

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of Petition of TracFone Wireless, Inc.)
for Designation as an Eligible Telecommunications)
Carrier in the State of Missouri for the Limited)
Purpose of Offering Lifeline Service to Qualified)
Households)

Case No. TA-2009-0327

RESPONSE TO STAFF RECOMMENDATION AND PETITION FOR WAIVER

TracFone Wireless, Inc. (“TracFone”), by its counsel, files this Response to the Staff Recommendation dated May 20, 2009. In addition, to the extent that the Staff seeks to apply the Lifeline eligibility certification rules set forth at 4 CSR 240-31.050(3) to TracFone, TracFone respectfully requests a waiver of those requirements pursuant to 4 CSR 240-31.050(5).

1. In the Staff Recommendation, Commission Staff recommends that TracFone be granted Eligible Telecommunications Carrier (“ETC”) designation in the State of Missouri for the purpose of receiving federal Lifeline universal service support, subject to certain conditions. TracFone is gratified by Staff’s favorable recommendation and it looks forward to the prompt introduction of its SafeLink Wireless Lifeline service to qualified low-income Missouri households. By this Response, TracFone addresses its concerns regarding certain of those conditions and seeks a waiver of those conditions. TracFone further requests the Commission to order that TracFone be subject to the federal rule allowing for self-certification of customers’ eligibility to receive Lifeline service based on participation in a qualified program.

I. The Staff Improperly Attempts to Apply Rules Governing ETCs' Access to Support from the Missouri Universal Service Fund to TracFone When TracFone Will Only Request Support from the Federal Universal Service Fund.

2. The Staff Recommendation recommends that TracFone be granted ETC designation in the State of Missouri for the purposes of providing Lifeline support. Staff Recommendation, at 3. The Staff Recommendation further states that designation of TracFone as an ETC should be conditioned on TracFone complying with several conditions, including conditions that TracFone shall require customers to provide documentation of participation in applicable programs; develop a process for recording the type of documentation received; and develop a process for returning or destroying the documentation once recorded. These requirements are contained in Missouri regulation 4 CSR 240-31.050. The articulated purpose of Section 240-31.050 is to “establish the eligibility of telecommunications companies to receive support from the Missouri Universal Service Fund (“MoUSF”) ... and the individual eligibility requirements for participation in the MoUSF by low-income and disabled customers.”¹ The MoUSF was established, in part, to permit eligible incumbent local exchange carriers (“ILECs”) to “recover the reasonable projected changes in revenues from reductions in Federal Universal Service Fund (USF) payments”² TracFone, as a wireless reseller, is not an ILEC, and therefore, is not eligible to obtain any funds from the MoUSF. Accordingly, TracFone is not within the scope of those entities who are subject to the aforementioned Commission regulations.

3. The rules set forth in Chapter 31 govern ETCs that seek funds from the MoUSF, not ETCs, such as TracFone, that will only seek funds from the federal USF. Indeed, the Staff notes that TracFone’s ETC Petition “request[s] designation as an Eligible Telecommunications

¹ 4 CSR 240-31.050, Purpose statement.

² 4 CSR 240-31.010(11).

Carrier (ETC) in the State of Missouri for the purpose of receiving federal ‘Lifeline’ universal service support.” Staff Recommendation, at 1 (emphasis added). Staff also states that “[i]n order to receive federal universal service support an eligible telecommunications company must comply with the requirements contained in 47 CFR Section 54.” Staff Recommendation, at 2. Given that TracFone is not seeking any funds from the MoUSF, as the Staff correctly recognizes, the federal rules governing certification of customers’ eligibility to receive Lifeline are applicable to TracFone.

II. Waiver of the Commission’s Rules Governing the MoUSF Will Serve the Public Interest in Giving Low Income Individuals Access to Telecommunications Services While Protecting the Federal USF from Fraud.

4. In the event that the Commission determines that TracFone is subject to the MoUSF requirements codified at 4 CSR 240-31.050(3), TracFone requests waiver of those rules pursuant to 4 CSR 240-31.050(5). TracFone seeks to rely on a consumer’s self-certification under penalty of perjury that he or she participates in a qualifying program as the basis for commencing Lifeline service to that consumer. The FCC’s Rules allow a consumer to self-certify, under penalty of perjury, that he or she receives benefits from a qualifying program, to be eligible to receive Lifeline service.³ Significantly, Missouri’s rules similarly require customer self-certification under penalty of perjury. The FCC has stated that the “ease of self-certification encourages eligible consumers to participate in Lifeline ... [and] imposes minimal burdens on consumers.”⁴ Moreover, the “certification of qualified program participation, under penalty of perjury, serves as an effective disincentive to abuse of the system at this time.”⁵ Indeed, the

³ 47 C.F.R. § 54.409(d).

⁴ In the Matter of Lifeline and Link-Up, 19 FCC Rcd 8302, ¶ 27 (2004).

⁵ Id.

Federal-State Joint Board on Universal Service, which recommended self-certification of program-based eligibility, has noted that “the record contained no evidence of fraud and abuse resulting from the use of self-certification.”⁶ In adopting the self-certification method, the FCC has crafted a reasonable balance between simplifying the Lifeline enrollment process to encourage participation by qualified households on the one hand, and providing disincentives against fraud and abuse of the system on the other hand. The FCC further protected the integrity of the universal service fund requiring that ETC’s verify annually the continued eligibility of a statistically valid random sample of Lifeline subscribers.⁷

5. The FCC’s carefully-crafted rule permitting self-certification under penalty of perjury of program-based eligibility has effectively enabled low-income individuals to obtain rapid access to essential telecommunications services, while simultaneously discouraging fraud. TracFone’s experiences in providing Lifeline service in other states confirms that conclusion. TracFone currently offers Lifeline service in Delaware, Florida, Georgia, Massachusetts, Michigan, North Carolina, New York, Pennsylvania, Tennessee, and Virginia. Each of those states allows consumers to self-certify under penalty of perjury that they participate in a qualified program in order to receive Lifeline service. TracFone has received thousands of Lifeline applications in those states and has been able to immediately provide SafeLink Wireless Lifeline service to eligible low-income households in those states. Fraud has not been a problem.

6. TracFone also has internal procedures in place to identify instances of fraud. In particular, when TracFone accepts Lifeline applications in Missouri, it will utilize a computer program that reviews each Lifeline applicant’s name, address, and last four digits of his or her

⁶ In the Matter of Federal-State Joint Board on Universal Service, *Recommended Decision*, 18 FCC Rcd 6589, ¶ 33 (2003).

⁷ 47 C.F.R. § 54.410(d)(2).

social security number to verify the identity of the applicant and confirm whether the address provided is associated with the applicant. The computer program also will look for certain patterns to determine whether there is a probability of fraud. The computer program will alert TracFone if there is a Lifeline application including an address similar to the an address already associated with a current Lifeline customer. For example, the computer program will look for addresses that only differ by an apartment number, such as 100 Main Street and 100 Main Street, Apartment A. When the computer program informs TracFone of any situations that may indicate fraud, TracFone will contact the Lifeline applicant to verify or obtain any necessary information prior to approving the applicant for Lifeline service. TracFone's process of verifying applicants' information will ensure that only qualified individuals receive Lifeline service and that only one TracFone Lifeline supported service is provided to each qualified household. While TracFone believes it is important to protect the integrity of the Lifeline program by employing an additional process to minimize fraud, in actuality TracFone has identified very few instances of potential fraud and in all such instances TracFone has either denied or terminated Lifeline service to the relevant individuals.

7. Self-certification of program-based eligibility serves the public interest by enabling customer applications to be promptly processed and approved and allowing qualified low-income customers to begin receiving Lifeline benefits without delay. Moreover, because the self-certification is subject to penalties of perjury (which are clearly stated on TracFone's SafeLink Wireless enrollment application as required by the FCC) and to random verification on an annual basis, reasonable protection from fraud is provided. In TracFone's experience, thousands of Lifeline applications are being submitted each month in every state in which it is currently providing SafeLink Wireless service. In some states TracFone has received over

30,000 Lifeline applications in one month. In one state, TracFone received over 80,000 Lifeline applications in one month. In less than a year of offering Lifeline in only a handful of states, TracFone is already providing SafeLink Wireless Lifeline service to over 1 million customers. Given the substantial interest in TracFone's Lifeline service in every state in which it is offering Lifeline, TracFone expects similar interest from qualified Missourians. Requiring TracFone to review documentation from each applicant will unjustifiably and unnecessarily delay commencement of Lifeline service and greatly increase the administrative burden on individuals who qualify for Lifeline and on TracFone. Self-certification under penalty of perjury minimizes the administrative burden of the Lifeline application process on customers and TracFone and facilitates increased participation in the Lifeline program.

8. There is no doubt that the federal Lifeline program has been underutilized. According to FCC data, only 33.7 percent of Lifeline-eligible low-income households nationwide participate in the Lifeline program.⁸ In Missouri, the situation is significantly worse. According to FCC data, Missouri's statewide Lifeline participation rate is only 10.3 percent of eligible households.⁹ Based on its experience in the other states where TracFone has introduced SafeLink, its non-traditional and aggressive marketing strategy has resulted in customer enrollment levels far greater than that of other ETCs. TracFone is confident that it will similarly be able to increase Lifeline enrollment in Missouri. Recent economic conditions have

⁸ Lifeline and Link-Up, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 8302 (2004), at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline subscription information (Year 2002).

⁹ 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 2007 the participation rate for eligible households in Missouri 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>.

heightened the need for Lifeline. With thousands of persons, including many in Missouri, having lost their jobs, their savings, and even their homes to foreclosure, the need for communications assistance through the Lifeline program has never been greater and has never been more immediate. Adopting a procedure that encourages Lifeline enrollment while providing reasonable protections against fraud will promote the statutory objective of providing low-income individuals with access to quality telecommunications services.¹⁰

9. In addition, the Commission's MoUSF rules, which differ from the federal USF rules regarding customers' certification of eligibility for Lifeline service, are inconsistent with the "federal policy of a uniform, national and deregulatory framework for CMRS."¹¹ As noted by the FCC, "[t]o succeed in this marketplace, CMRS carriers typically operate without regard to state borders and, in contrast to wireline carriers, generally have come to structure their offerings on a national basis."¹² By applying different and more rigorous certification requirements to TracFone, than the requirements imposed by the FCC and the other states in which TracFone is currently offering SafeLink Wireless Lifeline service, the Commission would be impeding the federal policy of a uniform, national framework for CMRS. Self-certification enables TracFone -- a national CMRS provider -- to make available its SafeLink Wireless Lifeline service on a nationally-uniform basis.

10. Finally, Section 254(c) of the Communications Act defines universal service as an "evolving level of telecommunications services that the [Federal Communications] Commission shall establish periodically under this section, taking into account advances in

¹⁰ See 47 U.S.C. § 254(b)

¹¹ Truth-in-Billing and Billing Format, 20 FCC Rcd 6448, ¶ 35 (2005); see 47 U.S.C. § 332(c)(3) (states lack authority to regulate the entry of or the rates charged by CMRS providers).

¹² Truth-in-Billing and Billing Format, 20 FCC Rcd 6448, ¶ 35.

telecommunications and information technologies and services.” At the time of enactment of the 1996 Telecommunications Act and the FCC’s earliest universal service rules, 1997, services to be supported were generally considered to be wireline local exchange services which are, by definition, intrastate services subject to state regulation, even when offered by an ETC subject to the FCC’s ETC requirements. However, the FCC has recognized that universal service fund-supported services should include wireless services, as demonstrated by the FCC’s designation of TracFone in ten states and the District of Columbia. Similarly, the Commission should consider how telecommunications services have evolved to include the availability of wireless service for Lifeline service when it determines what Lifeline certification of eligibility requirements should be imposed upon TracFone.

CONCLUSION

11. Based on the foregoing, TracFone requests that the Commission grant its petition for designation as an ETC for the purpose of providing Lifeline service to qualified individuals in the State of Missouri and order that TracFone be subject to the federal rule allowing for self-certification of customers’ eligibility to receive Lifeline service based on participation in a qualified program. To the extent that the Commission concludes that a state regulation applicable to TracFone is contrary to that self-certification under penalty of perjury procedure, TracFone respectfully requests waiver of that contrary regulation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served via e-mail on this 12th day of June, 2009, on counsel of record.

/s/ Mark P. Johnson
Mark P. Johnson