeks for reply comments. Pennsylvania Commission Comments at 2. The Pennsylvania Commission filed comments and reply comments, as well as an *ex parte* filing in response to the TracFone Petition. *See infra* note 10; Letter from Joseph K. Witmer, Assistant Counsel, Pennsylvania Commission Law Bureau, to Marlene Dortch, Office of the Secretary, Federal Communications Commission, CC Docket No. 96-45 (dated Jan. 29, 2009) (Pennsylvania Commission January 29th *Ex Parte* Letter). We find that the Pennsylvania Commission was able to provide comment on the TracFone Petition without the need for an extension of the pleading cycle. We therefore deny the Pennsylvania Commission's request.

[2] *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16; *see also TracFone ETC Designation Order*, 23 FCC Rcd at 6215, para. 22 (declining TracFone's request to modify the forbearance condition requiring TracFone to obtain the required certification from each PSAP).

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended, (the Act) provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[3] Pursuant to section 214(e)(1) of the Act, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms either using its own facilities, or a combination of its own facilities and resale of another carrier's services.[4]

3. TracFone provides prepaid wireless services on a resale basis only, rather than providing service over its own facilities.[5] On September 8, 2005, the Commission conditionally granted TracFone's request for forbearance from the facilities-based requirement of section 214(e)(1) of the Act.[6] Among other things, the forbearance grant was conditioned on the requirement that TracFone obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service.[7] On April 11, 2008, the Commission conditionally designated TracFone an ETC for the purpose of receiving Lifeline support only in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania,[8] and the District of Columbia.[9] In the *TracFone ETC*

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[3] 47 U.S.C. § 254(e).

[4] 47 U.S.C. § 214(e)(1)(A); *see also* 47 C.F.R. § 54.201(d)(1).

[5] TracFone Petition at 3-4.

[6] *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16.

[7] *Id.* at 15098, para. 6. Grant of forbearance was conditioned on TracFone: (a) providing its Lifeline customers with 911 and E911 access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the consumer, non-compliant handsets of customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtaining a certification from each PSAP where TracFone provides Lifeline service confirming that TracFone provides its customers with 911 and E911 access; (e) requiring its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address. *Id.*

[8] At the time the Commission designated TracFone an ETC in Pennsylvania, the Pennsylvania Commission had not exerted jurisdiction over wireless providers for purposes of ETC designation; therefore the Commission granted TracFone ETC designation pursuant to section 214(e)(6) of the Act. *TracFone ETC Designation Order*, 23 FCC Rcd at 6207, 6211, paras. 1, 9; 47 U.S.C. § 214(e)(6). On February 26, 2009, the Pennsylvania Commission announced that it will exert its jurisdiction, effective as of that date, to designate wireless carrier ETCs pursuant to section 214(e)(2) of the Act. *See* Letter from Joseph K. Witmer, Assistant Counsel, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Feb. 26, 2009) (attaching February 26, 2009 Pennsylvania Commission decision); 47 U.S.C. § 214(e)(2).

[9] *See TracFone ETC Designation Order*, 23 FCC Rcd at 6207-08, para. 1. The Commission conditioned grant of TracFone's ETC designations on TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision and support of 911 and E911 service. *Id.* at 6213, para. 16. The TracFone Petition and this order are limited to the PSAP certification requirement regarding TracFone's provision of access to 911 and E911 service to its customers. This condition is separate from the certification regarding TracFone's compliance with any state 911/E911 obligations, including payment of fees into state 911/E911 funds. *See* Pennsylvania Commission January 29th *Ex Parte* Letter at 2 (expressing concern about TracFone's compliance with the separate condition to certify compliance with Pennsylvania law); Pennsylvania Emergency Management Agency Petition to Reject, CC Docket No. 96-45 (filed Jan. 29, 2009) (asking the Commission to reject TracFone's certification for compliance with Pennsylvania 911/E911 obligations due to TracFone's failure to contribute to Pennsylvania's Wireless E911 Emergency Services Fund).

Designation Order, the Commission declined TracFone's request to eliminate the condition that TracFone obtain the required certification from each PSAP where it will provide Lifeline service.[10]

4. On November 21, 2008, TracFone filed the instant petition seeking to modify the PSAP certification requirements. Specifically, TracFone requests that, if a PSAP does not provide the requisite certification within 90 days of a request for such certification from TracFone, TracFone would be allowed to self-certify that its customers will have access to 911 and E911 without regard to activation status or availability of prepaid minutes.[11]

III. DISCUSSION

5. As the Commission found in the *TracFone ETC Designation Order*, TracFone's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, high-quality service offerings, and mobility.[12] In addition, the prepaid feature of TracFone's service, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts. Therefore, we find that the public interest is served by allowing TracFone to offer its Lifeline service to consumers as quickly as possible, while also ensuring that its consumers have access to necessary emergency services.

6. The Commission has twice stressed the importance of ensuring that TracFone's Lifeline customers have access to 911 and E911 services through the PSAP certification process.[13] We affirm that TracFone must continue to comply with this requirement and seek certification from the PSAPs within its service area. To ensure that the benefits of Lifeline service are made available to TracFone's customers in a timely manner, however, we grant TracFone's request to allow it to self-certify compliance with the 911 and E911 availability condition if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area.[14] In making a request for certification, TracFone must notify the PSAP that TracFone has the option to self-certify within 90 days of the request if the PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service. TracFone may not self-certify compliance until 90 days after it has provided a PSAP with notification of the 90-day self-certification period adopted in this order. TracFone also may not make such a self-certification until it has provided a PSAP with all of the information and/or equipment requested by the PSAP in analyzing

[10] *Id.* at 6213, para. 16.

[11] TracFone Petition at 1. On December 23, 2008, the Wireline Competition Bureau sought comment on TracFone's petition. *See Comment Sought on TracFone Wireless Inc. Petition for Modification of Public Safety Answering Point Certification Condition*. CC Docket No. 96-45, Public Notice, DA 08-2779 (Wireline Comp. Bur., rel. Dec. 23, 2008). Comments on the petition were due January 6, 2009, and reply comments were due January 13, 2009. Comments were filed by Consumer Action, the National Emergency Number Association, and the Pennsylvania Commission. TracFone and the Pennsylvania Commission filed reply comments.

[12] *See TracFone ETC Designation Order*, 23 FCC Rcd at 6212, para. 15.

[13] *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16; *see also TracFone ETC Designation Order*, 23 FCC Rcd at 6215, para. 22.

[14] If a PSAP has conducted testing and notified TracFone within the 90-day period of concerns regarding the ability of TracFone customers to access 911 and E911 services, TracFone may not self-certify compliance until it has addressed the PSAP's concerns (for example, issues with TracFone's underlying wireless provider concerning access to 911 and E911 services), such that the PSAP can provide the required certification. In this circumstance, TracFone may self-certify 180 days after requesting certification from the PSAP if the PSAP does not approve or deny the certification within that period.

TracFone's ability to provide 911 and E911 service to its customers. If TracFone makes such a self-certification, TracFone must obtain from each of its underlying carriers that provide service to TracFone in the area served by that PSAP certification that the carriers route 911 and E911 calls from TracFone customers to the PSAP in the same manner that they route 911 and E911 calls from their own customers. TracFone is required to retain such underlying carrier certifications and provide them to the Commission upon request. TracFone must provide PSAPs with copies of any self-certifications at the time they are filed. If after TracFone makes a self-certification a PSAP finds that TracFone does not provide its customers with 911 and E911 access, upon receiving notice of this finding TracFone must immediately notify the Commission of this finding and explain how it plans to come into compliance with this condition.

7. The Pennsylvania Commission opposed TracFone's request for a modification of the PSAP certification requirement, stating that TracFone has refused to comply with the "drive testing" requirements included as part of Pennsylvania's Phase II 911 compliance.[15] It is unclear from the Pennsylvania Commission's filing whether such state "drive testing" requirements apply to resale services, such as those provided by TracFone, or whether a demonstration of successful "drive testing" of the underlying wireless provider's service would comply with the state requirement. As this Commission stated in the *TracFone ETC Designation Order*, TracFone's designation as an ETC eligible for Lifeline support in each state is conditioned upon TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision and support of 911 and E911 service.[16] Therefore, TracFone must comply with any state requirements that are applicable to carriers providing service on a purely-resale basis. We do not find that the Pennsylvania Commission's claim of TracFone's non-compliance with the state "drive testing" requirement warrants denial of TracFone's request for a 90-day PSAP certification period. As discussed above, TracFone's customers should not be denied the benefits of access to Lifeline support for a prolonged period of time pending PSAP action on TracFone's certification requests. We therefore grant TracFone's request and allow it to self-certify its provision of 911 and E911 services to its customers, and also require it to obtain certification from its underlying carriers, if, within 90 days of TracFone's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area. To the extent an entity disagrees with TracFone's self-certification, it may file a request asking the Commission to examine the issue pursuant to section 1.41 of the Commission's rules.[17]

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 214(e) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214 and 254, the petition for modification filed by TracFone Wireless, Inc. IS GRANTED as discussed herein.

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[15] Pennsylvania Commission Reply Comments at 7-8. The Pennsylvania Commission also requests that the Commission revisit the decisions granting TracFone's forbearance request and ETC designation in Pennsylvania. *Id.* at 9, 12-17. Pursuant to section 1.106(f) of the Commission's rules, petitions for reconsideration of Commission actions must be filed within 30 days from the date of public notice of the final Commission action. 47 C.F.R. § 1.106(f). The public notice dates of both the *TracFone Forbearance Order* and the *TracFone ETC Designation Order* were their release dates pursuant to section 1.4(b)(2) of the Commission's rules. 47 C.F.R. § 1.4(b)(2). Those dates were September 8, 2005, and April 11, 2008, respectively. The Pennsylvania Commission's reply comments were filed on January 13, 2009, well outside of the 30-day reconsideration deadlines for both orders. The Pennsylvania Commission's oppositions to those decisions are therefore untimely and will not be considered here.

[16] *TracFone ETC Designation Order*, 23 FCC Rcd at 6213, para. 16.

[17] 47 C.F.R. § 1.41.

9. IT IS FURTHER ORDERED that the Pennsylvania Public Utility Commission's request for an extension of the pleading cycle IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Exhibit 9

Privacy Policy

Please read the TRACFONE Privacy Policy.

TRACFONE Wireless has instituted a comprehensive set of privacy policies and procedures to ensure that its Web site visitors' privacy is never compromised. The purpose of this privacy notice is to inform our Web site visitors of the type of information that TRACFONE, or a credit card processing partner acting on its behalf, collects from the Web site, how the information is gathered, how it is utilized, how long it is retained and how visitors can restrict its use or disclosure.

The primary focus of TRACFONE's privacy policy is to ensure that all Web site visitors' customer identification, which we term "customer identifiable information," is kept private at all times. As the term suggests, "customer identifiable information" is information which can be associated with a specific individual or entity, including, for example, a customer's name, address, or telephone number, e-mail address and information about online activities that are directly linked to them.

The collection of customer identifiable information is a critical element in the day-to-day operation of the Web site to allow TRACFONE to maintain the highest level of customer service for all Web site visitors. It is a common practice and often a necessity for companies, governments, or other organizations to collect customer identifiable information in order to conduct business and offer services.

TRACFONE always strives to safeguard the customer identifiable information obtained from its Web site users and visitors (collectively, "customers") from any unauthorized intrusions.

TRACFONE may contact people on the home phone number they enter on our website, input into our automated phone system or give to an agent in case of technical difficulties, promotions and/or reminders.

General

TRACFONE will not sell, trade, or disclose to third parties any customer identifiable information derived from the registration for, or use of, a TRACFONE product or service -- including customer names and addresses -- without the consent of the customer. TRACFONE will, however, disclose customer identifiable information as required by subpoena, search warrant, or other legal process or in the event that such customer is engaging in unlawful use of our Web site.

When TRACFONE uses third parties to perform services on its behalf, TRACFONE will request that such third parties protect your customer identifiable information consistently with this privacy policy. However, we cannot ensure that all of your customer identifiable information will never be disclosed, as regulatory and/or other requirements may make disclosure necessary.

Collection and Use:

In some instances, TRACFONE may collect information that is not "customer identifiable information." Some examples of this type of information include the type of Internet browser you are using, the type of operating system you have configured on your computer, and the domain name of the Web site and/or Internet Service Provider from which you are linked to our Web site. TRACFONE primarily uses this information for market research and optimizing its systems in order to deliver the best customer experience possible.

TRACFONE may collect and use customer identifiable information for various purposes, including but not limited to, billing purposes, to provide or change service, to anticipate and resolve problems with your service, or to inform you of products and services that better meet your needs. This means that TRACFONE may use your customer identifiable information, in conjunction with information available from other sources, to market new services that may be of interest to you, but TRACFONE will not disclose your customer identifiable information to third parties who want to market products to you.

Declining e-mail offers:

TRACFONE will only send our customers e-mail regarding promotional offers or other news if a customer specifically grants us permission. A customer has the right to choose not to receive TRACFONE e-mail direct marketing communications by simply notifying us of their preference. This process is commonly termed opting-out or unsubscribing. At any time, a customer can unsubscribe from our e-mail list by clicking on the unsubscribe link found at the bottom of every message or promotion delivered electronically to our customers. Upon such choice, TRACFONE (a) will not contact that customer directly with TRACFONE promotional messages, and (b) will not use customer identifiable information obtained from that customer's registration to contact that customer with TRACFONE product or service messages. A customer may also choose not to receive such messages by notifying TRACFONE via fax or mail.

Security:

TRACFONE has gone to great lengths to implement technology and security features to safeguard the privacy of your customer identifiable information from unauthorized access or improper use, and TRACFONE, based on its judgment, will continue to enhance its security procedures as new technology becomes readily available. However, since there is no such thing as "perfect Internet security", TRACFONE cannot provide any guarantees of 100% security compliance.

E-mail Contents:

TRACFONE will not read or disclose to third parties private e-mail communications that are transmitted using TRACFONE services except as required to operate the service or as otherwise authorized by law.

Improper Conduct:

TRACFONE may also use customer identifiable information to investigate and help prevent potentially unlawful activity or activity that threatens the network or otherwise violates the customer agreement for that service.

Account Information:

TRACFONE honors requests from customers for account information and will correct any such information, which may be inaccurate. Customers may contact TRACFONE to verify that appropriate corrections have been made.

Cookies

When you visit our Web site, we may store information on your computer that allows us to identify you immediately. This process is often referred to as "cookie" technology. More specifically, a cookie is a commonly used Internet standard which stores, in a very small text file on the customer's hard disk, information specific to the customer. Our Web site makes limited

use of cookies in an effort to improve our level of service to our Web site visitors. Cookies cannot be accessed by any other Web site other than the Web site issuing the cookie. The private features of our Web site are only accessible when cookies are enabled in the customer's browser. If a customer does not wish to utilize cookies, this feature may be disabled within the customer's Web browser. However, by disabling cookies, a customer will not have access to private areas of our Web site through that browser.

Other Web sites

Since TRACFONE's Web site contains links to other Web sites, we are not responsible for the content or privacy practices employed by these other Web sites. It is possible that on some occasions, these third party Web sites may in fact collect personal information from our customers. We recommend that you examine the privacy policies of such third party Web sites prior to submitting any personal information, as they may differ from ours.

In some instances, our Web site content is also featured on other Web sites with differing or non-existent privacy policies. These Web sites may collect personal information from their customers that may or may not be used in conjunction with our Web site information. Prior to supplying any personal information to any third party company linking to our Web site, please read and understand their privacy policy.

Advertisements

Advertisements may appear on pages throughout our Web site. Some advertisements may request information directly from our customers or take our customers to Web sites that may request personal information. TRACFONE has no control over its advertisers' privacy policies, so please examine the privacy policy of any company advertising on our Web site prior to submitting any personal information.

Third Party Advertising Companies

We may use third-party advertising companies to serve ads on our behalf. These companies mayemploy cookies and action tags (also known as single pixel gifs or web beacons) to measure advertising effectiveness. Any information that these third parties collect via cookies and action tags is completely anonymous. If you would like more information about this practice and your choices, click here. You may also visit the Advertising.com Privacy Policy,click here.

Surveys

Occasionally, we may conduct surveys on our Web site. Surveys are conducted at random and are completely voluntary to our Web site visitors. The survey may require a customer to provide customer identifiable information in exchange for the information or services provided by the survey. We may use this information in an aggregate manner to better tailor the type of services, information, and advertising that are provided on our Web site.

Policy Changes

TRACFONE reserves the right to change its privacy policy by publishing new terms on its Web site at any time and your access and useof the TRACFONE Web site thereafter constitutes youracknowledgment and acceptance of such amended policy. This privacy policy does not create any legal right for you or any third parties.

Children

TRACFONE Web sites are not structured to attract children under the age of 13. TRACFONE believes there is no information on its Web site, which is inappropriate or objectionable for viewing by children.

TRACFONE does not knowingly, directly or passively, collect information from children under the age of 13. If we create offers and products that make it appropriate to collect information from children under the age of 13, we will notify you of the change in this Policy. We also will ask a parent to confirm his/her consent in advance of any collection, use or disclosure of that information. We do not collect any information that is not submitted to us. We only use personally identifiable information so that we may better understand our users' needs and send information to users regarding new services or offerings, including but not limited to any sweepstakes or other offering. We do not sell any personally identifiable information or disclose any personally identifiable information to third parties.

Ordering online products and services from TRACFONE is limited to adults (ages 18+). However you should be aware that wireless devices and services purchased for family use may be used by minors without the knowledge of TRACFONE. If that happens, any information collected from the usage will appear to be the personal information of the actual adult subscriber and treated as such under this Policy.

Questions?

Please direct any questions or comments regarding our privacy policy to information@TRACFONE.com.

Exhibit 10

TRACFONE WIRELESS, INC.
PROPOSED ADVERTISING COPY

Did you know that TracFone Wireless, Inc. is offering wireless service in your area?

Now, customers who are enrolled in certain low-income assistance programs can receive a free cell phone and a specified number of minutes of use each month for free. TracFone's wireless service is single party, voice grade telephone service, including touch-tone™ and access to: 1) local and long distance, 2) operator services, 3) directory assistance, and 4) E911 emergency service, where available, for free.

For more information on these services and benefits, contact your TracFone Wireless, Inc. representative at 1-800-867-7183.

We all need a little help sometimes.

Presenting Lifelink Wireless, a government-backed program that provides a free cell phone, free monthly airtime, and free 9-1-1 access for income-eligible customers.

If you receive government assistance, you are likely eligible for LifeLink Wireless. The free phone and airtime provided by LifeLink Wireless are valued at over $200/year. If you need more minutes, you can buy and add LifeLink Wireless Airtime Cards from a retailer near you.

Get the help you need to make ends meet, stay safe, and keep connected!

LifeLink
WIRELESS

1-800-977-3768

You may contact your local Public Service Commission for further details, questions or comments at 1-800-XXX-XXXX.

LifeLinkWireless.com

We all need a little help sometimes.

Free cell phone & monthly airtime for income-eligible customers.

LifeLink

WIRELESS

1-800-977-3768

You may contact your local Public Service Commission for further details, questions or comments at 1-800-XXX-XXXX.

LifeLinkWireless.com

"LifeLink Wireless Radio 1"
TracFone Lifeline Services
English-language Radio/0:60
6/19/08

interlex

FX	*AUDIO*
Subtle but brooding, tense music.	**Commentator VO:** We all need a little help sometimes. **Mom** ***(worried):*** On the road to pick up my kids my car broke down. I had no way of reaching anyone. I was stranded. **Construction Worker** ***(serious):*** When my line got cut off, I worried. It's hard to find jobs, but it's easy to miss opportunities. **Senior African American Woman** ***(concerned):*** I live alone. If I have an emergency, how will I call for help?
Tone of music becomes uplifting.	**Commentator VO:** In times of need, we can now turn to LifeLink Wireless, a government-backed program that provides a free cell phone, free minutes of airtime each month, and free 9-1-1 access for income-eligible customers. Call 1-800-XXX-XXXX or visit LifeLinkWireless.com to learn more. **Mom** ***(warm and friendly):*** It's keeping me safe...and connected. **Construction Worker** ***(upbeat):*** I got a free cell phone and I'm staying busy! **Commentator VO:** If you receive government assistance based on your income, you are likely eligible for LifeLink Wireless. Call 1-800-XXX-XXXX or visit LifeLinkWireless.com to apply. **Senior African American Woman** ***(happy):*** It helps me make ends meet...and gives me peace of mind. **Commentator VO:** LifeLinkWireless. Apply today! ***You may contact your local Public Service Commission for further details, questions or comments at 1-800-XXX-XXXX.***

"LifeLink Wireless TV 1"
TracFone Lifeline Services
English-language TV/0:60
Revised 6/19/08

interlex

VIDEO	*AUDIO*
Yellow text on grey/black background: *We all need a little help sometimes.*	*Subtle but brooding, tense music.* *All VO off camera.*
Fade In followed by quick cuts and flashes: Open field. Blue skies. Black top. Woman standing by car with hood up. Orange text at bottom of screen, up for rest of spot: *1-800-XXX-XXXX | LifeLinkWireless.com*	**Mom** ***(worried):*** On the road to pick up my kids my car broke down. I had no way of reaching anyone. I was stranded.
Fade to grey/black.	
Fade in. Weathered Hispánic construction worker unloading tools from battered pick up truck. Close up panning over construction hat and tool belt hanging up on wall. Construction worker in workshop setting, looking idle, worried.	**Construction Worker** ***(serious):*** In construction sometimes we're very busy, other times we wait for a call. When my line got cut off...***(shakes his head, swallowing hard).*** Man, it's hard to find jobs. It's easy to miss opportunities.
Fade to grey/black.	
Poignant image of senior woman gazing out her home's window at night, raindrops hitting the glass.	**Senior African American Woman** ***(concerned):*** I live alone...so I worry...if I have an emergency outside my home, how do I call for help?
Fade to grey/black.	*Tone of music becomes uplifting.*
Dynamic solar ray pattern fades in with white copy on screen: *Welcome to LifeLink Wireless.*	**OFF Commentator:** Presenting Lifelink Wireless, a government-backed program that provides... a free cell phone, free minutes of airtime each month, and free 9-1-1 access... for income-eligible customers.
Text on Screen: • *Free cell phone* • *Free monthly airtime* • *Free 9-1-1 access*	
Images of Construction Worker taking a call at home. Putting phone in holster. Getting tools. Going to work in truck.	**Construction Worker** ***(upbeat):*** I got a free cell and I got the call!!!
Images of Mom and kids together, happy. Little kids helping her bake cookies.	**Mom** ***(warm and friendly):*** It's perfect for the times you need a little help.

Dynamic solar ray pattern fades in with white copy on screen:

OFF Commentator:

Rotating Text on Screen (dynamic over two screen shots):
If you receive any of the following, apply today!
- *Medicaid*
- *Food Stamps*
- *Temporary Assistance to Needy Families (TANF)*
- *Supplemental Security Income (SSI)*
- *National School Lunch Program (NSL)*
- *Low Income Home Energy Assistance (HEAP)*
- *Federal Public Housing (Section 8)*

If you receive government assistance like Medicaid or Food Stamps, are retired or your family income is under $26,000 a year, you are likely eligible for LifeLink Wireless.

On screen fine print disclaimer:
Household income based on family of four. Qualifying household income must not exceed 135% of federal poverty level. Limited to one service per household.

Senior Woman rocking on her porch with son next to her. She pats her cell phone on adjacent table.

Senior African American Woman *(happy):*

It helps me make ends meet...and now I can call my family or 9-1-1 anytime, anywhere.

Cut to close up of serene, smiling Senior Woman.

Senior African American Woman:

It gives me peace of mind.

Construction worker on site, with diverse group of coworkers.

Construction Worker *(upbeat):*

It helps me stay busy.

Mom with kids at park.

Mom *(warm and friendly):*

It's keeping me safe...and connected.

Fade to dynamic solar ray pattern. Grey text on white beneath rays.

Call today for your application.
1-800-XXX-XXXX | LifeLinkWireless.com

Logo on white screen

Disclaimer on screen:

You may contact your local Public Service Commission for further details, questions or comments at 1-800-XXX-XXXX.

Content for section 2.4

SUPPORT

TECHNICAL SUPPORT	RINGTONES & MORE	UPDATE AREA CODE
Get technical support on your TRACFONE or check the status of an open case.	Find your favorite ringtones here. Download a wide variety of songs from jazz to hip hop.	Occasionally, area codes change in the U.S. When this occurs, wireless phones may need to be reprogrammed with a new area code and phone number.
Learn more...	Learn more...	Learn more...
VOICE MAIL	**SWITCH NUMBER TO TRACFONE**	**TEXT MESSAGES**
View instructions on how to set up your voice mail service for your TracFone.	Switch your phone number to TracFone Wireless and keep your phone number.	Text messaging is a quick and easy way to stay in touch with your friends and family. Check to see if you can send text messages with your TracFone.
Learn more...	Learn more...	Learn more...

(Dropdown 1) LifeLink Wireless Benefits
LifeLink Wireless makes cellular service more affordable by offering Lifeline Service to qualified customers. Upon approval, customers will receive a free cell phone (your LifeLink Wireless phone) and free monthly Minutes with no commitments, contracts, or bills. Additional Minutes may be purchased at a discounted rate.

(Dropdown 2) How to Qualify
Find information about the requirements to qualify for LifeLink Wireless Services.

(Dropdown 3) How to Apply
Get step by step information on how to apply for the LifeLink Wireless Support .

(Dropdown 4) FAQ
Here you will find answers to the most Frequently Asked Questions (FAQ).

Check Status

(Dropdown 1) Check Application Status
Find information on the status of your application.

(Dropdown 2) Check Order delivery Status

Track the status of your LifeLink Wireless phone shipment.

(Dropdown 3) Get Available Minutes
View instructions on how to receive Airtime you may have not received yet.

Service & Support

(Dropdown 1) Get Available Minutes
View instructions on how to receive Airtime you may have not received yet.

(Dropdown 2) Set up Voicemail
View instructions on how to set up your voicemail service in your LifeLink Wireless phone.

(Dropdown 3) Send Text message
Text messaging is a quick and easy way to stay in touch with your friends and family. View instructions on how to send/receive messages with your LifeLink Wireless phone.

(Dropdown 4) Technical / Service Support
Get Technical support or report problems with your LifeLink Wireless Service.

Add Airtime

You can add Airtime directly from your LifeLink Wireless phone!

To add Airtime, please follow the steps below:

1. With your LifeLink Wireless phone on, press the **MENU** key located in the center of the arrow keys.
2. **"Prepaid"** will be displayed across your screen. Press **SELECT.**
3. Using your arrow keys, go to **"Redeem Airtime"** and press **SELECT** three times.
4. Your LifeLink Wireless phone screen should display **"CARD. #"** Please enter your 15 digit Airtime PIN. Your PIN number is located on the back of your airtime card, or on your register receipt. To locate the PIN on your Airtime card, scratch off the gray strip on the back of your card.
5. Please make sure the numbers you entered are correct and press **OK**.
6. **Keep your LifeLink Wireless phone ON to receive your Minutes.**

To add more Minutes to your LifeLink Wireless phone, you can buy an Airtime Card. Click here to buy Airtime. *<link should go to Buy airtime page>*

If you have not yet received your free LifeLink Wireless minutes, or if you are waiting to receive your Airtime after adding a card, please click here. <link should go to pending minutes page>

Buy Airtime

LifeLink Wireless Airtime Cards will be available at retailers soon.

You can also use Tracfone Airtime Cards with your LifeLink Wireless service. TracFone Airtime Cards are sold at most retailers including Wal-Mart, K-Mart, Target, RadioShack, Walgreens, CVS, Eckerds, and RiteAid stores. You can also by Airtime online at www.TracFone.com or by calling 1-800-867-7183.

Get Available minutes

Please remember to keep your phone on to receive your free monthly minutes.

If you have not received your free minutes, please follow these steps:

1. With your LifeLink Wireless phone on, please press the **MENU** key located in the center of the arrow keys.
2. **"Prepaid"** will be displayed on your screen. Press **SELECT**.
3. Using your arrow keys, go to **"Redeem Airtime"** and press **SELECT** 3 times.
4. **"Card #,"** will appear on your screen. Press ***#5555**. Then press **OK**.
5. **Make sure to keep your LifeLink Wireless phone ON to receive your Minutes.**

Set up Voicemail

From your LifeLink Wireless phone
On your LifeLink Wireless phone, press and hold the **"1"** key until the phone calls your voice mailbox. Please follow the instructions for setting up your voice mailbox as they are provided

Send/Receive Text message

SEND MESSAGES
Cost to send a message: 0.3 Minutes

1. With your LifeLink Wireless phone on, press the key below the word **"Message,"** located to the right of the display.
2. **"Create Message"** should be highlighted. Press **SELECT.**
3. **"To"** will appear highlighted. Press **CHANGE.**
4. Enter the cellular number you wish to send a text message to and press **OK.**
5. **"Msg"** will appear highlighted. Press **CHANGE.**
6. Using your keypad, enter your message or press **INSERT** to select and insert a quick note message and press **OK.**

7. Press the key below the word **"DONE."**
8. **"Send Message Now"** will appear on your screen. Press **YES** to send the message. Otherwise, press **NO**.

RECEIVE MESSAGES
Cost to receive a message: 0.3 Minutes

When you receive a text message, your phone will display the indicator and a **"New Inbox Message"** notification, and gives an alert.

Press **READ** to open the message.

Or:

1. With your LifeLink Wireless phone on, press the key below the word **"Message,"** located to the right of the display.
2. Using your arrow keys, go to **"Text Msgs"** and press **SELECT.**
3. Highlight the message you would like to see and press **READ.** Your message will be displayed on your screen.

If reminders are turned on, your phone sends you an occasional reminder until you close the new message notification, read the message, or turn off your phone.

When your phone displays **"Memory is Full!"** you must delete some existing message to receive new messages.

Technical / Service Support

Please call the LifeLink Wireless Customer Care Center at 1-800-977-3768.

You may also call or write to your state's Public Service Commission to let them know how we are doing:

State	Phone Number	Email	Address
Alaska	(907) 276-6222 TTY: (907) 276-4533 Toll Free: (1-800) 390-2782 (outside Anchorage, within	webmaster.rca@alaska.gov	Regulatory Commission of Alaska 701 West Eighth Avenue, Suite 300 Anchorage, Alaska 99501-3469

State	Phone Number	Email	Address
	Alaska)		
Arizona	Phoenix (800) 222-7000 Tuscon (800) 535-0148	www.cc.state.az.us	Arizona Corporation Commission Consumer Services Section 1200 W. Washington St. Phoenix, AZ 85007
California	800-649-7570 or 415-703-2782		California Public Utility Commission San Francisco Office (Headquarters) 505 Van Ness Avenue San Francisco, CA 94102
Florida	1-800-342-3552		Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850
Georgia	404-656-4501 or 1-800-282-5813	gapsc@psc.ga.gov	Georgia Public Service Commission Consumer Affairs Unit 244 Washington Street, SW Atlanta, GA 30334
Illinois	1-800-524-0795 (from within Illinois) or 217-782-2024 (from outside of Illinois)		Illinois Commerce Commission 527 East Capitol Ave Springfield, IL. 62701
Kansas	Call: 1.800.662.0027 or in Topeka 785.271.3140	public.affairs@kcc.ks.gov	Kansas Corporation Commission Office of Public Affairs and Consumer Protection 1500 S.W. Arrowhead Road Topeka, KS 66604
Kentucky	502-564-3940 or 1-800-772-4636	http://psc.ky.gov	Kentucky Public Service Commission P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615
Louisiana	800-256-2397 (from within Louisiana) or 225-342-4404 (from		Louisiana Public Service Commission 602 North 5th Street 12th Floor Baton Rouge, LA 70802

State	Phone Number	Email	Address
	outside of Louisiana)		
Michigan	1-800-292-9555 (from within Michigan) or 517-241-6180 (from outside of Michigan)		Michigan Public Service Commission Consumer Intake Center P.O. Box 30221 Lansing, MI 48909
Mississippi	Phone: (601) 961-5434 Toll Free: **1-800-356-6430**	https://www.psc.state.ms.us/Complaint	Mississippi Public Service Commission Woolfolk Building 501 North West St. Jackson, MS 39201
Nebraska	Phone: 402-471-3101 Toll Free: 1-800-526-0017 (Nebraska Only)		Nebraska Public Service Commission 1200 N Street, Suite 300 Lincoln, NE 68508
New Jersey	1-800-624-0241 (from within New Jersey) or 973-648-2350 (from outside of New Jersey)		New Jersey Board of Public Utilities Two Gateway Center (8th Floor) Newark, NJ 07102
Ohio	800-686-PUCO (7826)		The Public Utilities Commission of Ohio 180 East Broad Street Columbus, Ohio 43215
Oklahoma	(405)521-2211	occeweb.com/Divisions/CS/Forms/PUTILCOMPLAINT.htm	Oklahoma Corporation Commission 2101 North Lincoln Blvd. Oklahoma City, OK 73105
Puerto Rico	Telephone Number: 787-756-0804; Fax:	rmiranda@jrtpr.gobierno.pr	Telecommunications Regulatory Board of Puerto Rico Attn. Mr. Roberto Miranda Capital Center II

State	Phone Number	Email	Address
	787-753-5684		235, Arterial Hostos Ave., Suite 1001 San Juan, PR 00918-1453
South Carolina	1-800-922-1531 (toll-free in SC) (803) 737-5230	www.regulatorystaff.sc.gov - On-Line Complaint/Inquiry Form	State of South Carolina Office of Regulatory Staff 1401 Main Street, Suite 190 Columbia SC 29201
Texas	1-888-782-8477 or 512-936-7120	customer@puc.state.tx.us	Public Utility Commission of Texas 1701 N. Congress Avenue PO Box 13326 Austin, TX 78711-3326
West Virginia	1-800-642-8544		Public Service Commission of WV c/o Customer Assistance 201 Brooks Street PO Box 812 Charleston, WV 25323
Washington	1-888-333-9882	www.wutc.wa.gov/ fileacomplaint	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive SW Olympia, WA 98504-7250
Wisconsin	1-800-225-7729 (from within Wisconsin) or 1-608-266-2001 (from outside of Wisconsin)		Public Service Commission of Wisconsin P.O. Box 7854 Madison, WI 53707-7854

Your LifeLink Wireless serial number can be found in the LifeLink Wireless card included in your package.

You can also find your Serial Number directly from your handset:

1. On your LifeLink Wireless phone, press the round **MENU** key located in the center of your arrow keys.
2. **"Prepaid"** will be displayed across your screen. Press **SELECT**.
3. Using your arrow keys, go to **"My IMEI"** and press **SELECT.**
4. Your Serial Number will be displayed across your screen.

If your backlight turns off at any time, press any key to turn it back on again.
To return to the main screen, press the **PWR/End** key

Provide text for STREET NUMBER – HELP

Launch Internet Explorer Browser.lnk **"Street Name"**

Please provide us with the name of the street you live in.

E.g.- If your address is 123 Main Street, write Main Street
If your address is 958 SW 7th Street, write SW 7th Street

Exhibit 11

STATE OF SOUTH CAROLINA
INCUMBENT LOCAL EXCHANGE CARRIERS

NON-RURAL

BellSouth Telecommunications, Inc (BellSouth) DBA: AT&T South Carolina dba AT&T Southeast

Verizon South, Inc.

RURAL

Bluffton Telephone Co., Inc.

Chesnee Telephone Company, Inc. DBA: Chesnee Communications

Chester Telephone Company DBA: TruVista

Farmers Telephone Cooperative, Inc.

Fort Mill Telephone Company DBA: Comporium Communications

Hargray Telephone Co., Inc.

Home Telephone Company, Inc.

Horry Telephone Cooperative, Inc.

Lancaster Telephone Company DBA: Comporium Communications

Lockhart Telephone Company DBA: TruVista

McClellanville Telephone Company DBA: TDS Telecom, Inc.

Norway Telephone Company DBA: TDS TELECOM

Palmetto Rural Telephone Co-op, Inc.

PBT Telecom, Inc.

Piedmont Rural Telephone Cooperative, Inc.

Ridgeway Telephone Company DBA: TruVista

Rock Hill Telephone Company DBA: Comporium Communications

Sandhill Telephone Cooperative, Inc.

St. Stephen Telephone Company

United Telephone Company of the Carolinas

West Carolina Rural Telephone Cooperative, Inc.

Williston Telephone Company

Windstream South Carolina, LLC DBA: fka Alltel South Carolina, Inc.