

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)	CASE NO.
LIMITED PURPOSE OF OFFERING LIFELINE)	2009-00100
AND LINK UP SERVICE TO QUALIFIED)	
HOUSEHOLDS)	

ORDER

On March 5, 2009, TracFone Wireless, Inc. ("TracFone") filed a petition for designation as an Eligible Telecommunications Carrier ("ETC") in Kentucky for the limited purpose of offering Lifeline and Link-Up Service to qualified low-income households. TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States, including Kentucky, and proposes to offer service to qualifying Lifeline and Link-up customers under the "SafeLink Wireless" service. TracFone indicated that it will not seek support from the Federal Universal Service Fund for the purpose of providing service to high-cost areas, nor will it seek support from the Kentucky Universal Service Fund. TracFone provides service through a "virtual network" consisting of services obtained from numerous licensed operators of wireless networks. TracFone has been providing service in Kentucky for over ten years. TracFone uses the networks of AllTel, AT&T Mobility, Bluegrass Cellular, T-Mobile, and Verizon Wireless in Kentucky. TracFone, through the use of these networks, is able to provide service throughout Kentucky. TracFone provides service to over eleven million

customers in the United States and is one of the largest prepaid wireless providers. This ETC petition creates an issue of first impression for this Commission, as no other CMRS resellers have previously received ETC certification for services in Kentucky. In light of this fact, the Commission will use this Order to discuss the full context and implications of TracFone's unique method for the provision of services as an ETC.

On September 1, 2010, TracFone filed a motion to remove this petition for designation as an ETC from the deferred status. The Petition states that, on August 18, 2010, the United States District Court for the Western District of Kentucky issued an order in the matter of Commonwealth of Kentucky Mobile Radio Service Emergency Telecommunications Board v. TracFone Wireless, Inc. By Order dated August 9, 2010, the Commission deferred a final decision on this petition pending an Order by the Federal Court as to TracFone's obligations to contribute to Kentucky's 911 and E911 services. The Commission finds that no other outstanding issues exist and the Commission will grant the motion and rule in this matter. The Commission finds that TracFone should be designated as an ETC in Kentucky for the limited purpose of offering Federal Lifeline and Link-Up Service to qualified low-income households, subject to the conditions enumerated herein.

DISCUSSION

TracFone's Lifeline offerings will differ from other ETCs' Lifeline programs in several ways. TracFone will offer low-income consumers quantities of wireless usage at no charge to satisfy Lifeline requirements of reduced monthly local telephone costs. Typically, Lifeline consumers receive a discount from the carrier's standard monthly rates. TracFone's Link-Up offering will allow consumers to receive a free wireless

handset instead of typically reduced or eliminated installation/service charges for new service.

A. Federal Communications Commission's ("FCC") TracFone Forbearance Order

TracFone sets forth in its application that it meets the requirements for ETC designation by the Commission pursuant to 47 U.S.C. § 214(e)(2). Specifically, § 214(e)(1)(A) of the Telecommunications Act of 1996 ("Act") states that ETCs shall offer services, at least in part, over their own facilities and 47 C.F.R. §54.201(i) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through resale of another carrier's services. However, on June 8, 2004, TracFone filed a petition with the FCC requesting that the FCC exercise its forbearance authority under Section 10 of the Act with respect to the facilities-based requirement.¹ On September 8, 2005, the FCC granted the petition and, on April 11, 2008, the FCC granted all of TracFone's pending petitions for designation as an ETC subject to conditions.²

¹ See TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004, as amended by TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed August 16, 2005, and TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004.

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); and 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 (2008) (granting TracFone's ETC Petitions for Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Virginia).

State Commissions have the primary responsibility to designate ETC status for federal universal service purposes. Section 214(e)(2) of the Act provides that a state commission shall designate a common carrier as an ETC if the carrier meets the requirements of § 214(e)(1). Section 214(e)(1) requires a carrier designated as an ETC to offer services that are supported by Federal Universal Service support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier's services, and to advertise the availability of such services and the related charges using media of general distribution.

As noted above, the FCC has decided to forbear from applying the facilities-based requirement for ETCs to TracFone. 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.” As such, the Commission is required by federal law to act in accordance with the FCC's TracFone Forbearance Order and, therefore, may not apply the facilities-based requirement to TracFone. Other state commissions have designated TracFone as an ETC in their respective states.

The Commission notes that the FCC's TracFone Forbearance Order allows TracFone and other CMRS resellers to circumvent the requirement of having to agree to serve as a reliable “Carrier of Last Resort” in the service areas for which it receives ETC designation. This element of certification is essential to all ETC certifications, as it is supposed to guarantee the presence and reliability of service by a carrier. CMRS resellers are, by technical design, providing services as an agent of an underlying carrier and do not even have to agree to provide their own physical facilities in

transmitting services to retail customers. The FCC's forbearance decision deviates from the standard for landline carriers, as well as other wireless carriers. However, state commissions do not have the authority to preempt decisions of the FCC and so this Commission must consider TracFone's petition in Kentucky within the standards enumerated in the forbearance decision.

However, the FCC's grant of forbearance is subject to the following conditions: (a) TracFone providing Lifeline customers with basic 911 and Enhanced 911 ("E911") access regardless of activation status and availability of prepaid minutes; (b) TracFone providing its new Lifeline customers with E911-compliant handsets and replacing any existing customers' non-compliant handsets at no additional charge; (c) TracFone complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) TracFone obtaining a certification from each Public Service Answering Point ("PSAP") where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) TracFone requiring its customers to self-certify at the time of service activation and annually thereafter that they are the heads of the households and receive Lifeline-supported service only from TracFone; and (f) TracFone establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.

B. Technical Service Requirements

TracFone states that it offers, or will offer upon designation as an ETC in Kentucky, all of the services and functionalities required by 47 C.F.R §§ 54.101(a) and

54.202(a) of the Act including the following:³ Voice grade access to the public switched telecommunications network (“PSTN”) means the ability to make and receive traditional voice phone calls between the approximately 500 Hertz and 4,000 Hertz for a bandwidth of approximately 3,500 Hertz. The voice-grade access provided by TracFone enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.⁴ As part of the voice-grade access to the PSTN, an ETC must provide local calling pursuant to 47 C.F.R. § 54.101(a)(2). TracFone indicates that it provides subscribers the ability to send and receive local phone calls wherever it provides service. Moreover, local usage is included in TracFone’s calling plan. 47 C.F.R § 54.202(a)(4) requires an ETC applicant to “demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.” The FCC has explained that an ETC applicant’s local usage plans should be reviewed on a case-by-case basis to ensure that each ETC provides a local usage component in its universal service offering that is comparable to the plan offered by the Incumbent Local Exchange Carrier (“ILEC”) in the area. Importantly, the

³ Under FCC rule 47 C.F.R. § 54.202(a)(1)(ii), an applicant for ETC status must demonstrate that it satisfies network build-out and improvement requirements and provides a certification that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area (47 C.F.R. § 54.202(a)). In the TracFone ETC Order, the FCC determined that TracFone was not required to make these showings because it is a pure reseller. See n.35. TracFone maintains that it also is not required to make these showings for this Petition.

⁴ Petition at 9 – 10.

requirement is that ETCs offer local usage plans “comparable” to those of the ILEC, not that the plans be identical. The FCC has not adopted any minimum local usage requirement. As a designated ETC, TracFone states that it will comply with any applicable minimum local usage requirements adopted by the FCC.⁵

Dial Tone Multi-Frequency (“DTMF”) signaling allows carriers to provide expeditious call set-up and call-detail information and enables modem usage. The FCC permits carriers to provide signaling that is functionally equivalent to DTMF to satisfy the DTMF requirement. All telephone handsets provided by TracFone are DTMF-capable as required by 47 C.F.R. §54.101(a)(3).⁶ TracFone states that it provides customers with single-party access for the duration of every phone call in accordance with 47 C.F.R. § 101(a)(4). Single-party service means that only one party will be served by a subscriber line or access loop, in contrast to a multi-party line. TracFone does not provide “multi-party” or “party line” services.⁷

The FCC has declared that access to emergency services is essential. TracFone states that it provides universal access to the 911 system for its customers. TracFone indicates that it has implemented and will continue to implement E911 services consistent with the FCC’s rules, including 47 C.F.R. § 54.101(a)(5), and orders when such services are made available by the carriers from whom TracFone purchases services. TracFone claims it will make access to E911 service available in accordance with applicable FCC requirements. In addition, in accordance with 47 C.F.R. §

⁵ Id. at 10.

⁶ Id. at 11.

⁷ Id.

54.202(a)(2), TracFone says it has the ability to remain functional in emergency situations. As described in this Petition, TracFone provides service in Kentucky by reselling services of underlying wireless network carriers, including Alltel, AT&T, Bluegrass Cellular, T-Mobile, and Verizon. Those network operators have implemented state-of-the-art network reliability standards and TracFone and its customers benefit from their high standards.⁸

TracFone offers all of its customers access to operator services, in accordance with 47 C.F.R. § 54.101(a)(6). TracFone declares that customers can use TracFone's services to complete toll calls as required by 47 C.F.R. § 54.101 (a)(7). However, TracFone says it does not impose separate charges for interexchange calls. Long distance calling is included in TracFone's service with no additional charge. Lastly, TracFone says its customers receive access to directory assistance service through the TracFone virtual network as required by 47 C.F.R. § 54.101 (a)(8).⁹

TracFone states that there is no need for it to offer a toll limitation feature to qualifying low-income customers because its service is a prepaid service and no customers will be disconnected for failure to pay toll charges or, for that matter, any other charges. TracFone states that it treats long distance minutes of use as any other usage and the customers are not charged separately for toll services; and because all TracFone services are prepaid, there is no danger that low-income customers will incur large charges for heavy toll (or other) calling and no risk that they will be disconnected for nonpayment. Since customers pay for the service in advance, they can use only

⁸ Id. at 11-12.

⁹ Id. at 12-13.

what they already have paid for or the service quantities provided to them under the Lifeline program. Thus, TracFone claims prepaid services are especially beneficial to low-income users since the consumers enjoy the ability to control or limit their charges for toll service (as well as local service) in a manner that customers of traditional post-paid (billed in arrears) services do not.¹⁰

TracFone provides service in Kentucky by reselling service which it obtains from underlying facilities-based providers. Each of those providers' networks are operational and are largely built out. Thus, TracFone indicates it will be able to commence offering its Lifeline service to all locations served by any of its underlying carriers very soon after receiving approval from the Commission. TracFone is also ready to commence providing handsets to qualified customers free of charge under its Link-Up plan. The only delay will be the time needed to implement procedures and internal systems to offer the Lifeline and Link-Up programs. Thus, TracFone claims it will be able to provide Lifeline and Link-Up service to all qualified customers on a timely basis or within a reasonable period of time in accordance with 47 C.F.R. § 54.202(a)(1).¹¹

The Commission finds that, as a reseller of other carriers' wireless services, TracFone's service is of the same quality and reliability as that of its underlying vendors. For that reason, TracFone cannot assure the Commission that it will never experience service disruptions, as occasional dropped calls and inconsistent coverage, depending on atmospheric conditions, are a fact of life in the wireless industry. TracFone believes that its service is as reliable as that of any other wireless provider serving the Kentucky

¹⁰ Id. at 13.

¹¹ Id. at 14.

market. To demonstrate its commitment to high service quality, TracFone states it will comply with the CTIA--The Wireless Association's Consumer Code for Wireless Service--in accordance with 47 C.F.R. § 54.202(a)(3).¹²

C. Advertisement of Services

TracFone states that it will advertise the availability of its Lifeline and Link-Up services and the associated charges using media of general distribution, in accordance with the requirements of 47 U.S.C. §214(e)(1)(A) and 47 C.F.R. § 54.201(d)(2). TracFone plans to utilize such marketing and outreach efforts as necessary and appropriate to ensure that as many eligible consumers as possible avail themselves of TracFone's prepaid wireless Lifeline offering and its free Link-Up offering. TracFone says it understands that it will be competing with other ETCs in Kentucky, including the ILECs, to be chosen by consumers to be their Lifeline service provider and will utilize traditional means for promoting the availability of its Lifeline and Link-Up programs. These means will include print and broadcast advertising in media outlets most likely to reach consumers eligible for Lifeline and Link-Up. These include national publications as well as local and community newspapers, and commercial broadcast stations, especially those stations whose programming is targeted to significant lower income communities including, for example, Spanish language stations in areas with significant Spanish-speaking populations. Examples of TracFone's print, radio, and television advertisements for Lifeline that have been created to date and the Lifeline webpage that will be available on TracFone's website are attached as Exhibit 8 to the application.¹³

¹² Id. at 14.

¹³ Id. at 14-15.

In addition, TracFone states it will utilize its network of retail outlets to help promote the availability of its Lifeline and Link-Up plans, especially those retail outlets which are frequented by lower-income consumers, such as Rent-a-Center, Dollar General Stores, Walgreen's, CVS, and even Wal-Mart, which are important shopping venues for many consumers eligible for Lifeline and Link-Up. Retailers will be provided with signage to be displayed where TracFone products, including airtime cards, are sold, and with printed materials describing TracFone's Lifeline and Link-Up programs, and will be encouraged to assist qualified consumers in applying for Lifeline and Link-Up. While TracFone does not require retailers to use the TracFone provided advertising materials in their stores, retailers would be strongly encouraged to display all advertising materials provided by TracFone. Given the relationship which exists between TracFone, lower-income consumers, and retail outlets which are often visited by lower-income consumers, TracFone expects to be able to inform consumers of the availability of Lifeline and Link-Up in a manner which will result in significantly higher participation in these low-income universal service programs by qualified consumers than in the past.¹⁴

D. Eligibility Verification

47 C.F.R §§ 54.410 and 54.416 require ETCs to comply with certification of eligibility and verification of continued eligibility requirements for Lifeline and Link-Up participation. TracFone asserts it will certify and verify consumer eligibility in

¹⁴ Id. at 15.

accordance with the FCC's requirements and with applicable Commission rules governing certification and verification of Lifeline and Link-Up eligibility.¹⁵

E. Petition for Waiver

In the data request of April 23, 2009, the Commission also inquired whether TracFone would agree to perform an audit of all of its Lifeline customers to verify eligibility as all other ETCs in the state are required to do. TracFone declares that compliance with the annual verification requirement is not necessary to minimize fraud, would be unduly burdensome, and would impede TracFone's ability to provide low-income Kentucky households with the same Lifeline benefits which it provides its Lifeline customers in other states where it has been designated as an ETC. On May 15, 2009, TracFone filed a petition for waiver of this requirement. In that motion, TracFone further suggests an alternative means to ensure that customers continue to be eligible for Lifeline service. TracFone requests that the Commission alternatively allow it to perform an annual audit on a statistically valid sample of its Lifeline customers as allowed by the FCC in certain federal default states.¹⁶ In support of its request for waiver, TracFone alleges that this Commission's annual verification requirements compelling ETCs to obtain documented proof of eligibility from all Lifeline customers is more rigorous than the initial self-certification requirement applicable to Lifeline applicants. TracFone contends that it expects to have at least 20,000 Lifeline customers in Kentucky during its initial ETC year and believes that requiring it to verify the eligibility of each of those customers every year thereafter is burdensome and that

¹⁵ Id. at 16-17.

¹⁶ Petition for Waiver at 1, 2, 5.

the Commission should authorize TracFone to use other random statistical auditing procedures.

Having reviewed the arguments, the Commission finds that TracFone's request for waiver from the standard Lifeline eligibility auditing procedures should be denied. The Lifeline program provides tremendous telephone service assistance to lower-income citizens in Kentucky and this Commission fully supports this program. However, ETCs in Kentucky also receive a tremendous benefit in the form of significant annual financial support given by the federal Universal Service Fund to numerous carriers across the U.S. in exchange for those carriers extending services to the most financially vulnerable citizens. By Order dated May 24, 2007 in Administrative Case No. 360, An Inquiry into Universal Service and Funding Issues, this Commission ordered every ETC to verify the eligibility every year of its entire Lifeline subscribership and submit the results to the Commission by August 15 of each year. The Commission believed that carriers who receive the benefit of federal USF Lifeline funds should have the obligation of annually collecting data clearly demonstrating that it is entitled to those funds because each of its Lifeline customers is truly eligible to receive discounted telephone services. As to this issue, the Commission believes the maxim, "To whom much is given, much is required," is applicable to the auditing requirement. At this juncture, despite TracFone's statement that its expected Lifeline Kentucky subscribership will be at least 20,000 and likely much more, it is TracFone's choice to become an ETC in Kentucky and pursue an aggressive campaign to have a large Lifeline subscribership. As such, TracFone is obligated to develop a verification plan which conforms to the

requirements of this Commission, in consideration of its ETC customer base being larger than average ETCs.

The Commission has not been persuaded that TracFone should be treated any differently than other ETC carriers in Kentucky. No other carrier has been relieved of the obligation of obtaining certification from all Lifeline customers or shown it to be burdensome. TracFone's petition for waiver is denied; however, TracFone will be given leave to file another petition for waiver after the submission of its first annual verification report, in accordance with the requirements of Administrative Case No. 360, to this Commission and re-assert its arguments with demonstrative evidence as support.

The Commission also inquired as to what steps TracFone would take to insure that customers who were no longer using their phones would not continue to receive benefits of the Lifeline program. TracFone stated that it had implemented a churn policy that covers inactive handsets that are enrolled to receive Lifeline benefits. If a customer has more than two months without any usage, they will be deactivated and given a thirty-day grace period to reactivate.¹⁷ This policy will ensure that TracFone does not continue to receive disbursements from the Universal Service Fund. The Commission will require that TracFone 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, and voluntarily being deactivated.

¹⁷ TracFone's Responses to Commission Staff's First Data Request, May 15, 2009, Response 6a.

F. Proposed ETC Service Territories

TracFone stated in its application that it requests certification for its entire service area in Kentucky. It also stated that it provided service in every zip code in Kentucky through the resale of wireless services provided by its underlying carriers.¹⁸ TracFone also stated in the application that it obtains service from Alltel, AT&T Mobility, Bluegrass Cellular, T-Mobile, and Verizon Wireless.¹⁹ On October 30 2009, TracFone filed a Motion to File First Amendment to its petition ("First Amendment"). In the First Amendment, TracFone stated that it intended to provide Lifeline service in all areas served by AT&T Mobility and T-Mobile and that, in the second Quarter of 2010, it would expand its Lifeline service to include the areas of Kentucky served by Verizon Wireless. TracFone reiterated that it requests ETC designation statewide in all exchanges to the extent that its underlying carriers have facilities and coverage.

The Commission issued another data request to TracFone regarding its intended service area on November 30, 2009. TracFone was not able to provide the Commission with a list of exchanges that it would be able to provide service, but rather it provided zip code information on its service areas. It also provided a map that does not correspond to the zip code data. The Commission finds that TracFone's Motion to File the First Amendment is granted; however, neither in that Motion nor the related data request responses has TracFone provided sufficient information as to the proposed service areas. In order for the Commission to designate TracFone an ETC, the Commission will need to better understand the extent of TracFone's service area.

¹⁸ Id. at 17.

¹⁹ Id. at 2.

TracFone will need to clarify with the Commission the extent of its service territory prior to designation of ETC status.

G. TracFone's 9-1-1 Funding Obligations in Kentucky

On October 2, 2009, the Attorney General through his office of Rate Intervention ("AG") filed a motion to intervene in the proceeding based on the limited issue of whether TracFone should be granted status as an ETC based on its apparent non-compliance with KRS 65.7621, *et seq.* In particular, TracFone has allegedly neglected to remit its CMRS surcharge of \$0.70 per month for each CMRS connection to the CMRS Board from on or about November, 2003 through the present, as required by KRS 65.7635.²⁰ The Commission granted the motion to intervene on October 12, 2009. On October 2, 2009, the Commission also received a letter from Jerry Keathly, President of the National Emergency Number Association Kentucky Chapter ("KENA"), representing 9-1-1 Professionals from across the Commonwealth. Mr. Keathly advises the Commission that TracFone does not participate in the funding of 911 and may issue phones that fail to provide 9-1-1 operators with information necessary to provide emergency services to the caller.

TracFone responded to the AG and KENA stating that 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 and the FCC's Forbearance Order

²⁰ See Commonwealth of Kentucky Commercial Mobile Radio Service Emergency Telecommunications Board v. TracFone Wireless, Inc., United States District Court, Western District of Kentucky, Case No. 3:08-CV-660-JGH (hereinafter, "CMRS Board-TracFone proceeding").

included several conditions, none of which required TracFone to contribute to the support of 911 services.

On May 3, 2010, the FCC issued a decision on the TracFone petition requesting rescission of a condition imposed in the TracFone ETC Designation Order. In the original ETC Designation Order, the FCC conditionally designated TracFone as an ETC for the limited purpose of receiving universal service low-income support through the Lifeline program in its licensed service areas in several states. TracFone's limited ETC designation is subject to, among other things, the condition that TracFone certify that it is in full compliance with state-level 911 and E911 obligations, *including obligations relating to the provision and support of such service*, before receiving Lifeline universal service support in a state. Given the importance of ensuring that all consumers, including low-income consumers, have access to emergency services and, consistent with the FCC's previous holding that TracFone must comply with state obligations relating to access to those services, in the May 3, 2010 Order, the FCC found that TracFone has not demonstrated sufficient cause to justify rescission of the state 911/E911 compliance certification requirement imposed in the TracFone ETC Designation Order.

Due to the apparent conflict with the Kentucky CMRS Board and the lack of clarity on whether TracFone had complied with Kentucky law regarding the collection of 9-1-1 fees, on August 9, 2010, the Commission issued an order in this proceeding requiring TracFone's application to be held in abeyance pending final order of the District Court of Western Kentucky in the CMRS Board-TracFone proceeding.

The Commission finds that the provision of 911 and E911 services are vital to the safety and welfare of all Kentuckians. 911 and E911 services are especially critical to Lifeline customers, such as those whom TracFone petitions to serve, because the Lifeline service may be a customer's only access to emergency services. ETC designation includes full compliance with obligations to both provide and support 911 and E911 services pursuant to KRS 65.7621, et seq. ("CMRS Act"). At issue in the CMRS Board–TracFone matter in federal court is TracFone's obligation to comply with the financial provision to support 911 and E911 services pursuant to the CMRS Act. On August 18, 2010, the District Court of the Western District of Kentucky issued an order in that proceeding. The Court found that TracFone is required to remit past-due service fees for the period of November 2003 through July 12, 2006 for all of its customers and, from July 12, 2006 through September 2009, for its customers that purchased services directly from the Defendant. It was further ordered that the defendant is not required to remit any fees under the 2006 amendments to KRS 65.7635 for its non-direct customers until the CMRS Board advises it of the proper method of collection.

In light of the Court's decision, the Commission hereby finds that TracFone's request for ETC designation in Kentucky will be subject to the condition that TracFone certify that it is in full compliance with state-level 911 and E911 obligations, including obligations relating to the provision and support of such service, before receiving Lifeline universal service support.²¹ TracFone will have to certify to the Commission that it has complied with the judgment of the District Court for the Western District of

²¹ See *In the Matter of Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition to Rescind State 911/E911 Condition*, CC Docket No. 96-45, Order, 24 FCC Rcd 4661 (2010).

Kentucky. All ETC designations rendered by a state commission must be consistent with the public interest, convenience, and necessity, as required under 47 U.S.C. § 214(e), and compliance with state level 911 and E911 obligations falls squarely into the Commission's review of a carrier's request for such designation.

H. Motion to File Second Amendment

On December 29, 2009, TracFone filed a motion to make a second amendment to its application. In the Motion, TracFone stated that it would not be offering special low-volume usage cards in the amounts of \$3.00, \$5.00 and \$10.00 at the rate of \$.20 per minute as it had previously stated in its application. However, TracFone stated that it would provide SafeLink Wireless customers with a maximum rate of \$.20 per minute if the cost of the card per-minute rate was higher than \$0.20 per minute. For example, if a customer purchases a 60-minute card at the price of \$19.99, the customer would in fact be credited with 100 minutes rather than 60 minutes. Having reviewed the motion, the Commission finds that the request to file the second amendment should be granted.

On August 13, 2010, TracFone filed a Notice of Expanded Lifeline Offering. In the Notice, TracFone states that, beginning on August 16, 2010, it will offer all of its Lifeline customers in all states a choice of three monthly plans. The plans are as follows: 1) 250 free minutes each month, which do not carry over to the next month if unused, with texting available at a rate of one text per minute of airtime; 2) 125 free minutes each month, which carry over to the following month if unused, with texting available at a rate of one text per minute of airtime; or 3) 68 free minutes each month, which carry over to the following month if unused, with texting available at a rate of 3

texts per each minute of airtime, plus International Long Distance calling to over 60 destinations.

Having considered TracFone's amended available rate plans, the Commission finds that the discrepancies in the per-minute prices available to Safelink Wireless customers for the initial minutes and additional minutes are significant and may adversely impact the intended availability of Lifeline services to subscribers. The Commission also notes that TracFone offers SafeLink Wireless customers in some other states a rate of \$.10 per minute for additional minutes. The Commission finds that TracFone should offer Kentucky Safelink Wireless customers additional minutes of use at a rate of \$.10 per minute or less. The Commission will impose conditions upon TracFone as to the provision of minutes to customers.

I. Conditions for ETC Status

The Commission finds that TracFone has met the requirements to be designated as an ETC and finds that TracFone should be designated an ETC subject to the conditions imposed by the FCC in granting forbearance from facilities-based requirements of Section 214(e)(1). Those conditions are: (a) TracFone providing Lifeline customers with basic 911 and E911 access regardless of activation status and availability of prepaid minutes; (b) TracFone providing its new Lifeline customers with E911-compliant handsets and replacing any existing customers' non-compliant handsets at no additional charge; (c) TracFone complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) TracFone obtaining a certification from each PSAP where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) TracFone requiring its customers to self-certify at the time of service

activation and annually thereafter that they are the heads of the households and receive Lifeline-supported service only from TracFone; and (f) TracFone establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.

The Commission also imposes the following conditions upon TracFone as part of its ETC designation. The Commission retains the authority to revoke the ETC status of carriers for whom it granted designation if the Commission finds that a carrier is not complying with any portion of its ETC obligations.

Condition 1

TracFone must certify to the Commission that it has complied with the obligations imposed by the District Court of Western of Kentucky. Evidence of this compliance shall be filed within 45 days of the date of this Order.

Condition 2

TracFone must perform an annual audit of all Lifeline customers in accordance with Administrative Case No. 360. The Commission will require that TracFone submit a quarterly report to the Commission, effective the date of this Order, 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.

Condition 3

TracFone will need to clarify with the Commission the extent of its service territory prior to designation of ETC status.

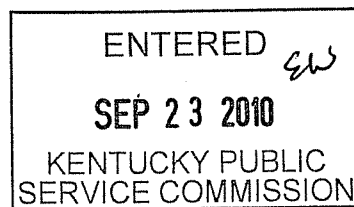
Condition 4

TracFone will be required to offer Kentucky SafeLink Wireless customers additional minutes of use at a rate of \$.10 per minute or less.

IT IS HEREBY ORDERED that:

1. TracFone shall be designated an ETC in Kentucky for the limited purpose of offering Lifeline and Link-Up Service to qualified low-income households, subject to verification of and agreement to all conditions stated above.
2. TracFone shall have 45 days from the date of this Order to notify the Commission that it has agreed to all the conditions, including providing the Commission with the necessary information about its service area.
3. The decision on all pending motions shall stand as outlined within this order. Those motions not directly addressed within this Order are denied.

By the Commission



ATTEST:

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