

COMMONWEALTH OF KENTUCKY
BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED

MAR 07 2012

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

PETITION OF TRACFONE WIRELESS, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN THE) CASE NO. 2009-00100
COMMONWEALTH OF KENTUCKY FOR THE)
LIMITED PURPOSE OF OFFERING LIFELINE)
AND LINK UP SERVICE TO QUALIFIED)
HOUSEHOLDS)

PETITION FOR CONFIDENTIAL TREATMENT OF
PROPRIETARY AND COMMERCIALY SENSITIVE INFORMATION

TracFone Wireless, Inc. (“TracFone”), pursuant to KRS 61.870 *et seq.*, 807 KAR 5:001, Section 7 and other applicable law, respectfully requests the Commission to grant confidentiality to, and protect from public disclosure, certain information provided in compliance with the Commission’s September 23, 2010 Order granting TracFone status as an eligible telecommunications carrier for the purpose of offering Lifeline and Link-Up Service to qualified low-income households in the Commonwealth of Kentucky. In support of said petition, TracFone states as follows:

1. The Commission’s September 23, 2010 Order requires TracFone to “submit a quarterly report to the Commission...showing the number of customers who have been deactivated for not having any activity on their phone in a 60-day period, not passing annual verification, or voluntarily being deactivated.”

2. On October 28, 2011, TracFone filed its quarterly report covering the third quarter of 2011. TracFone filed the information both in a redacted format and in an unredacted format. In its letter accompanying the filing, TracFone requested that the report be afforded confidential treatment in accordance with Kentucky law. The report included valuable commercial information, including the number of customers subscribing to TracFone's service who had been de-enrolled. The information is confidential and proprietary and, if openly disclosed, would permit an unfair commercial advantage to competitors of TracFone.

3. In a letter dated December 21, 2011, the Commission denied the request for confidential treatment of the quarterly report on procedural grounds, stating:

The information is described as the number of customers subscribing to service who have been de-enrolled; however, you did not file a Petition or Motion Requesting Confidential Treatment as is required by Commission procedures. The Commission requires that a Motion or Petition requesting confidential treatment be filed on behalf of a utility stating with specificity what you are requesting to be held confidential and stating the grounds by which you are basing your request. The Motion or Petition for Confidential Treatment would accompany the confidential materials when you file them with the Commission.¹

The Commission thereafter invited TracFone to renew its request for confidential treatment by filing a suitable petition.

4. It does not appear that the quarterly report filed on October 28, 2011 has been published on the Commission's website. Accordingly, TracFone respectfully requests the Commission to grant confidential treatment to the quarterly report originally

¹ Letter from Jeff Derouen to Stephen Athanson (Dec. 21, 2011). A copy of the letter is attached hereto as Exhibit A.

filed on October 28, 2011 for the reasons set forth herein and as set forth in TracFone's cover letter accompanying the original filing.

5. The Kentucky Open Records Act exempts from public disclosure certain information, including proprietary information and/or sensitive commercial information. Specifically, KRS 61.878(1)(c)(1) provides:

The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction...records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records....

The Kentucky Supreme Court has construed this exemption from disclosure to include information which is proprietary and not otherwise publicly available. *See Marina Management Service, Inc. v. Com. of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995); *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

6. The information contained in TracFone's quarterly report is required to be disclosed to the Commission by virtue of conditions imposed in the Commission's September 23, 2010 Order. The information is not publicly available and identifies the number of customers who have been de-enrolled from subscriptions to TracFone's service. The confidential and proprietary nature of this information has been previously acknowledged by the Commission:

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly

disclosed would permit an unfair commercial advantage to Tracfone's competitors.²

The information contained in the report satisfies the Kentucky Open Records Act's requirements for exemption and therefore it should be afforded confidential status.

WHEREFORE, on the basis of the foregoing, TracFone respectfully requests that the Commission grant confidential treatment to, and protect from public disclosure, certain information filed herewith under seal as set forth herein.

This 7th day of March, 2012.

Respectfully submitted,

 *Tom O'Brien* by *ASS w/permission*

Mark David Goss

Tom O'Brien

Frost Brown Todd LLC

250 West Main Street, Suite 2800

Lexington, KY 40507-1749

(859) 231-0000 – Telephone

(859) 231-0011 – Facsimile

Counsel for TracFone Wireless, Inc.

² Letter from Jeff Derouen to Stephen Athanson (Sept. 16, 2011). A copy of the letter is attached hereto as Exhibit B.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served by delivering same to the custody and care of the U.S. Postal Service, postage pre-paid, addressed to the following on this 7th day of March 2012:

Hon. Dennis Howard
Office of the Attorney General
Utility Intervention and Rate Division
1024 Capital Center Drive
Frankfort, Kentucky 40601

Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAURIG, LLP
2101 L Street, NW
Suite 1000
Washington, D.C. 20037


Tom O'Brien by DSS w/permissions
Counsel for TracFone Wireless, Inc.



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P O Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

December 21, 2011

Tracfone Wireless, Inc.
Attention: Stephen Athanson
9700 NW 11^{2th} Avenue
Miami, Florida 33178

Re: Tracfone Wireless, Inc.
Letter Request for Confidential Treatment received 10/28/11
PSC Reference – Case No. 2009-00100

Dear Mr. Athanson:

The Public Service Commission has received your letter dated October 27, 2011 wherein you have requested confidential protection on behalf of Tracfone Wireless, Inc. ("Tracfone") to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.870. The information you seek to have treated as confidential is identified as being contained in its Quarterly Activity Report for the 3rd Quarter of 2011. The information is described as the number of customers subscribing to service who have been de-enrolled; however, you did not file a *Petition or Motion Requesting Confidential Treatment* as is required by Commission procedures. The Commission requires that a Motion or Petition requesting confidential treatment be filed on behalf of a utility stating with specificity what you are requesting to be held confidential and stating the grounds by which you are basing your request. The Motion or Petition for Confidential Treatment would accompany the confidential materials when you file them with the Commission.

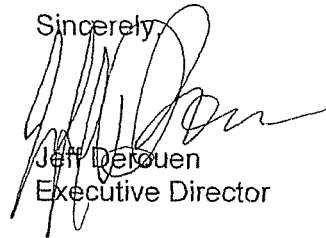
The Commission has determined that your letter requesting confidential treatment was insufficient and therefore based upon procedural issues, your request for confidential treatment is hereby **DENIED**.

The information denied confidentiality will be withheld from public inspection for 20 days from the date of this letter. If you disagree with the Commission's decision, you may

Mr. Athanson
December 21, 2011
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seek rehearing with the Commission within 20 days of the date of this letter under the provisions of KRS 278.400.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff DeLoe", written over the typed name and title.

Jeff DeLoe
Executive Director

kg/

cc: Parties of Record



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
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Fax: (502) 564-3460
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

September 16, 2011

Tracfone Wireless, Inc.
Attention: Stephen Athanson
9700 NW 11th Avenue
Miami, Florida 33178

Re: Tracfone Wireless, Inc.
Petition for Confidential Treatment received 7/29/11
PSC Reference – Case No. 2009-00100

Dear Mr. Athanson:

The Public Service Commission has received your letter on July 29, 2011 wherein you have requested confidential protection on behalf of Tracfone Wireless, Inc. ("Tracfone") to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.870. The information you seek to have treated as confidential is identified as being contained in its Quarterly Activity Report for the 2nd Quarter of 2011. The information is described as the number of customers subscribing to service who have been de-enrolled.

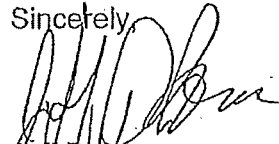
Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise Tracfone's competitive position in the industry, which would result in an unfair commercial advantage to Tracfone's competitors.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to Tracfone's competitors. Therefore, the information requested to be treated as confidential **meets the criteria for confidential protection** and will be maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.

Mr. Athanson
September 16, 2011
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If the information becomes publicly available or no longer warrants confidential treatment, Tracfone Wireless, Inc. ("Tracfone") is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

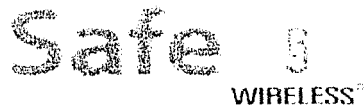
Sincerely,



Jeff DeJouen
Executive Director

kg/

cc: Parties of Record



KY - Customer De-Enrollment Report thru Q3 2011:

		Jul-11	Aug-11	Sep-11
1	Provide the number of customers who have been de-enrolled for not having activity in a 60 day period or longer.			
2	Provide the number of customers who did not pass the annual verification			
3	Provide the number of customers that were voluntarily de-enrolled.			

REDACTED