

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|---------------------------------|---|---------------------|
| INVESTIGATION OF THE FAILURE OF |) | ADMINISTRATIVE |
| TRACFONE WIRELESS, INC. TO FILE |) | CASE NO. 2011-00322 |
| REQUIRED REPORTS |) | |

O R D E R

On October 12, 2011, the Commission ordered TracFone Wireless, Inc., (“TracFone”) to show cause why it should not be penalized for its failure to file a report of its gross operating revenues derived from intra-Kentucky business for the year ending December 31, 2010, as KRS 278.140 requires (“Show Cause Order”). In our Show Cause Order, we set the matter for hearing, but allowed TracFone, in lieu of appearing at the hearing, to admit the allegations, file the required report, waive its right to a hearing, and pay a penalty of \$250.00.

On October 19, 2011, TracFone submitted a written response, by letter, to the Show Cause Order that included payment of \$250.00 and the required report. TracFone reported 291,480 customers in Kentucky, but no gross revenues.

In its letter, TracFone argues that it is not a utility and, therefore, is under no legal obligation to submit a report of gross operating revenues. It states:

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. . . . 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) 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.

TracFone's argument, however, ignores the definition of facility. KRS 278.010(11) defines "facility" as "all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility." Certainly, TracFone must own, operate, lease, license, use furnish, or supply some type of property, means, or instrumentalities to conduct its business. Furthermore, KRS 278.010(3)(f) does not limit the location of those facilities to Kentucky.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that a reasonable basis exists to find that TracFone meets the statutory definition of a utility as set forth in KRS 278.010(3) and that TracFone should be afforded an opportunity to present further argument on this issue.

IT IS THEREFORE ORDERED that TracFone shall have 20 days from receipt of this Order to supplement its arguments as to why it is not a utility as defined in KRS 278.010(3)(f).

By the Commission

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MAR 22 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Stephanie Bell for Jeff Derom
Executive Director

Administrative Case No. 2011-00322

Richard Salzman
Executive VP & General Counsel
TracFone Wireless, Inc.
9700 NW 112th Avenue
Miami, FL 33178