

**Dinsmore & Shohl** LLP  
ATTORNEYS

Holly C. Wallace  
502-540-2309  
holly.wallace@dinslaw.com

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PUBLIC SERVICE  
COMMISSION

September 17, 2007

**Via Federal Express**

Hon. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601



**Re: *In the Matter of: An Investigation Into Regulation of Wireless Telecommunications Service Providers, Administrative Case No. 2007-00409***

Dear Ms. O'Donnell:

I have enclosed for filing in the above-styled case the original and eleven (11) copies of Kentucky RSA #3 Cellular General Partnership's Application for Administrative Case and Complaint. Please return a file-stamped copy in the self-addressed, postage prepaid envelope furnished herewith.

Thank you, and if you have any questions, please call me.

Sincerely,

DINSMORE & SHOHL LLP

A handwritten signature in cursive script that reads "Holly C. Wallace".

Holly C. Wallace

HCW/rk  
Enclosure

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN INVESTIGATION INTO REGULATION OF  
WIRELESS TELECOMMUNICATIONS  
SERVICE PROVIDERS

FILED  
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PUBLIC SERVICE  
COMMISSION

SEP 18 2007

PUBLIC SERVICE  
COMMISSION

Administrative Case No. 2007-00469

APPLICATION FOR ADMINISTRATIVE CASE AND COMPLAINT

Kentucky RSA #3 Cellular General Partnership ("RSA #3"), by counsel, for its application for administrative case and complaint, pursuant to KRS 278.040, 278.260 and 807 KAR 5:001 §12, hereby requests that the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), initiate an investigation into whether pre-paid wireless service providers and other resellers of wireless telecommunications service: (1) are utilities subject to regulation under Chapter 278 of the Kentucky Revised Statutes; and (2) are paying the annual assessment against utilities pursuant to KRS 278.130. In support of its application and complaint, RSA #3 states as follows.

1. The full name and address of RSA #3 is Kentucky RSA #3 Cellular General Partnership, 2902 Ring Road, Elizabethtown, Kentucky 42701. RSA #3 is a wireless service provider offering a variety of service plans including pre-paid plans. RSA #3 is a registered utility in the Commonwealth of Kentucky and serves the counties of Allen, Breckinridge, Butler, Edmonson, Grayson, Hancock, Logan, McLean, Meade, Muhlenberg, Ohio, Simpson, Todd and Warren.

2. TracFone Wireless, Inc. ("TracFone") is a foreign corporation with its principal place of business located at 8390 NW 25 Street, Miami, Florida, 33122. TracFone is a wireless service provider offering a variety of pre-paid plans. According to its website, TracFone is "America's largest prepaid wireless company." ([www.tracfone.com](http://www.tracfone.com).) TracFone is not a registered utility in the Commonwealth of Kentucky.

3. Virgin Mobile USA, LLC ("Virgin Mobile") is a foreign limited liability company with its principal place of business located at 10 Independence Boulevard, Warren, New Jersey 07059. Virgin Mobile is a wireless service provider offering a variety of pre-paid plans. Virgin Mobile is not a registered utility in the Commonwealth of Kentucky.

4. The facts supporting this application and complaint are set forth more fully below; but briefly, this application and complaint concerns the discrepancy in regulation of wireless service providers in the Commonwealth of Kentucky.

#### APPLICABLE LAW

5. Pursuant to KRS 278.040, the jurisdiction of the Kentucky Public Service Commission (the "Commission") "shall extend to all utilities in this state." The Commission "shall regulate utilities and enforce the provisions of this chapter."

6. A utility is defined as "any person . . . who owns, controls, operates, or manages any facility used or to be used for or in connection with: (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation." KRS 278.010(3)(e).

7. "Facility includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility." KRS 278.010(11).

8. Pursuant to KRS 278.130, all utilities are required to pay an annual assessment for the purpose of maintaining the Commission.

9. "To ascertain the amount of the assessment provided for in KRS 278.130, each utility shall . . . file with the commission a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year." KRS 278.140.

10. Pursuant to KRS 278.150, the Commission shall “certify to the Revenue Cabinet and the Finance and Administration Cabinet the amount of intrastate business of each utility in the state subject to its jurisdiction during the previous calendar year.”

#### STATEMENT OF THE FACTS

11. RSA #3 is a wireless service provider and registered utility in the Commonwealth of Kentucky. RSA #3 files an annual gross earnings report with the Commission pursuant to KRS 278.140.

12. To the best of its information and belief, on an annual basis the Commission certifies to the Revenue Cabinet the amount of RSA #3’s intrastate business pursuant to KRS 278.150.

13. Pursuant to KRS 278.130 and 278.150, RSA #3 pays an annual assessment for the purpose of maintaining the Commission. On July 30, 2007, RSA #3 paid \$51,736.31 to the Revenue Cabinet in satisfaction of the annual assessment.

14. TracFone and Virgin Mobile are wireless service providers in the Commonwealth of Kentucky. TracFone and Virgin Mobile are not registered utilities in the Commonwealth, however, and they do not file annual gross earnings reports with the Commission.

15. To the best of RSA #3’s information and belief, the Commission does not certify the amount of intrastate business of TracFone and Virgin Mobile, respectively, to the Revenue Cabinet.

16. To the best of RSA #3’s information and belief, TracFone and Virgin Mobile do not pay the annual assessment required under KRS 278.130, and RSA #3 believes there are other wireless service providers operating in Kentucky who do not pay the annual assessment.

17. As described above, wireless telecommunications service providers are not uniformly regulated and subject to the annual Commission assessment pursuant to the Kentucky Revised Statutes.

18. Wireless service providers that are not subject to paying the annual assessment enjoy an unfair competitive advantage vis-à-vis wireless service providers, such as RSA #3, that do pay the annual assessment.

**WHEREFORE**, Kentucky RSA #3 Cellular General Partnership respectfully requests that the Commission take the following actions:

1. Initiate a formal investigation into the uniformity of regulation of wireless service providers including providers of pre-paid service and other resellers of telecommunications service;

2. Declare that pre-paid wireless service providers and other resellers of wireless telecommunications service are utilities within the meaning of KRS 278.010;

3. Uniformly enforce the provisions of KRS 278.130 (assessments against utilities - applications for adjustment), 278.140 (report of gross earnings from intrastate business) and 278.150 (payment of assessments - certification of deduction by commission - administration of funds collected) against all wireless service providers inclusive of pre-paid wireless service providers and other resellers of wireless telecommunications service;

4. Implement any and all other legal and equitable remedies necessary to ensure the uniform regulation of wireless service providers in the Commonwealth.

Respectfully submitted,



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John E. Selent  
Holly C. Wallace  
**DINSMORE & SHOHL LLP**  
1400 PNC Plaza  
500 W. Jefferson Street  
Louisville, Kentucky 40202  
(502) 540-2300 (telephone)  
(502) 585-2207 (fax)

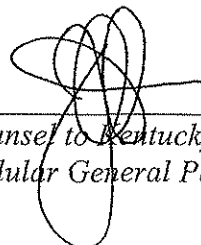
*Counsel to Kentucky RSA #3  
Cellular General Partnership*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of this Application for Administrative Case and Complaint was served by first-class U. S. mail, postage pre-paid, this 17<sup>th</sup> day of September, 2007 upon the following:

Virgin Mobile USA, LLC  
c/o CT Corporation System  
Kentucky Home Life Building  
Louisville, KY 40202

TracFone Wireless, Inc.  
c/o CT Corporation System  
Kentucky Home Life Building  
Louisville, KY 40202



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*Counsel to Kentucky RSA #3  
Cellular General Partnership*