

**Before the
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of)	
)	
)	
Petition of TracFone Wireless, Inc.)	File No. TA-2009-0327
for Designation as an Eligible Telecommunications)	
Carrier in the State of Missouri for the Limited)	
Purpose of Offering Lifeline Service to Qualified)	
Households)	

TRACFONE WIRELESS, INC.'S APPLICATION FOR REHEARING

TracFone Wireless, Inc. (“TracFone”), pursuant to Missouri Revised Statutes, § 386.500 and 4 CSR 240-2.160, files this Application for Rehearing regarding the Order Granting Designation as an Eligible Telecommunications Carrier (“ETC”), issued August 26, 2009. The stated effective date of the Order is September 5, 2009, and as this Application for Rehearing is filed before the effective date of the Order, it is timely. § 386.500.2, RSMo.

1. TracFone is gratified by the Commission’s determination that designating it as an ETC would serve the public interest and it looks forward to promptly offering its SafeLink Wireless Lifeline service to qualified low income Missouri households.

2. There is one aspect of the Commission’s order which warrants rehearing. By this Application, TracFone seeks rehearing of the Commission’s denial of TracFone’s request for waiver of the Commission rule 4 CSR 240-31.050(3), which sets forth customer certification requirements for enrollment in Lifeline service. The Commission’s Lifeline certification rule requires customers seeking to enroll in Lifeline service to provide documentation of participation in qualifying programs and requires ETCs to develop a process for recording the type of

documentation received and to develop a process for returning or destroying the documentation once recorded.

3. This requirement deviates from the corresponding federal Lifeline enrollment rule in important respects and imposes undue and unnecessary burdens on consumers seeking to avail themselves of federal Lifeline benefits. The federal rule promulgated by the Federal Communications Commission (“FCC”) allows consumers to self-certify, under penalty of perjury, that they receive benefits from qualifying programs, to be eligible to receive Lifeline service.¹ The Commission’s denial of TracFone’s request for waiver of its state Lifeline certification rule, in lieu of allowing TracFone to comply with the FCC Lifeline certification rule (47 C.F.R. § 54.409(d)) is unlawful, unreasonable, and unjust as well as unnecessary to protect the interest of Missouri ratepayers. Accordingly, that denial should be reconsidered on rehearing.

ARGUMENT

I. The Federal Rule Regarding Certification of Initial Eligibility for Lifeline Should Govern Because TracFone Will Only Request Support from the Federal Universal Service Fund.

4. During the July 7, 2009 hearing on TracFone’s petition for designation as an ETC, Commissioner Gunn posed the following question to his fellow Commissioners: “Why are we requiring extra certification to protect the Federal Government’s money when the Federal Government has decided that their reporting requirements are adequate to protect themselves from fraud?” Tr. at 12:17-20 . This question addresses the reason the Commission’s denial of TracFone’s request for waiver should be reconsidered: TracFone will only seek Lifeline support from the federal Universal Service Fund (“USF”) for the benefits it provides its Lifeline

¹ 47 C.F.R. § 54.409(d).

customers. TracFone will not, and in fact, may not, seek any support from the Missouri Universal Service Fund (“MoUSF”).² Given that only the federal USF will be impacted by TracFone’s provision of Lifeline service, there is no risk that Missouri state universal service funds will be disbursed improperly. Neither is there any risk that contributors to the state fund or Missouri intrastate service ratepayers will be burdened by such disbursements.

5. Indeed, the Lifeline certification conditions that the Commission imposed upon TracFone are contained in Missouri regulation 4 CSR 240-31.050. That rule’s stated purpose is as follows: 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.”³

6. Given that TracFone will only receive support from the federal USF, it is unreasonable and unjust, as well as unnecessary to apply any rule more burdensome than the federal rule to govern certification of customers’ eligibility to receive Lifeline.

II. Requiring Low-Income Consumers to Submit Documentation Will Unjustly and Unreasonably Burden Qualified Lifeline Applicants and Will Discourage Participation in the Federal Lifeline Program.

7. The Commission’s denial of TracFone’s request for waiver of the Commission’s Lifeline certification procedures is based two stated premises: (1) “the inconvenience of the customer supplying a document to show participation in an income-eligible program is outweighed by the benefit that customer receives” and (2) “there may be an increase in the level of attempts to defraud.” The Commission stated that this second premise was based on the fact

² 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.

³ 4 CSR 240-31.050, Purpose statement (emphasis added).

“that TracFone has uncovered instances of fraud using its current system” and the “expected increase in the level of participation.” Order, at 8.

8. Rehearing is necessary and appropriate here because requiring TracFone’s customers to supply documents to prove their Lifeline eligibility through their participation in a qualified program as a prerequisite to obtaining Lifeline service imposes an unreasonable and unjust burden on low-income Missouri consumers, thereby effectively denying them the federal Lifeline benefits to which they are entitled. TracFone has substantial experience in providing Lifeline service to low-income households. It is currently providing Lifeline service as a designated ETC in 18 states and the District of Columbia and has enrolled more than 2 million qualified low income consumers in its SafeLink Wireless program. TracFone has found that requesting low-income consumers, including unemployed individuals, transients, recent immigrants, the elderly and other economically disadvantaged persons, to provide any type of document to TracFone is highly ineffective. Such individuals often do not have access to such documentation that is requested or encounter extreme difficulty in transmitting such documentation to TracFone since telecopying (fax) machines and or e-mail services are not readily available to them.

9. Furthermore, many Lifeline applicants do not have permanent residential addresses, such as those living in shelters. Those otherwise qualified applicants frequently do not have access to the required documentation, but are eligible to participate in social programs that qualify them to receive Lifeline service. TracFone believes it is essential for transient or homeless individuals, including those individuals who reside in shelters, to have access to telephone service through the Lifeline program. Indeed, it is those individuals who especially need such service to keep in touch with family members, current and potential employers,

schools, and various state agencies to ensure they receive benefits to which they are entitled. Self-certification of program-based eligibility serves the public interest by enabling customer applications to be promptly processed and approved and by allowing qualified low income customers to begin receiving federal Lifeline benefits to which they are entitled without delay. Given Missouri's statewide Lifeline participation rate of only 10.3 percent of eligible households,⁴ low-income individuals' enrollment in Lifeline should be facilitated, rather than impeded by a stringent and unnecessary administrative burden.

10. Moreover, the Commission's denial of TracFone's waiver request is based on an unsupported assumption that existing protections against fraud will no longer be effective if the number of Lifeline participants increases. That conclusion is purely speculative since there is nothing in the record of this proceeding which supports the conclusion that fraud potential will increase and become less preventable as the Lifeline program grows. The Commission acknowledged that TracFone's internal fraud protection system has detected some instances of fraud, but provided no basis for concluding that TracFone's system would not work if it had to process more Lifeline applications. Indeed, the Commission-acknowledged fact that TracFone's internal security system had uncovered those rare instances of fraud demonstrates that its current processes are working well and that a burdensome document production-based enrollment requirement is not necessary.

11. There is also no reason to conclude that self-certification subject to penalty of perjury and subject to random verification on an annual basis, as required by the FCC's rules,

⁴ 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>.

will not provide reasonable protection from fraud. The FCC, in adopting its self-certification rule, stated that “certification of qualified program participation, under penalty of perjury, serves as an effective disincentive to abuse of the system at this time.”⁵ Nothing in the record of this proceeding contradicts that conclusion. Neither does TracFone have any reason to question that FCC conclusion based on TracFone’s experience as a Lifeline provider in 18 states and the District of Columbia.

12. Finally, TracFone suggests that the Commission consider adopting an on-line or other computer-based system that would enable all ETCs offering Lifeline service to confirm whether Lifeline applicants are eligible for Lifeline benefits. Indeed, the FCC has found that “an on-line verification process, where states can obtain and provide data to allow ETCs real-time access to a database of low-income assistance program participants or income reports, could be a quick, easy, and accurate solution.”⁶ Allowing ETCs to access a neutrally-administered database solely to determine whether a Lifeline applicant’s name is listed as a participant in a Lifeline qualified program would enable qualified low income consumers to easily enroll in Lifeline while providing the Commission with reasonable assurance that the risk of fraud would be eliminated.

CONCLUSION

13. 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.⁷ Based on the foregoing,

⁵ In the Matter of Lifeline and Link-Up, 19 FCC Rcd 8302, ¶ 27 (2004).

⁶ Id., ¶ 36.

⁷ See 47 U.S.C. § 254(b)

TracFone requests that the Commission grant its application for rehearing and issue an order granting TracFone's request for waiver of Commission rule 4 CSR 240-31.050(3).

Respectfully submitted,

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September 4, 2009

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 4th day of September, 2009, on counsel of record.

/s/ Mark P. Johnson
Mark P. Johnson