

**Frost
Brown Todd** LLC
ATTORNEYS

KENTUCKY · OHIO · INDIANA · TENNESSEE · WEST VIRGINIA

Mark David Goss
(859) 244-3232
MGOSS@FBTLAW.COM

October 13, 2009

RECEIVED
OCT 13 2009
**PUBLIC SERVICE
COMMISSION**

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: Case No. 2009-00100

Dear Mr. Derouen:

Enclosed please find an original and ten (10) copies of TracFone Wireless, Inc.'s Response to Comments in the above-referenced matter. Please file these documents of record and return a file-stamped copy to me.

Sincerely yours,

Mark David Goss /sac

Mark David Goss

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE 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 SERVICE TO)
QUALIFIED HOUSEHOLDS)
_____)

CASE NO.
2009-00100

RECEIVED

OCT 13 2009

PUBLIC SERVICE
COMMISSION

TRACFONE WIRELESS, INC.'S RESPONSE TO COMMENTS

TracFone Wireless, Inc. (“TracFone”), by its attorneys, responds to Comments filed in this proceeding by the Attorney General of the Commonwealth of Kentucky (“AG”) and the National Emergency Number Association Kentucky Chapter (“KENA”) on October 2, 2009.¹ The AG and KENA both contend that the Commission should deny TracFone’s petition for designation as an Eligible Telecommunications Carrier (“ETC”) based on TracFone’s alleged failure to contribute to certain state funds. As explained in this Response, TracFone is not obligated to contribute to those funds. Moreover, any concern about whether TracFone is required to contribute to any state funds should be resolved in a more appropriate forum, not in this ETC proceeding.

¹ It is not clear who actually filed the letter purportedly on behalf of KENA. The address listed on the KENA filing is 4265 Dixie Hwy, Dry Ridge, KY 41035. TracFone attempted to contact KENA at that address by calling the telephone number on the filing’s letterhead. The call was answered by the Kentucky State Police. The person who answered the call had never heard of KENA.

I. The FCC's 2005 Order Forbearing From The Requirement That ETCs Provide Service At Least In Part Using Their Own Facilities Is Applicable To And Binding On The Commission.

The AG and KENA claim that the Commission should deny TracFone's ETC petition based on TracFone's failure to contribute to the commercial mobile radio service emergency telecommunications fund ("CMRS fund"). However, the AG and KENA erroneously characterize the Federal Communications Commission's ("FCC's") imposition of conditions on its designation of TracFone as an ETC in certain states and inaccurately present the status of prepaid CMRS providers' obligation to contribute to the CMRS fund.

The AG incorrectly asserts that when the FCC granted TracFone forbearance from the facilities-based requirement for ETCs, one of the conditions of that forbearance was that TracFone comply with all state laws regarding the support of 911 services. The FCC's Forbearance Order included several conditions, none of which required TracFone to contribute to the support of 911 services. While the Forbearance Order discussed the importance of public safety, it did so as an explanation for imposition of conditions that TracFone obtain a certification from each Public Safety Answering Point ("PSAP") where it provides Lifeline service confirming that TracFone provides its Lifeline customers with access to 911 and E911 service and that TracFone provide E911-compliant handsets to all Lifeline customers.² TracFone complies with all of the conditions in the Forbearance Order in every state in which it offers

² See Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd 15095, ¶16 (2005) ("Forbearance Order").

Lifeline service as a designated ETC, and will comply with those conditions in Kentucky upon designation as an ETC.³

The AG erroneously attempts to expand the FCC's Forbearance Order conditions to include a certification of compliance with state 911 funding laws. In the FCC's order designating TracFone as an ETC in certain states, the FCC included a condition that TracFone provide a "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."⁴ The FCC further concluded that "[s]ubject to this condition, we find, on balance, that the advantages of designating TracFone as a limited ETC in the designated service areas outweigh any potential disadvantages."⁵ As described in the TracFone ETC Order, the designated service areas are limited to TracFone's service areas in the ten states listed in the Order and the District of Columbia.⁶ Thus, the condition regarding compliance with state 911 laws is applicable only to

³ On March 5, 2009, the FCC issued an Order modifying the PSAP certification requirement. In the Matter of 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., 24 FCC Rcd 3375 (2009). The FCC modified the PSAP certification condition so as 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.

⁴ In the Matter of 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.*, 23 FCC Rcd 6206, ¶16 (2008) ("TracFone ETC Order").

⁵ TracFone ETC Order, ¶16 (emphasis added).

⁶ Id., ¶17.

those jurisdictions in which the FCC has designated TracFone as an ETC pursuant to its authority codified at Section 214(e)(6) of the Communications Act.⁷

That FCC-imposed condition is not applicable to states, such as Kentucky, that have authority to designate ETCs pursuant to Section 214(e)(2) of the Communications Act.⁸ Kentucky may not lawfully deny an ETC petition based on non-compliance with a FCC-imposed condition applicable only to the states where the FCC designated TracFone as an ETC. More importantly, the condition referenced in the AG's comments and set forth in the FCC's TracFone ETC Order is not a condition of forbearance and has no relevance at all to the FCC's Forbearance Order. Rather, pursuant to 47 U.S.C. § 160(e), the Commission must act in accordance with the FCC's Forbearance Order and the conditions set forth in that order. Section 10(e) of the Communications Act (47 U.S.C. § 160(e)) provides: "[a] State Commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section." Pursuant to Section 10(e), the FCC's 2005 Forbearance Order, including the conditions contained therein, is binding on all State commissions, including the Commission.

II. The AG And KENA Misstate The Nature Of The 911 Fee Dispute Between TracFone And The CMRS Board.

The AG and KENA, both apparently advised by the CMRS Board that TracFone is not contributing to the CMRS fund, also fail to inform the Commission that TracFone has communicated with the CMRS Board regarding the method by which TracFone should contribute to the CMRS fund. In 2006, the Kentucky General Assembly enacted a bill, codified at K.R.S. 65.7621 *et seq.*, that requires prepaid wireless phone services to remit a 911 surcharge

⁷ 47 U.S.C. § 214(e)(6).

⁸ 47 U.S.C. § 214(e)(2).

that it collects from its customers. Previously, the relevant statute did not require providers of prepaid wireless services to remit 911 surcharges on their prepaid services. TracFone contributed to the CMRS Fund until October 2003, even though it was not required to do so by law and it did not -- indeed could not -- collect a 911 surcharge from its customers. K.R.S. 65.7635(1) provides that each CMRS provider shall act as a collection agent for the CMRS fund; it does not obligate the CMRS provider to pay the 911 surcharge from its own funds. K.R.S. 65.7635(1) further states: “For CMRS customers who purchase CMRS services on a prepaid basis, the CMRS service charge shall be determined according to one (1) of the following methodologies as elected by the CMRS provider.” (emphasis added) One of those methodologies – the methodology elected by TracFone – states:

In the case of CMRS providers that do not have the ability to access or debit end-user accounts, and do not have retail contact with the end user or purchaser of prepaid wireless airtime, the CMRS service charge and collection methodology may be determined by administrative regulations promulgated by the board to collect the service charge from such end users.⁹

By letter dated October 2, 2006, the CMRS Board advised TracFone of the recently-enacted statute and noted that the new law “includes modifications impacting prepaid providers with several new options for remitting the Kentucky CMRS surcharge.”¹⁰ TracFone, because it does not have the ability to access or debit end-user accounts and does not have retail contact with the end user, elected the methodology described in K.R.S. 65.7635(1)(c). To facilitate the

⁹ K.R.S. 65.7635(1)(c).

¹⁰ See Attachment 1.

promulgation of administrative regulations by the CMRS Board, TracFone proposed a regulation regarding the remittance of the CMRS surcharge.¹¹

TracFone subsequently submitted a revised proposed regulation to the CMRS Board in February 2007. Although TracFone waited six months for a response from the CMRS Board to its revised proposal, no such response was forthcoming. As of August 2007, the CMRS Board and its legal counsel were still reviewing TracFone's proposed regulation which had been submitted to them in February.¹²

Two more years have passed since that time, and the CMRS Board still has not communicated with TracFone regarding its February 2007 proposed regulation on the methodology for prepaid wireless providers to collect the CMRS surcharge, and TracFone continues to await a response from the CMRS Board to its February 2007 communication seeking guidance on how to collect and remit 911 fees in accordance with the 2006 law. Furthermore, while the CMRS Board has promulgated regulations to implement the provisions of K.R.S. 65.7621 to 65.7643, none of those regulations address how a prepaid wireless carrier should collect the CMRS surcharge from its end users. Given that the CMRS Board has not acted on TracFone's proposed regulation, nor promulgated any regulation on how prepaid wireless carriers should collect the CMRS surcharge, TracFone does not have a legal obligation to collect the CMRS surcharge nor remit it to the CMRS Board. Despite the CMRS Board's full knowledge that it has never advised TracFone that its proposed regulation was not acceptable, it

¹¹ Although the CMRS Board initially sent a letter, dated November 27, 2006, to TracFone rejecting its proposed regulations, that letter was sent by mistake, as indicated in several electronic mail messages from the CMRS Board dated December 5, 2006. See Attachment 1 (e-mail from W. Fogle (CMRS Board attorney) to J. Schrader stating that "the wrong letter was sent out").

¹² Id.

now appears to have enlisted the AG and KENA to advise the Commission that TracFone has failed to contribute to the CMRS fund.

Conspicuously absent from the AG and the KENA filings is any reference to or description of TracFone's efforts expended over nearly three years to work with the CMRS Board to promulgate workable regulations governing collection and remittance of 911 fees from customers of prepaid wireless services. Given that prolonged and continuing delay, TracFone's ETC proceeding should not be impacted by TracFone's exercise of its statutory right to elect a methodology under which to collect the CMRS surcharge (pursuant to K.R.S. 65.7635) and the CMRS Board's continuing failure to act when advised of TracFone's election.

III. ETC Designation Proceedings Are Not Appropriate Forums For Resolution Of 911 Fee Disputes.

TracFone objects to the AG's and KENA's attempts to misuse this proceeding regarding TracFone's petition for designation as an ETC to adjudicate any disputes the CMRS Board or any other entity may have about TracFone's compliance with any state obligation to collect the CMRS surcharge. That issue is not an appropriate issue for this proceeding and should be addressed in another forum. Indeed, the CMRS Board has commenced a civil law suit against TracFone based upon alleged non-remittance of 911 fees.¹³ A dispute between TracFone and the CMRS Board should be addressed and resolved in that proceeding. No public interest benefit would be served by tying the instant ETC petition to the 911 fee dispute now the subject of litigation in an appropriate forum.

¹³ Commonwealth of Kentucky Commercial Mobile Radio Service Emergency Telecommunications Board v. TracFone Wireless, Inc., Jefferson Circuit Court, Division 11, No. 08-CI-010856 (filed October 14, 2008), removed to United States District Court, Western District of Kentucky, No. 3:08-CV-660.

In this regard, it is significant that the Commission's authority to designate ETCs was bestowed upon it by Congress through enactment of Section 214(e)(2) of the Communications Act. The authority to designate ETCs does not derive from any provision of state law. Section 214(e)(2) of the Communications Act states, in relevant part, as follows:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission.

As demonstrated in its ETC petition, TracFone -- a communications common carrier -- has met the requirements of Section 214(e)(1) of the Communications Act. Accordingly, the Commission **shall** designate TracFone as an ETC, subject to the forbearance conditions imposed by the FCC.

IV. TracFone Is Registered to Transact Business In Kentucky.

KENA asserts that TracFone is not registered as a business in Kentucky. However, pursuant to K.R.S. 271B.15-010, TracFone is not required to obtain a certificate of authority from the Secretary of State to transact business in the state because its business falls within several exceptions to that requirement. TracFone does not maintain any retail outlets in Kentucky and only sells its services through independent contractors.¹⁴ TracFone also transacts its business in interstate commerce and all orders for service require acceptance outside the state.¹⁵ Nevertheless, TracFone has registered as a foreign corporation in Kentucky, as demonstrated in Attachment 2.

¹⁴ See K.R.S. § 271B.15-010(2)(e).

¹⁵ See K.R.S. § 271B.15-010(2)(f) and (k).

V. TracFone Is Not Subject To The Laws Requiring Contributions To The Telecommunications Access Program Fund And The Telecommunications Relay Service Fund.

KENA also claims that TracFone does not contribute to the Telecommunications Access Program Fund (“TAP Fund”) or the Telecommunications Relay Service Fund (“TRS Fund”). The Commission’s Order extending the collection of fees to support the Kentucky TRS Fund and the Kentucky TAP Fund to wireless telecommunications providers requires monthly collection of the fees for these funds from **billed** retail customers. As noted in the Order, “wireless carriers, in the same manner as ILECs and CLECs, shall be required to outline the combined fees on each retail customer’s bill as a separate line item denoted as ‘Kentucky TRS/TAP Fee’ or something similar in title.”¹⁶ Also, the Order directs wireless carriers to give notice to their retail customers of the upcoming collection of TRS and TAP fees and that “[s]uch notice shall be made through the generation of bill inserts or bill messages.”¹⁷ TracFone’s services are provided on a prepaid basis only; TracFone does not issue bills. By law, the TAP and TRS fees are imposed on monthly billed subscribers, not on carriers. Therefore, because TracFone is not obligated under the applicable Commission order to collect the fees from its subscribers, none of whom receive bills, it has no obligation to contribute to the funds.

VI. All Handsets Provided By TracFone To Lifeline Customers Are Initialized Without Regard To Whether They Have Remaining Minutes Of Use Available.

Finally, KENA asserts that it is a common practice of wireless carriers to sell low-income customers simple wireless phones that do not provide 9-1-1 operators with information necessary

¹⁶ Petition of the Kentucky Commission on the Deaf and Hard of Hearing to Expand the Funding Base for the Kentucky Telecommunications Access Program, Case No. 2007-00464 and Request for Proposal and Selection of a Vendor for Telecommunications Relay Service, Administrative Case No. 372, Order (Kentucky Pub. Serv. Comm’n: February 16, 2009), at 8.

¹⁷ Id. at 9.

to provide emergency services to the caller. Such devices are referred to as “non-initialized” phones. KENA also claims that when a caller uses a phone to dial 9-1-1, but there are no airtime minutes on the phone, then the phone is considered a non-initialized phone. According to KENA, non-initialized phones do not provide complete Automatic Number Identification or Automatic Location Information necessary for an emergency operator to map the location of the caller.

KENA’s concerns are misplaced in the case of TracFone. TracFone provides all of its customers, including Lifeline customers, with handsets that comply with the technical requirements for enhanced 911 services. TracFone’s handsets, like all other wireless handsets offered by other wireless carriers, are initialized so long as they are activated. When a TracFone Lifeline customer uses its entire allotment of minutes, the handset remains active and the phone remains initialized. 911 calls from such phones will provide PSAPs with all needed telephone number and location information. Therefore, KENA’s suggestion that TracFone’s Lifeline customers will have non-initialized phones that will prevent the customers from having meaningful access to emergency services is incorrect.

CONCLUSION

There is no doubt that low income residents of the Commonwealth of Kentucky will benefit from the availability of a free wireless Lifeline service option. According to FCC data, over eighty percent of low income Kentucky households which are eligible to participate in

Lifeline are not doing so.¹⁸ TracFone has significantly increased the percentages of qualified households which have enrolled in Lifeline in each of the 19 jurisdictions where its SafeLink Wireless Lifeline service is available. TracFone fully expects that its service will have a similarly beneficial impact on Kentucky's low income residents. Accordingly, TracFone respectfully requests that the Commission promptly designate it as an ETC for the limited purpose of providing Lifeline service to low income Kentucky households.

Respectfully submitted,

TRACFONE WIRELESS, INC.

By: Mark David Goss

Mark David Goss
Thomas P. O'Brien, III
Frost Brown Todd LLC
250 W. Main Street
Suite 2800
Lexington, KY 40507-1749
(859) 231-0000

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

Its Attorneys

October 13, 2009

¹⁸ According to FCC data, Kentucky's statewide Lifeline participation rate is only 18.3 percent of eligible households. See In the Matter of Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87 (April 29, 2004) Table 1.A. The Universal Administrative Company estimates that in 2008 the participation rate for eligible households in Kentucky was between ten and twenty percent (10-20%). See 2008 Participation Rates by State, available at <http://www.usac.org/li/about/participation-rate-information.aspx>.

CERTIFICATE OF SERVICE

This is to certify that I have duly served TracFone Wireless, Inc.'s Response Comments by U.S. mail, postage prepaid, on all parties listed, this 13th day of October, 2009, addressed as follows:

Jerry Keathley
President
National Emergency Number Association, Kentucky Chapter
4265 Dixie Highway
Dry Ridge, KY 41035

Dennis G. Howard, II
Assistant Attorney General
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204



Attorney for TracFone Wireless, Inc.

Attachment 1

0745238.09

mstratton
ADD

Trey Grayson, Secretary of State
Received and Filed:
10/7/2009 12:49 PM
Fee Receipt: \$90.00

Kentucky Secretary of State TREY GRAYSON

Division of Corporations BUSINESS FILINGS P.O. Box 718 Frankfort, KY 40602 (502) 564-3490 http://www.sos.ky.gov/	Application for Certificate of Authority	FCO
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Pursuant to the provisions of KRS Chapter 271B, 273 or 274, the undersigned hereby applies for authority to transact business in Kentucky on behalf of the corporation named below and for that purpose submits the following statements:

1. The corporation is a business corporation (KRS 271B). a nonprofit corporation (KRS 273).
 a professional service corporation (KRS 274).

2. The name of the corporation is TracFone Wireless, Inc.

3. The name of the corporation to be used in Kentucky is _____

4. Delaware is the state or country under whose law the corporation is incorporated. (if "real name" is unavailable for use)

5. 5/9/2007 is the date of incorporation and the period of duration is perpetual

6. The street address of the corporation's principal office is 9700 N.W. 112th Avenue Miami, FL 33178

7. The street address of the corporation's registered office in Kentucky is 101 North Seventh Street Louisville, KY 40202

and the name of the registered agent at that office is Corporate Creations Network Inc.

8. The names and usual business addresses of the corporation's current officers and directors are as follows:

- President *Please see attached list
- Vice-President _____
- Secretary _____
- Treasurer _____
- Directors _____

(Attach a continuation sheet, if necessary)

9. If a professional service corporation, all the individual shareholders, not less than one half of the directors, and all of the officers other than the secretary and treasurer are licensed in one or more states or territories of the United States or District of Columbia to render a professional service described in the statement of purposes of the corporation.

10. A certificate of existence duly authenticated by the Secretary of State accompanies this application.

11. This application will be effective upon filing, unless a delayed effective date and/or time is specified: _____ (Delayed effective date and/or time)

Rick Salzman
Signature
Rick Salzman, Secretary
Type or Print Name & Title
Date: October 6, 2009

1. Corporate Creations Network Inc. consent to serve as the registered agent on behalf of the corporation.
Type or print name of registered agent

Samantha Simons
Signature of Registered Agent
Samantha Simons, Special Secretary
Type or Print Name & Title

TracFone Wireless, Inc.

Officers/Directors

Officers

Frederick J. Pollak – President
9700 N.W. 112th Avenue
Miami, FL 33178

Richard B. Salzman – Secretary
9700 N.W. 112th Avenue
Miami, FL 33178

Gustavo Blanco – Treasurer
9700 N.W. 112th Avenue
Miami, FL 33178

Directors

Frederick J. Pollak
9700 N.W. 112th Avenue
Miami, FL 33178

Alejandro Cantu Jimenez
9700 N.W. 112th Avenue
Miami, FL 33178

Carlos Garcia Moreno
9700 N.W. 112th Avenue
Miami, FL 33178

Gustavo Blanco
9700 N.W. 112th Avenue
Miami, FL 33178

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "TRACFONE WIRELESS, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SECOND DAY OF SEPTEMBER, A.D. 2009.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "TRACFONE WIRELESS, INC." WAS INCORPORATED ON THE NINTH DAY OF MAY, A.D. 2007.

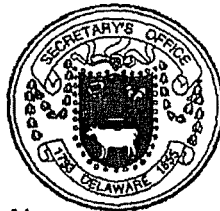
AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.


AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

4334531 8300

090828759

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7508042

DATE: 09-02-09

Attachment 2



Ernie Fletcher
Governor

OFFICE OF THE GOVERNOR
KENTUCKY OFFICE OF HOMELAND
SECURITY

Stephen B. Pence
Lieutenant Governor

Kenneth O. Mitchell
Executive Director

Office of the 911 Coordinator
Commercial Mobile Radio Service
Emergency Telecommunications Board
200 Mero Street, T-500
Frankfort, Kentucky 40601
502-564-3911 Fax 502-564-7764
homelandsecurity.ky.gov
cmrsboard.ky.gov

May 2, 2006

Leighton W. Lang
Assistant General Counsel – State Regulatory Affairs
Tracfone Wireless, Inc.
8390 NW 25th Street
Miami, FL 33122

Dear Mr. Lang,

The 2006 Kentucky General Assembly passed HB656 which includes modifications impacting prepaid providers with several new options for remitting the Kentucky CMRS surcharge. These changes are detailed in KRS 65.7621 through KRS 65.7643.

KRS 65.7635 has been amended to read as follows:

(1) Each CMRS provider shall act as a collection agent for the CMRS fund. From its customers, the provider shall, as part of the provider's billing process, collect the CMRS service charges levied upon CMRS connections under KRS 65.7629(3) from each CMRS connection to whom the billing provider provides CMRS. Each billing provider shall list the CMRS service charge as a separate entry on each bill which includes a CMRS service charge. If a CMRS provider receives a partial payment for a monthly bill from a CMRS customer, the provider shall first apply the payment against the amount the CMRS customer owes the CMRS provider. For CMRS customers who purchase CMRS services on a prepaid basis, the CMRS service charge shall be determined according to one (1) of the following methodologies as elected by the CMRS provider:

- (a) The CMRS provider shall collect, on a monthly basis, the CMRS service charge specified in KRS 65.7629(3) from each active customer whose account balance is equal to or greater than the amount of service charge; or*
- (b) The CMRS provider shall divide its total earned prepaid wireless telephone revenue received with respect to its prepaid customers in the Commonwealth within the monthly 911 emergency telephone service reporting period by fifty dollars (\$50), multiply the quotient by the service charge amount, and pay the resulting amount to the board; or*
- (c) In the case of CMRS providers that do not have the ability to access or debit end user accounts, and do not have retail contact with the end user or purchaser of pre-paid wireless airtime, the CMRS service charge and collection methodology may be determined by administrative regulations promulgated by the board to collect the service charge from such end users."*

The bill may be reviewed at <http://www.lrc.ky.gov/RECORD/06RS/HB656/bill.doc>.

KentuckyUnbridledSpirit.com

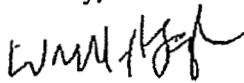


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TF 00528

I appreciate your attention to these changes to Kentucky's CMRS statutes and feel confident you will take the appropriate actions necessary to comply. If you have any questions, feel free to contact me.

Sincerely,



William H. Fogle
Attorney
Kentucky Office of Homeland Security
Office of the 9-1-1 Coordinator/CMRS Board

cc:

Major Alecia Webb-Edgington
Executive Director, Kentucky Office of Homeland Security
Kenneth O. Mitchell
Executive Director, Office of the 9-1-1 Coordinator/CMRS Board



JUSTICE AND PUBLIC SAFETY CABINET

Ernie Fletcher
Governor

Office of Legal Services
www.justice.ky.gov

BG Norman E. Arflack
Secretary

November 27, 2006

Richard Salzman
Executive Vice President, General Counsel
Tracfone Wireless, Inc.
8390 NW 25th Street
Miami, FL 33122

RE: Commonwealth of Kentucky CMRS Service Fee

Dear Mr. Salzman,

As counsel for the Kentucky Office of Homeland Security, this letter is submitted in response to your company's proposed regulation regarding the remittance of the CMRS surcharge. After review, the CMRS Board has declined to adopt your company's proposed regulation because it is inconsistent with the collection scheme in the underlying statute (KRS 65.7635). Accordingly, this is to request that your company begin remitting the fee provided for in KRS 65.7651(a) or (b) immediately. Please do not hesitate to contact me if you have any questions regarding this matter.

Very truly yours,

William H. Fogle

Attorney

Kentucky Office of Homeland Security

Office of the 9-1-1 Coordinator/CMRS Board

cc: Major Alecia Webb-Edgington
Executive Director, Kentucky Office of Homeland Security
Kenneth O. Mitchell
Executive Director, Office of the 9-1-1 Coordinator/CMRS Board

KentuckyUnbridledSpirit.com



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Confidential
TF 01174

Richard Salzman

From: ronburleson@bellsouth.net
Sent: Tuesday, December 05, 2006 5:27 PM
To: Leighton Lang; Richard Salzman
Subject: [Fwd: FW: here it is]

Attachments: ATT1261584.htm; image001.jpg; image001.jpg



ATT1261584.htm
(23 KB)



image001.jpg (1
KB)



image001.jpg (1
KB)

fyi

>
> From: "mshea" <mshea@govplan.com>
> Date: 2006/12/05 Tue PM 04:12:47 EST
> To: <ronburleson@bellsouth.net>
> Subject: FW: here it is
>
>

Thought you'd get a kick out of this e-mail stream below -- It began at the bottom with me sending Joel the letter they had sent you, and ends with major Edgington's response.

-Mike Shea



Government Strategies
228 Shelby Street
Frankfort, KY 40601

office: 502-226-3975
fax: 502-226-3977

From: Schrader, Joel (GOV Office KOHS) [mailto:Joel.Schrader@ky.gov]
Sent: Tuesday, December 05, 2006 3:09 PM
To: mshea@govplan.com
Subject: FW: here it is

FYI

From: Edgington, Alecia (GOV Office KOHS)
Sent: Tuesday, December 05, 2006 3:06 PM
To: Schrader, Joel (GOV Office KOHS)
Subject: RE: here it is

Tell Mike that I am terribly sorry for our goof up...and that I will send a paper with 100 times, " I will not reject Mike's proposal without first ckg with the board" AMEN.....

Alecia Webb-Edgington
Executive Director
Kentucky Office of Homeland Security
502.664.2081
502.564.7764 (fax)
859.200.2121 (cell)

This communication contains information which is confidential. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s) please note that any form of distribution, copying, forwarding or use of this communication, or the information therein, is strictly prohibited and may be unlawful. If you have received this communication in error, please, return it to the sender and then delete the communication and destroy any copies.

-----Original Message-----

From: Schrader, Joel (GOV Office KOHS)
Sent: Tuesday, December 05, 2006 3:02 PM
To: Edgington, Alecia (GOV Office KOHS)
Subject: FW: here it is

file://C:\Documents and Settings\rsalzman\Local Settings\Temporary Internet Files\OLK1... 6/23/2009

Confidential
TF 00189

From: Fogle, William (Justice)
Sent: Tuesday, December 05, 2006 2:31 PM
To: Schrader, Joel (GOV Office KOHS)
Subject: RE: here it is

Ok, sorry for the mix up.....w

From: Schrader, Joel (GOV Office KOHS)
Sent: Tuesday, December 05, 2006 1:32 PM
To: Fogle, William (Justice)
Subject: RE: here it is

Mike is not upset, they are drafting a new proposal. I think we just leave it alone at this point.

From: Fogle, William (Justice)
Sent: Tuesday, December 05, 2006 1:31 PM
To: Schrader, Joel (GOV Office KOHS)
Subject: RE: here it is

Joel, you are right, the wrong letter was sent out. Please let me know if there is anything I can do by way of explanation to Mr. Shea or Tracfone to rectify this or if it is better left alone. I certainly apologize for any trouble this oversight has caused. Will

From: Schrader, Joel (GOV Office KOHS)
Sent: Tuesday, December 05, 2006 1:21 PM
To: Fogle, William (Justice)
Subject: FW: here it is

From: mshea [mailto:mshea@govplan.com].
Sent: Tuesday, December 05, 2006 1:07 PM

To: Schrader, Joel (GOV Office KOHS)
Subject: here It Is

-Mike Shea



Government Strategies
229 Shelby Street
Frankfort, KY 40601

office: 502-226-3975
fax: 502-226-3977

file://C:\Documents and Settings\rsalzman\Local Settings\Temporary Internet Files\OLK1... 6/23/2009

Confidential
TF 00191

GUITTAR, ELDON R (ATTICINW)

From: Mitchell, Ken (GOV Office KOHS-CMRS) [Ken.Mitchell@ky.gov]
Sent: Monday, February 12, 2007 2:30 PM
To: Guittar, Richard; Bradley, John (KSP); Dee Hopper; Forest Skaggs; Jamey Spears; Mitchell, Ken (GOV Office KOHS-CMRS)
Subject: TracFone
Follow Up Flag: Follow up
Flag Status: Blue
Attachments: Prepaid Amendment to Admin. Regs. - Draft - 9-25-06.doc

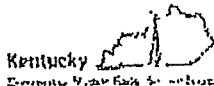
CMRS Board Members,

Attached is a proposal from TracFone. They are recommending an amendment to our regulations. We will discuss this proposal at our board meeting tomorrow. Our counsel will be attending the meeting. I anticipate representation from TracFone there also,

Ken

Ken Mitchell

Executive Director, Office of the 911 Coordinator
 Administrator, CMRS Board
 Office of the Governor
 Kentucky Office of Homeland Security
 Commonwealth of Kentucky
 200 Maro Street
 Frankfort, Kentucky 40622
 Phone Number: 502.564.3911 ext. 4333
 Fax: 502.696.5293
 Ken.Mitchell@ky.gov
 CMRS Website: cmrsboard.ky.gov
 KOHS Website: homelandsecurity.ky.gov
 Also Visit: <http://kentucky.gov>



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CMRS-TF-VM-1020

202 KAR 6:010. Definitions for 202 KAR Chapter 6.

RELATES TO: KRS 65.7621-65.7643, 9 U.S.C. Sections 1-16, 47 U.S.C. Sections 153(27), 332(d)
STATUTORY AUTHORITY: KRS 65.7633(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation provides definitions for terms used in 202 KAR Chapter 6.

Section 1. Definitions. (1) "Alternate routing" means sending 9-1-1 calls to a designated alternate location if all 9-1-1 trunks to the normal PSAP are busy or out of service. Alternate routing may be activated automatically, if an equipment failure is detected, or upon request.

(2) "Call transfer function" means the ability to redirect a call to another party.

(3) "Contracted wireline E9-1-1 service provider" means the company providing by signed agreement the E9-1-1 features, functions, and network connections to the PSAP.

(4) "Cost recovery plan" means a detailed description of how a CMRS carrier intends to comply with the wireless E9-1-1 requirements established in the FCC order.

(5) "Default routing" means the ability of the 9-1-1 network to automatically send 9-1-1 calls to a predetermined alternate PSAP if a call cannot be selectively routed due to an ANI failure or other cause.

(6) "E9-1-1" means the features and functions available in an enhanced 9-1-1 capable PSAP as defined by the FCC order.

(7) "FCC" means the Federal Communications Commission.

(8) "Nondisclosure agreement" means a signed statement whereby a person swears to maintain the confidentiality of designated information provided to them.

(9) "NRC" means nonrecurring cost.

(10) "P-ANI" means pseudo automatic number identification as defined by KRS 65.7621(16).

(11) "Phase I" means the interim step in implementing the wireless E9-1-1 network to include the provision of a caller's mobile phone number and P-ANI, and as further defined by the FCC.

(12) "Phase II" means the second step in implementing the wireless E9-1-1 network to include the functions of Phase I, and as further defined by the FCC.

(13) "RC" means recurring cost.

(14) "Retail merchant" means a retail vendor of prepaid wireless airtime to end users and purchasers in the state.

(14) "Sworn paid invoice" means a notarized statement submitted with invoices for reimbursement that:

(a) Lists the included invoices or other approved documentation;

(b) Attests that the invoices are accurate and reflect true costs for the carrier's implementation of wireless E9-1-1; and

(c) Is signed and dated by a person designated by a carrier.

(15) "Sworn statement" means a notarized letter signed and dated by a person designated by a PSAP, which may be given in lieu of documentation. (26 Ky.R. 2104; eff. 12-7-2000.)

202 KAR 6:080. CMRS surcharge remittance and reporting.

RELATES TO: KRS 65.7621, 65.7627, 65.7629(3)-(9), (13), 65.7631, 65.7635, 65.7639, 65.7643, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d), FCC Order Docket #94-102, 1996

STATUTORY AUTHORITY: KRS 65.7633

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(3) requires the CMRS Board to collect surcharges from every CMRS connection in the Commonwealth and to distribute a portion of the revenues deposited into the CMRS fund to PSAPs, based on their workload in complying with the wireless E911 service requirements established by the FCC order. This administrative regulation establishes the process by which CMRS providers and their resellers remit surcharges and report the information necessary to collect the remittances and to calculate the required disbursements.

Section 1. Remittance of CMRS Surcharge. (1) A CMRS provider shall remit to the CMRS Board the CMRS surcharge on form "EFT Payment Submission", incorporated by reference, also available on the web page at <http://cmrsboard.state.ky.us>.

(2) At least ninety (90) calendar days before implementation of a change in remittance procedure, the board shall notify each provider, by certified mail, return receipt requested, of the change. Notice shall include copies of required forms and instructions for their completion.

(3) The board shall:

(a) Upon request of a provider, provide copies of required forms and instructions for their completion; and

(b) Maintain on the website <http://cmrsboard.state.ky.us>, a copy of the form and instructions in current use.

(4) With respect to customers of CMRS providers that have elected the collection methodology in KRS 65.7635(1)(c), the Board shall collect the service charge from retail merchants that engage in retail sales of prepaid wireless airtime to end users and purchasers in the state. The amount of the service charge collected shall be one-percent (1%) of the retail purchase price of such prepaid airtime. The retail merchant is authorized, but not required, to recover the amount of the service charge from such end users and purchasers on an itemized basis on each retail sale. In lieu of remitting the service charge to the Board, the retail merchant may remit such amounts to the CMRS service provider, in which case the service provider shall be responsible for remitting any such receipts to the Board. The retail merchant and CMRS provider shall be entitled to the collection fee authorized by KRS 65.7635(4).

(5) A CMRS provider subject to the provisions of KRS 65.7635(1)(a),(b) and (c) shall be required to remit to the Board only those service charges that were paid to such provider by CMRS customers, retail merchants or purchasers of the prepaid airtime.

Section 2. Quarterly Report of CMRS Connections in a Zip Code. (1) Each provider or reseller shall submit to the CMRS Board a quarterly report of the number of CMRS connections served by them.

(2) Each quarterly report shall list for each zip code served by the provider and located at least partially in Kentucky, the number of CMRS connections billed by them in the months of March, June, September, or December.

(3) The report shall be sorted by zip code and submitted as an Excel spreadsheet.

(4) A reseller shall include:

(a) A list of the CMRS providers on whose network they resell service; and

(b) The number of CMRS connections on each network.

(5) The report shall be due at the CMRS Board office no later than sixty (60) days following the end of the reporting month.

Section 3. Required Reports Regarding Resellers of CMRS Service. (1) A provider who contracts with a reseller of wireless service shall submit to the CMRS Board a quarterly report listing each vendor reselling wireless service on the provider's network.

(2) The quarterly report shall:

(a) Be submitted to the board no later than sixty (60) days after the end of the calendar months of March, June, September, and December;

(b) Include the reseller's:

1. Business name;

2. Business address;

3. Contact person;

4. Telephone numbers; and

5. E-mail address; and

(c) Include, if the network provider has a cost recovery plan based on number of subscribers, the number of CMRS connections receiving service on the provider's network and billed by the listed reseller.

Section 4. Provider Failure to Comply with Reporting and Remittance Requirements. (1) A provider's failure to comply with the requirements of this administrative regulation shall constitute cause for the board to suspend cost recovery payments to the provider.

(2) A cost recovery payment shall be suspended only if authorized by a majority vote of the CMRS Board.

(3) The board shall not consider suspension of payment to a provider unless the provider has been:

(a) Notified in writing of the failure to comply with a stated provision of this administrative regulation; and

(b) Allowed ten (10) days from receipt of notice in which to respond.

(4) The provider may appeal the board's suspension of cost recovery payments, in accordance with KRS Chapter 13B.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "EFT Payment Submission, 6/2001"; and

(b) "Bank Routing and Account, 6/2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the CMRS Board, 21 Millcreek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 1271; Am. 1614; eff. 1-14-2002.)

CMRS-TF-VM-1022

From: Leighton Lang
Sent: Wednesday, July 18, 2007 4:53 PM
To: 'Ken.Mitchell@ky.gov'
Cc: Richard Salzman
Subject: KY 911 Rule on Prepaid
Ken,

I just left a message for you.

I wanted to inquire as to the status of any possible rulemaking on prepaid E911 fees. We submitted possible versions of a prepaid rule last year to carry out the prepaid provision in HB 656. My understanding is that the Board has been considering a rule but has taken no final action.

If it would be helpful to meet with you or the Board or provide additional information, I would be pleased to do so.

Thank you.

Leighton W. Lang
Vice President & Assistant General Counsel
TracFone Wireless, Inc.
8390 Northwest 25th Street
Miami, FL 33122
Phone: 305-640-2014
Fax: 305-640-2070
Mobile: 404-229-3211
llang@tracfone.com
www.tracfone.com

Leighton Lang

From: Leighton Lang
Sent: Thursday, July 26, 2007 3:47 PM
To: 'Ken.Mitchell@ky.gov'
Subject: KY HB 656 - Prepaid Rulemaking

To: KY CMRS Board

I wanted to inquire as to the status of any possible rulemaking on prepaid E911 fees. We submitted possible versions of a prepaid rule last year to carry out the prepaid provision in HB 656. My understanding is that the Board has been considering a rule but has taken no final action.

If you could provide the status of this rulemaking, it would be appreciated.

Thank you.

Leighton W. Lang
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Phone: 305-640-2014
Fax: 305-640-2070
Mobile: 404-229-3211
llang@tracfone.com
www.tracfone.com

GUITTAR, ELDON R (ATTCINW)

From: Guittar, Richard
Sent: Friday, July 27, 2007 8:31 AM
To: Mitchell, Ken (GOV Office KOHS-CMRS)
Subject: FW: KY HB 656 - Prepaid 911 Issue

Follow Up Flag: Follow up
Flag Status: Blue

FYI, a message from Leighton Lang and my response. One thing we need to do is decide as a Board what we want to do with the opportunity to establish a process for prepaid collection. Perhaps we need to wait until we establish some sort of legal position on prepaid collections history? Let's put this on the agenda to at least discuss, even if we don't take action just yet.

Richard

-----Original Message-----

From: Guittar, Richard
Sent: Thursday, July 26, 2007 5:27 PM
To: 'LLang@tracfone.com'
Subject: Re: KY HB 656 - Prepaid 911 Issue

It has been like slow torture getting the new Board organization in place. All of the new members are finally on board and new committee assignments were made at the last meeting. The plan for prepaid rulemaking was not discussed. It is a good point. I will be sure to ask to have it added to the agenda for next meeting. I believe by state rules we are not supposed to take action on anything that was not in the previously published agenda.

Richard

-----Original Message-----

From: Leighton Lang <LLang@tracfone.com>
To: Guittar, Richard
CC: Richard Salzman <RSalzman@tracfone.com>
Sent: Thu Jul 26 17:05:17 2007
Subject: KY HB 656 - Prepaid 911 Issue

Richard,

Just wanted to ask if you knew the status of the planned rulemaking for a prepaid collection method that was authorized last year by HB 656. We previously submitted draft rule language, and there were some discussions with the Board, but I haven't heard anything recently. I sent an email inquiry to Ken Mitchell but haven't heard anything back yet.

Any information you could provide would be appreciated. Was this on the recent Board agenda, or do you expect it to be considered at the next Board meeting?

Thanks.

Leighton W. Lang
Vice President & Assistant General Counsel TracFone Wireless, Inc.
8390 Northwest 25th Street
Miami, FL 33122
Phone: 305-640-2014
Fax: 305-640-2070
Mobile: 404-229-3211
llang@tracfone.com
www.tracfone.com

CMRS-TF-VM-1019

From: Leighton Lang
Sent: Monday, August 13, 2007 2:27 PM
To: 'Ken.Mitchell@ky.gov'
Cc: 'Denisa.Robinson@ky.gov'; 'TandyS.Hubbard@ky.gov'
Subject: RE: KY HB 656 - Prepaid Rulemaking
To: CMRS Board

This is in further reference to my voice mail and email inquiries about the rulemaking. Could you tell me if the rulemaking is expected to be completed at the next Bd. meeting, the effective date of the rule and other relevant information?

To date, I have received no responses to my messages, although Mr. Gultar indicated this may be on the agenda for the next Board meeting.

Thank you.

Leighton Lang

From: Leighton Lang
Sent: Thursday, July 26, 2007 3:47 PM
To: 'Ken.Mitchell@ky.gov'
Subject: KY HB 656 - Prepaid Rulemaking

To: KY CMRS Board

I wanted to inquire as to the status of any possible rulemaking on prepaid E911 fees. We submitted possible versions of a prepaid rule last year to carry out the prepaid provision in HB 656. My understanding is that the Board has been considering a rule but has taken no final action.

If you could provide the status of this rulemaking, it would be appreciated.

Thank you.

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Vice President & Assistant General Counsel
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Mobile: 404-229-3211
llang@tracfone.com
www.tracfone.com

Richard Salzman

From: Richard Salzman
Sent: Wednesday, August 15, 2007 4:28 PM
To: ken.mitchell@ky.gov
Cc: Leighton Lang
Subject: Ky Regulation
Attachments: Ky Regulation.doc

Pursuant to our discussion today, attached is our proposal to amend the applicable regulation to provide for the collection mechanism contemplated in KRS 65.7635(1)(c). Please feel free to contact me if you have any questions or would like to discuss it once you have had an opportunity to review.

1/22/2009

Confidential
TF 00329

202 KAR 6:010. Definitions for 202 KAR Chapter 6.

RELATES TO: KRS 65.7621-65.7643, 9 U.S.C. Sections 1-16, 47 U.S.C. Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation provides definitions for terms used in 202 KAR Chapter 6.

Section 1. Definitions. (1) "Alternate routing" means sending 9-1-1 calls to a designated alternate location if all 9-1-1 trunks to the normal PSAP are busy or out of service. Alternate routing may be activated automatically, if an equipment failure is detected, or upon request.

(2) "Call transfer function" means the ability to redirect a call to another party.

(3) "Contracted wireline E9-1-1 service provider" means the company providing by signed agreement the E9-1-1 features, functions, and network connections to the PSAP.

(4) "Cost recovery plan" means a detailed description of how a CMRS carrier intends to comply with the wireless E9-1-1 requirements established in the FCC order.

(5) "Default routing" means the ability of the 9-1-1 network to automatically send 9-1-1 calls to a predetermined alternate PSAP if a call cannot be selectively routed due to an ANI failure or other cause.

(6) "E9-1-1" means the features and functions available in an enhanced 9-1-1 capable PSAP as defined by the FCC order.

(7) "FCC" means the Federal Communications Commission.

(8) "Nondisclosure agreement" means a signed statement whereby a person swears to maintain the confidentiality of designated information provided to them.

(9) "NRC" means nonrecurring cost.

(10) "P-ANI" means pseudo automatic number identification as defined by KRS 65.7621(16).

(11) "Phase I" means the interim step in implementing the wireless E9-1-1 network to include the provision of a caller's mobile phone number and P-ANI, and as further defined by the FCC.

(12) "Phase II" means the second step in implementing the wireless E9-1-1 network to include the functions of Phase I, and as further defined by the FCC.

(13) "RC" means recurring cost.

(14) "Retail merchant" means a retail vendor of prepaid wireless airtime to end users and purchasers in the state.

(14) "Sworn paid invoice" means a notarized statement submitted with invoices for reimbursement that:

(a) Lists the included invoices or other approved documentation;

(b) Attests that the invoices are accurate and reflect true costs for the carrier's implementation of wireless E9-1-1; and

(c) Is signed and dated by a person designated by a carrier.

(15) "Sworn statement" means a notarized letter signed and dated by a person designated by a PSAP, which may be given in lieu of documentation. (26 Ky.R. 2104; eff. 12-7-2000.)

202 KAR 6:080. CMRS surcharge remittance and reporting.

RELATES TO: KRS 65.7621, 65.7627, 65.7629(3)- (9), (13), 65.7631, 65.7635, 65.7639, 65.7643, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d), FCC Order Docket #94-102, 1996

STATUTORY AUTHORITY: KRS 65.7633

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(3) requires the CMRS Board to collect surcharges from every CMRS connection in the Commonwealth and to distribute a portion of the revenues deposited into the CMRS fund to PSAPs, based on their workload in complying with the wireless E911 service requirements established by the FCC order. This administrative regulation establishes the process by which CMRS providers and their resellers remit surcharges and report the information necessary to collect the remittances and to calculate the required disbursements.

Section 1. Remittance of CMRS Surcharge. (1) A CMRS provider shall remit to the CMRS Board the CMRS surcharge on form "EFT Payment Submission", incorporated by reference, also available on the web page at <http://cmrsboard.state.ky.us>.

(2) At least ninety (90) calendar days before implementation of a change in remittance procedure, the board shall notify each provider, by certified mail, return receipt requested, of the change. Notice shall include copies of required forms and instructions for their completion.

(3) The board shall:

(a) Upon request of a provider, provide copies of required forms and instructions for their completion; and

(b) Maintain on the website <http://cmrsboard.state.ky.us>, a copy of the form and instructions in current use.

(4) With respect to CMRS providers that have elected the collection methodology in KRS 65.7635(1)(c),

the retail merchants shall collect the service charge from such customers at the point of sale. The amount of the service charge collected shall be one and four tenths percent (1.4%) of the retail purchase price of such prepaid airtime. The service charges so collected by the retail merchant shall be remitted to the CMRS service provider, and the service provider shall be responsible for remitting any such receipts to the Board. The retail merchant shall be entitled to the collection fee authorized by KRS 65.7635(4).

(5) A CMRS provider subject to the provisions of KRS 65.7635(1)(a),(b) and (c) shall be required to remit to the Board only those service charges that were paid to such provider by CMRS customers, retail merchants or purchasers of the prepaid airtime.

Section 2. Quarterly Report of CMRS Connections in a Zip Code. (1) Each provider or reseller shall submit to the CMRS Board a quarterly report of the number of CMRS connections served by them.

(2) Each quarterly report shall list for each zip code served by the provider and located at least partially in Kentucky, the number of CMRS connections billed by them in the months of March, June, September, or December.

(3) The report shall be sorted by zip code and submitted as an Excel spreadsheet.

(4) A reseller shall include:

(a) A list of the CMRS providers on whose network they resell service; and

(b) The number of CMRS connections on each network.

(5) The report shall be due at the CMRS Board office no later than sixty (60) days following the end of the reporting month.

Section 3. Required Reports Regarding Resellers of CMRS Service. (1) A provider who contracts with a reseller of wireless service shall submit to the CMRS Board a quarterly report listing each vendor reselling wireless service on the provider's network.

(2) The quarterly report shall:

(a) Be submitted to the board no later than sixty (60) days after the end of the calendar months of March, June, September, and December;

(b) Include the reseller's:

1. Business name;

2. Business address;

3. Contact person;

4. Telephone numbers; and

5. E-mail address; and

(c) Include, if the network provider has a cost recovery plan based on number of subscribers, the number of CMRS connections receiving service on the provider's network and billed by the listed reseller.

Section 4. Provider Failure to Comply with Reporting and Remittance Requirements.

(1) A provider's failure to comply with the requirements of this administrative regulation shall constitute cause for the board to suspend cost recover payments to the provider.

(2) A cost recovery payment shall be suspended only if authorized by a majority vote of the CMRS Board.

(3) The board shall not consider suspension of payment to a provider unless the provider has been:

(a) Notified in writing of the failure to comply with a stated provision of this administrative regulation; and

(b) Allowed ten (10) days from receipt of notice in which to respond.

(4) The provider may appeal the board's suspension of cost recovery payments, in accordance with KRS Chapter 13B.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "EFT Payment Submission, 6/2001"; and

(b) "Bank Routing and Account, 6/2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the CMRS Board, 21 Millcreek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 1271; Am. 1614; eff. 1-14-2002.)

Leighton Lang

From: Richard Salzman
Sent: Tuesday, August 21, 2007 3:37 PM
To: Mitchell, Ken (GOV Office KOHS-CMRS)
Cc: Leighton Lang; Fogle, William (Justice); dhopper@hopkinsvilleky.us
Subject: RE: Ky Regulation

Sounds like we should wait for the next meeting then. Please keep me posted.

Richard B. Salzman
EVP-General Counsel
TracFone Wireless, Inc.
9700 N.W. 112th Avenue
Miami, Florida 33178
Office 305-640-2054
Cell 786-202-9007
Fax 305-640-2070

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From: Mitchell, Ken (GOV Office KOHS-CMRS) [mailto:Ken.Mitchell@ky.gov]
Sent: Tuesday, August 21, 2007 3:36 PM
To: Richard Salzman
Cc: Leighton Lang; Fogle, William (Justice); dhopper@hopkinsvilleky.us
Subject: RE: Ky Regulation

The information has been forwarded to the CMRS Board and our legal counsel for review.

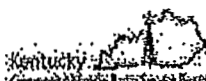
The September 6th meeting is at the KENA/APCO annual conference and time is somewhat limited.

I will talk with the CMRS Board members about your interest in meeting with them. Our next regular meeting will be in October/November when the meeting date is finalized.

Ken Mitchell

Executive Director, Office of the 911 Coordinator
Administrator, CMRS Board
Office of the Governor
Kentucky Office of Homeland Security
Commonwealth of Kentucky
200 Mero Street
Frankfort, Kentucky 40622
Phone Number: 502.564.3911 ext. 4333
Fax: 502.696.5293
Ken.Mitchell@ky.gov

CMRS Website: cmrsboard.ky.gov
KOHS Website: homelandsecurity.ky.gov
Also Visit: <http://kentucky.gov>



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From: Richard Salzman [mailto:RSalzman@tracfone.com]
Sent: Tuesday, August 21, 2007 3:25 PM
To: Mitchell, Ken (GOV Office KOHS-CMRS)
Cc: Leighton Lang
Subject: RE: Ky Regulation

Please bring me up to date on when you think we will be able to discuss this proposal with the board. If it will be September 6, as we discussed was possible, we will need to start looking at travel arrangements.

Richard B. Salzman
EVP-General Counsel
TracFone Wireless, Inc.
9700 N.W. 112th Avenue
Miami, Florida 33178
Office 305-640-2064
Cell 786-202-9007
Fax 305-640-2070

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From: Richard Salzman
Sent: Wednesday, August 15, 2007 4:28 PM
To: ken.mitchell@ky.gov
Cc: Leighton Lang
Subject: Ky Regulation

Pursuant to our discussion today, attached is our proposal to amend the applicable regulation to provide for the collection mechanism contemplated in KRS 65.7635(1)(c). Please feel free to contact me if you have any questions or would like to discuss it once you have had an opportunity to review.