

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Petition of TracFone                    )  
Wireless, Inc. for Designation as an Eligible                )  
Telecommunications Carrier in the State of                 )  
Missouri    )

Case No. TA-2009-0327

**RESPONSE TO NOTICE OF EX PARTE COMMUNICATION**

TracFone Wireless, Inc. (“TracFone”), by undersigned counsel, hereby responds to the Notice of Ex Parte Communication entered by Commission Chairman, Robert M. Clayton, III, on June 16, 2009 in the above-captioned proceeding.

1. Included with Chairman Clayton’s response are several e-mails sent to him by Nebraska Public Service Commissioner Anne Boyle. Leaving aside questions of the propriety of a member of one state commission communicating with a member of another state commission on an ex parte basis about matters affecting a pending matter before the latter Commission, Commissioner Boyle’s e-mail correspondence contains misleading and inaccurate information which warrants response by TracFone.

2. As Commissioner Boyle predicted in her June 9, 2009 e-mail, the Universal Service Fund contribution factor for third quarter 2009 will be increased from 11.3 percent to 12.9 percent.<sup>1</sup> To suggest that TracFone’s Lifeline-only Eligible Telecommunications Carrier (ETC) designation by the Federal Communications Commission and by several states is a significant cause of this increase is inaccurate, unsupported, and highly prejudicial to TracFone and its Lifeline program -- a program which is benefitting tens of thousands of low income households in the states where it is now available.

---

<sup>1</sup> See Public Notice - Proposed Third Quarter 2009 Universal Service Contribution Factor, DA 09-1322, released by the FCC, June 12, 2009.

3. Unlike universal service fund (USF) high cost support, Lifeline support is available to ETCs only when they obtain Lifeline customers. As Commissioner Boyle is well-aware, there are only two ways any ETC can obtain Lifeline customers: 1) by “capturing” customers from another ETC; and 2) by enrolling in its Lifeline program qualified low income persons not previously participating in Lifeline. In the former situation, there is no impact on the size of the USF. If TracFone persuades a Missouri resident to switch its Lifeline service from, *e.g.*, AT&T/SBC to TracFone, TracFone will gain the Lifeline support, but AT&T/SBC will lose the Lifeline support so the amount of support will not change. In the latter case, there will be additional USF support being paid, since an additional low income household will be receiving Lifeline benefits. However, TracFone respectfully submits that expanding Lifeline participation to cover more low income households is a positive circumstance, not one to be avoided. Indeed, providing affordable telecommunications service to low income households is a stated goal of the federal universal service program.

4. It is difficult to imagine any federal benefit program more underutilized than Lifeline. According to FCC data, nationally only about 33.7 percent of Lifeline-eligible low income households are enrolled in the program. In Missouri, only 10.3 percent of eligible households are enrolled.<sup>2</sup> In other words, nearly ninety percent of Lifeline-eligible low income households in Missouri are not currently benefitting from the Lifeline program despite the fact that the program’s primary purpose is to support telephone service for low income households. Based on TracFone’s success in enrolling qualified low income customers in other states, TracFone is confident that its aggressive and creative marketing strategy and its innovative offering of free

---

<sup>2</sup> 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).

wireless phones and free wireless telecommunications service will be well-received by low income Missourians and that Lifeline enrollment in the state will be increased. Even if such increases place some upward pressure on the size of the USF, that will be well-spent money as those funds will be used for their intended purpose -- to support telecommunications service to those in need.

5. Based upon FCC data, it strains credulity to suggest that TracFone's success in enrolling low income households in its SafeLink Wireless Lifeline program will have any significant impact on the USF. The Commission's attention is directed to the Universal Service Administrative Company (USAC) demand projections referenced in the FCC's June 12, 2009 public notice. USAC projects third quarter total USF program collection needs at \$2,028,950,000, of which total low income program demand will comprise only \$237,730,000 -- less than twelve percent of the total.

6. Efforts to control the size of the USF need to focus on the eighty-eight percent of the fund which has nothing to do with the low income program.<sup>3</sup> Indeed, TracFone shared its concerns about controlling USF growth with Commissioner Boyle in a recent letter following reports that she had made similar comments about TracFone's Lifeline program in correspondence with Members of Congress. Attached to this response is a June 12, 2009 letter from F.J. Pollak, President and Chief Executive Officer of TracFone, to Commissioner Boyle, correcting several of her statements. TracFone respectfully requests that Mr. Pollak's letter, along with this response, be entered into the record of this proceeding.<sup>4</sup>

---

<sup>3</sup> The low income programs include Lifeline and Link-Up. Pursuant to conditions imposed on TracFone by the FCC, it is not eligible for Link-Up support.

<sup>4</sup> Commissioner Boyle's stated concerns about pressures on the USF are understandable. Her state, Nebraska, is one of the nation's leading beneficiaries of the USF. According to the most recent FCC data, in 2007, Nebraska received \$77,832,000 more in USF support than that state's

7. Finally, TracFone notes with concern Commissioner Boyle's wholly-unsupported assertions that TracFone would not be able to prevent ineligible persons from enrolling in its Lifeline program. Nowhere does Commissioner Boyle offer any explanation as to why TracFone -- or any other ETC who happens to offer prepaid wireless services -- would be any less able to comply with existing eligibility certification and verification requirements than would any other ETC. In fact, the FCC has established rules to govern both initial certification of customer eligibility and annual verification of continued eligibility. TracFone complies with those requirements in all jurisdictions where it offers SafeLink Wireless Service and it will do so in Missouri. In this regard, the Commission's attention is directed to TracFone's Response to Staff Recommendation and Petition for Waiver filed in this proceeding on June 12, where TracFone describes in detail how the FCC in conjunction with the Federal-State Joint Board established rules which carefully balance the need for convenient Lifeline enrollment with prevention of fraud. Those rules are working well in all jurisdictions.

[Remainder of Page Intentionally Left Blank]

---

ratepayers contributed to the USF. In contrast, Missouri contributed \$4,175,000 more to the USF than the state received. See Universal Service Monitoring Report, CC Docket No. 98-202, Table 1.12.

In conclusion, nothing contained in the Chairman Clayton's June 16, 2009 Notice of Ex Parte Communication provides any basis for delayed action on TracFone's petition or on imposition of conditions which would only make SafeLink Wireless service less available to those low income Missouri households which need it most.

Respectfully submitted,

/s/ Mark P. Johnson

---

Mark P. Johnson, MO #30740  
Sonnenschein Nath & Rosenthal LLP  
4520 Main Street, Suite 1100  
Kansas City, Missouri 64111  
(816) 460-2400  
(816) 531-7545 (facsimile)  
mjohnson@sonnenschein.com

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

*Counsel for TracFone Wireless, Inc.*

June 22, 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 22nd day of June, 2009, on counsel of record.

/s/ Mark P. Johnson  
Mark P. Johnson