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Chairman

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Linda Breathitt  
Commissioner

May 25, 2012

## PARTIES OF RECORD

Re: Case No. 2011-00322  
Alleged Failure of Tracfone Wireless, Inc. to File Required Reports

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact Jeb Pinney, Staff Attorney, at 502-564-3940, Extension 427.

Sincerely,


A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen  
Executive Director

JP/kar  
Attachments

**INTRA-AGENCY MEMORANDUM**

**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** Main Case File 2011-00322  
**FROM:** J.E.B. Pinney, Staff Attorney   
**DATE:** May 24, 2012  
**SUBJECT:** Alleged Failure of Tracfone Wireless, Inc. to File Required Reports

On May 8, 2012, representatives from Commission Staff and Tracfone Wireless, Inc. ("Tracfone") met at the Commission's offices to participate in an informal conference. A list of the participants is attached.

Tracfone's representatives stated that they did not have much to add to what they had filed in their response in the case. They contended that Tracfone was not an utility under the Kentucky statutory definition found in KRS 278.010(11). Counsel for Tracfone stated that Tracfone, as a reseller, did not own, operate, manage or control facilities in or outside of Kentucky. Counsel for Tracfone also raised the question of whether or not the wholesale providers were assessed on the services sold to Tracfone, and, if Tracfone was required to pay the assessment as well, it would raise the issue of double recovery.

Commission Staff stated that it did not know whether or not underlying carriers reported income from wholesale on their gross receipts report.

Counsel for Tracfone stated that Kentucky's law was not as clear as other jurisdictions that clearly define wholesale and wireless resellers as utilities for the purposes of regulations and assessments. Commission Staff commented that other non-facility based resellers refused to pay assessments on gross annual intrastate revenues. Counsel also inquired as to previous Commission action in which the Commission declined to determine whether or not wireless resellers were required to report gross intrastate revenues.

The participants discussed further procedure and whether or not additional briefs were required or whether a hearing was needed or both. Counsel for Tracfone stated that he would welcome any opportunity to persuade the Commission. The participants concluded that if the case went to a hearing, it would be an evidentiary hearing focusing on how Tracfone operated and what it does and does not do. Commission Staff suggested that the next step would likely be Commission Staff data requests focusing on Tracfone's operations.

Thereafter the conference adjourned.

Attachment

