



wireless, inc. 9700 NW 112th Avenue | Miami, FL 33178

October 18, 2011

VIA OVERNIGHT MAIL

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

OCT 19 2011

PUBLIC SERVICE
COMMISSION

Att: Filings Division

**Re: CASE NO. 2011-00322 ALLEGED FAILURE OF TRACFONE
WIRELESS, INC. TO FILE REQUIRED REPORTS**

To whom it may concern:

By order issued October 12, 2011 in the above-captioned matter, the Commission states that TracFone Wireless, Inc. (TracFone) has not filed with the Commission its 2010 cellular gross revenues operating report. That order directs TracFone to file a gross revenues report by October 20, 2011 and to appear on October 27, 2011 at a hearing to show cause why it should not be subjected to the penalties of KRS 278.990 for failure to comply with KRS 278.140.

By letter dated March 28, 2011 to Mr. Jeff D. Kline, Annual Report Branch Manager, I explained that TracFone does not remit a Report of Gross Operating Revenues Derived from Intra-Kentucky Business for the Year Ended December 31, 2010 because TracFone is not a "Utility" as that term is statutorily defined. As noted in that letter, KRS 278.010(3)(f) defines "utility" as "any person . . . who **owns, operates, or manages** any facility used or to be used for or in connection with . . . (c) the transmission or conveyance of any message by telephone or telegraph to the public for compensation." (emphasis added). A copy of that letter is attached hereto.

TracFone does not own, operate or manage any facility used for the transmission of messages in Kentucky. TracFone does provide commercial mobile radio service (CMRS) to Kentucky consumers. However, it does so on a resale basis only. That is, TracFone purchases CMRS from wireless carriers who do own, operate or manage such facilities and who, therefore, are utilities under Kentucky law. TracFone submitted a similar letter in March 2010 in lieu of submitting a gross revenues report for calendar year 2009. TracFone never received any response from the Commission indicating any disagreement with the explanation provided in that 2010 letter and had no reason to believe that the explanation contained therein was not satisfactory.

As directed by Commission staff, TracFone registered with the Commission in 2009 and provided 1) name and address information; 2) its articles of incorporation; and 3) the name, street address, telephone number and fax number to which customer complaints and regulatory issues matters should be sent. TracFone was directed to provide this information so that its then-pending petition for designation as an Eligible Telecommunications Carrier pursuant to 47 U.S.C. § 214(e)(2) could be considered by the Commission. By order issued September 23, 2010, the Commission designated TracFone as an Eligible Telecommunications Carrier (Case No. 2009-00100 - Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households).

During our discussions with staff, we explained that TracFone does not own, operate or manage any facilities in Kentucky. We were directed to submit gross revenue reports. However, we were instructed to report \$0 revenues since the company does not operate as a utility and therefore derives no intrastate revenues from utility operations. To comply with that directive, we are submitting with this letter of explanation the 2010 report with \$0 revenues reported since TracFone is not a utility under Kentucky law. We are also enclosing a check in the amount of \$250 representing the penalty amount for late payment of the report.

Hopefully, the explanation set forth in this letter, as well as the submitted gross revenues report and the late filing penalty, will obviate the need for a hearing on October 27, 2011. If the Commission still deems it necessary to conduct a hearing, then we respectfully request that the hearing date be rescheduled since neither TracFone nor its counsel are available on short notice to appear at a hearing on October 27.

Finally, I note that the Commission appears to be using an incorrect address for TracFone. Our corporate address is: 9700 NW 112th Avenue, Miami, FL 33178 (not 9700 NW 112th **Street**). Please direct future communications to the correct address.

If you have questions regarding, this response, please contact me at your convenience.

Sincerely,



Richard B. Salzman
Executive Vice President
and General Counsel

Enclosures

KENTUCKY PUBLIC SERVICE COMMISSION
REPORT OF GROSS OPERATING REVENUES DERIVED FROM INTRA-KENTUCKY
BUSINESS FOR THE YEAR ENDING DECEMBER 31, 2010

PAGING AND CELLULAR UTILITIES

Name of Utility Reporting: TracFone Wireless, Inc.

FEIN # (Federal Employer Identification Number)

65-0655753

Address of Utility: 9700 NW 112 Avenue Phone: 305-640-2000

City: MIAMI State: FL Zip: 33178 Fax: 305-418-2696

E-Mail: CDillon@TracFone.com Web Site: TracFone.com

Primary Regulatory Contact: Richard Salzman Executive VP &
(Name) (Title)
General Counsel

GROSS REVENUES OF PAGING UTILITY..... \$	_____
Number of Paging Customers	_____
GROSS REVENUES OF CELLULAR UTILITY.... \$	<u>Ø See Attached Letter *</u>
Number of Cellular Customers	<u>291,480</u>

OATH

RECEIVED

State of Florida

OCT 19 2011

County of Miami-Dade ss.

PUBLIC SERVICE
COMMISSION

Chesley Dillon being duly sworn, states that he/she is
(Officer)

VP - Corporate Tax of the TracFone Wireless Inc that the
(Official Title) (Utility Reporting)

above report of gross revenues is in exact accordance with TracFone Wireless Inc
(Utility Reporting)

and that such books accurately show the gross revenues of Ø See Attached Letter *
(Utility Reporting)

derived from Intra-Kentucky business for the calendar year ending December 31, 20 10.



YAQUELIN FIALLO
MY COMMISSION # DD 890673
EXPIRES: May 19, 2013
Bonded Thru Budget Notary Services

Chesley Dillon VP - Corp. Tax
(Officer) (Title)

This the 17 day of October, 20 11

Yaquelin Fiallo Dade 05/19/2013
(Notary Public) (County) (Commission Expires)

**REVENUES ARE CONSIDERED INTRA-KENTUCKY IF DERIVED
FROM CALLS THAT ORIGINATE AND TERMINATE WITHIN THE
STATE REGARDLESS OF WHERE THE CALL IS SWITCHED**

* See Attached Letter.