

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF TRACFONE WIRELESS, INC.)	
FOR DESIGNATION AS AN ELIGIBLE)	
TELECOMMUNICATIONS CARRIER IN THE)	CASE NO.
COMMONWEALTH OF KENTUCKY FOR THE)	2009-00100
LIMITED PURPOSE OF OFFERING LIFELINE)	
AND LINK UP SERVICE TO QUALIFIED)	
HOUSEHOLDS)	

ORDER

On September 23, 2010, the Commission issued its Order (“September 23 Order”) in this proceeding that would grant TracFone Wireless, Inc.’s (“TracFone”) petition for designation as an Eligible Telecommunications Carrier (“ETC”) for the limited purposes of offering Lifeline service to qualified Kentucky households. The September 23 Order contained a number of conditions to which TracFone either needed to agree to follow or agree to provide additional information to the Commission in satisfaction of a specific requirement. Having reviewed all of the submitted responses, the Commission finds that TracFone has provided all of the information requested by the Commission and has agreed to all conditions outlined within the September 23 Order.

DISCUSSION

On October 13, 2010 and October 22, 2010, TracFone filed its initial and supplemental responses to the September 23 Order. On October 26, 2010, Commission Staff held an informal conference to address TracFone’s responses. At the informal conference, TracFone stated that it would supplement the record to address

other conditions not responded to in its initial or supplemental response.¹ On October 27, 2010, TracFone filed its second supplemental response.

In the September 23 Order, the Commission held that TracFone should be subject to the conditions imposed by the Federal Communications Commission (“FCC”) in granting forbearance from facilities-based requirements of 47 C.F.R. § 214(e)(1). Those conditions are: (a) TracFone providing Lifeline customers with basic 911 and E911 access regardless of activation status and availability of prepaid minutes; (b) TracFone providing its new Lifeline customers with E911-compliant handsets and replacing any existing customers’ non-compliant handsets at no additional charge; (c) TracFone complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) TracFone obtaining a certification from each Public Safety 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. In its supplemental response submitted on October 22, 2010, TracFone stated that it complies fully with each of the FCC’s imposed conditions of forbearance in each state where it has been designated as an ETC and in which it offers Lifeline service, including the Commonwealth of Kentucky. TracFone provided details of how it

¹ An informal conference memorandum was filed into the record by Commission Staff on October 28, 2010.

provides 911 and E911 service to its customers and how it has met the PSAP certification requirement. Having reviewed the supplemental response, the Commission finds that TracFone has presented sufficient evidence and assurance that it will comply with the FCC's imposed conditions.

The Commission also imposed four other conditions upon TracFone. For the first condition, TracFone was obligated to certify to the Commission that it has complied with the obligations imposed by the U.S. District Court for the Western District of Kentucky. TracFone stated in its October 13, 2010 response that the court case is an ongoing matter, that the amounts owed, if any, have not yet been addressed by the U.S. District Court, and that TracFone reserves its rights to appeal any adverse final decision rendered in the matter. However, TracFone acknowledged that the Court had found that TracFone was in full compliance with its obligations under Kentucky 911 funding law, which became effective in 2006, but it had not remitted the 911 fees under prior law for the period between 2002 and 2006. TracFone agreed to keep the Commission apprised of further developments in this litigation. Having reviewed this response, the Commission finds that, as the U.S. District Court has not rendered a final determination as to the amounts owed by TracFone, the Commission cannot find that TracFone is not in compliance with Kentucky law or any obligations imposed by the Court. For this reason, the Commission finds that TracFone has agreed to satisfy this condition; however, TracFone shall remain obligated to keep the Commission apprised as to the issuance of substantive decisions by the Court related to its obligations under Kentucky 911 law and funding requirements.

For the second condition, TracFone was obligated to perform an annual audit of all Lifeline customers in accordance with Administrative Case No. 360.² The Commission requires that TracFone submit a quarterly report to the Commission, effective with the issuance of the September 23 Order, showing the number of customers who have been deactivated for not having any activity on their phone in a 60-day period, not passing annual verification, or voluntarily being deactivated.

In its response, TracFone states that it will comply with all applicable verification of eligibility requirements adopted by the Commission in Administrative Case No. 360. Having reviewed the response, the Commission finds that TracFone has agreed to satisfy this condition.

For the third condition, TracFone was required to clarify with the Commission the extent of its service territory prior to designation of ETC status. In its response, TracFone has provided the Commission a map of the service territory and lists of the exchanges, zip codes, and rate centers of its service area. In addition, in its October 22, 2010 filing, TracFone stated it would be using AT&T Mobility, Verizon Wireless and T-Mobile as its underlying carriers for its SafeLink Wireless service. Having reviewed the response, the Commission finds that TracFone's explanation and the evidence of its service area are adequate and TracFone has, therefore, satisfied this condition.

As for the final condition, TracFone was required to offer Kentucky SafeLink Wireless customers additional minutes of use at a rate of \$.10 per minute or less. In

² Administrative Case No. 360, An Inquiry into Universal Service and Funding Issues (Ky. PSC Jun. 3, 2004).

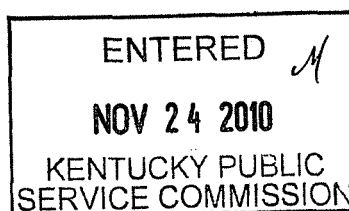
its response, TracFone stated that it has agreed that it will offer SafeLink wireless customers the ability to purchase additional minutes of use at the rate of \$.10 per minute. Having reviewed this response, the Commission finds that TracFone has agreed to this condition.

The Commission having reviewed the evidence and filings made by TracFone in this matter, IT IS HEREBY ORDERED that:

1. TracFone shall be designated an ETC in Kentucky for the limited purpose of offering Lifeline and Link Up Service to qualified low-income households, subject to continued compliance to all conditions stated above and as provided in the September 23, 2010 Order in this matter.

2. A copy of this Order shall be served on the Universal Service Administration Company and the FCC.

By the Commission



ATTEST:

Executive Director

A large, stylized handwritten signature in black ink, written over a horizontal line that serves as a signature line.

Mitchell F Brecher
Greenbert Traurig, LLP
2101 L Street, NW, Suite 1000
Washington, DC 20037

Mark David Goss
Frost, Brown, Todd, LLC
250 West Main Street
Suite 2700
Lexington, KY 40507

Mr. Dennis Howard
Assistant Attorney General
1024 Capital Center Drive
Frankfort, KY 40601

Debra M Mercer
Greenberg Traurig, LLP
2101 L Street, NW, Suite 1000
Washington, DC 20037