

**Before the
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of)

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)

Docket No. 2009-00100

RECEIVED

MAR 19 2009

**PUBLIC SERVICE
COMMISSION**

NOTICE OF FILING FEDERAL COMMUNICATIONS COMMISSION ORDER

TracFone Wireless, Inc. (“TracFone”), by its counsel, enters into the record of this proceeding an Order issued by the Federal Communications Commission (“FCC”) on March 5, 2009, in support of TracFone’s Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (“ETC Petition”).¹

As explained in TracFone’s ETC Petition, on September 8, 2005, the FCC exercised its forbearance authority under 47 U.S.C. § 160 with respect to the facilities-based service requirement for ETCs set forth in 47 U.S.C. § 214(1)(A) and 47 C.F.R. § 54.201(i). The FCC granted forbearance subject to certain conditions.² One of those conditions required TracFone to obtain a certification from each Public Safety Answering Point (“PSAP”) where TracFone provides Lifeline service confirming that TracFone provides its customers with access to 911 and E911 service without regard to activation status or availability of prepaid minutes.

¹ Federal -State Joint Board on Universal Service, et al., CC Docket No. 96-45, FCC 09-17 (released March 5, 2009), attached as Exhibit 1.

² 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).

On March 5, 2009, the FCC issued an Order granting TracFone's request to modify the PSAP certification requirement. 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. TracFone intends to provide Lifeline service in Kentucky in conformance with the FCC's PSAP certification condition, as modified by the FCC's March 5, 2009 Order.

Respectfully submitted,



Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAURIG, LLP
2101 L Street, NW
Suite 1000
Washington, D.C. 20037
(202) 331-3100

Counsel for TracFone Wireless, Inc.

March 18, 2009

Exhibit 1

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*

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.

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