

**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 and Link Up Service to)
Qualified Households)
_____)

Docket No. _____

**PETITION OF TRACFONE WIRELESS, INC.
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE STATE OF MISSOURI FOR THE LIMITED PURPOSE OF
OFFERING LIFELINE AND LINK UP SERVICE TO QUALIFIED HOUSEHOLDS**

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TracFone Wireless, Inc. (“TracFone”), by its undersigned counsel, and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Communications Act”), Missouri Statutes, Title XXV, § 392.248, and Missouri Code of State Regulations tit. 4, § 240-3.570, hereby submits this Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Missouri. TracFone seeks ETC designation solely to provide Lifeline and Link Up service to qualifying Missouri consumers; it will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high cost areas.¹ As demonstrated herein, and as certified in Exhibit 1 to this Petition, TracFone meets all the statutory and regulatory requirements for designation as an ETC in the State of Missouri. TracFone respectfully requests that the Missouri Public Service Commission (“Commission”) grant this Petition and that it do so expeditiously so that TracFone may provide Lifeline and Link

¹ Given that TracFone only seeks Lifeline and Link Up support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to TracFone.

Up service to low income households at the earliest practicable time.

I. TracFone's Universal Service Offering.

TracFone is incorporated under the laws of the State of Delaware and is headquartered at Miami, Florida. Its corporate offices are located at 9700 N.W. 112th Avenue, Miami, FL 33178. TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States, including the State of Missouri. TracFone provides service through a "virtual network" consisting of services obtained from numerous licensed operators of wireless networks. TracFone has provided CMRS service throughout the State of Missouri continuously for the past ten years. In Missouri, TracFone obtains service from the following underlying carriers: Alltel, AT&T, US Cellular, T-Mobile, and Verizon. TracFone's arrangements with these providers enable it to offer services wherever any of those providers offer service in the State of Missouri. Indeed, TracFone service is available wherever wireless service is available in Missouri. With more than eleven million customers nationwide, TracFone is the leading provider of prepaid wireless service in the United States.

TracFone, through its arrangements with the underlying carriers identified in the preceding paragraph, has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Federal Communications Commission ("FCC") Rules (47 C.F.R. § 54.101(a)) throughout Missouri. Upon designation as an ETC, TracFone will make available to consumers Lifeline and Link Up offerings which will provide consumers with all of the functionalities and features currently provided by TracFone to existing customers. TracFone will provide Lifeline and Link Up service to qualifying customers requesting these services throughout Missouri pursuant to the universal service program and in accordance with 47 C.F.R. § 54.202(a)(1).

TracFone's Lifeline offerings will differ from other ETCs' Lifeline programs in several very important respects. For one thing, TracFone will offer low income consumers the convenience and portability of wireless services. TracFone believes that many Lifeline-eligible consumers will take advantage of the opportunity to obtain subsidized wireless service. In addition, unlike any other ETC's Lifeline programs, TracFone's Lifeline service will provide quantities of wireless usage at no charge to the consumer. Stated simply, TracFone's Lifeline service will be free! Typically, Lifeline programs provide participating consumers with discounts below carriers' standard rates. However, participating customers still must pay the discounted rates and face service disconnection if they fail to pay the amounts owed. For example, if a provider's standard monthly charge is \$30.00 and the Lifeline customer receives a \$10.00 discount funded by the USF, the customer still receives an invoice for \$20.00, plus additional charges incurred during the billing period. In addition, under TracFone's Link Up plan, qualified customers will receive a free wireless telephone handset. Thus, with TracFone's Lifeline and Link Up plans, customers will be able to initiate and receive calls from their wireless phones while incurring no activation or usage charges. TracFone's Lifeline and Link Up plans are described at Section III.3 of this Petition.

Indeed, even without classification as an ETC, TracFone currently operates in accordance with the spirit of universal service. Because TracFone utilizes the networks of many licensed CMRS providers, TracFone service is available virtually nationwide (including throughout the State of Missouri). Moreover, TracFone service is available at nationally-uniform rates. TracFone service is priced the same at all locations in Missouri, and throughout the United States.

II. TracFone Meets the Requirements For Designation as an Eligible Telecommunications Carrier to Serve the Designated Areas in the State of Missouri.

Section 254(e) of the Communications Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.” Section 214(e)(2) of the Communications Act provides that a State commission “shall . . . upon request designate a common carrier that meets the requirements of paragraph 1 [of Section 214(e)] as an eligible telecommunications carrier for a service area designated by the State commission.”

As demonstrated below, and as set forth in the Declaration of F.J. Pollak, TracFone’s President and Chief Executive Officer, Exhibit 1, TracFone meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of the Communications Act. In addition, TracFone complies with the standards established by the FCC for determining whether applicants for ETC status serve the public interest.² TracFone recognizes that Section 214(e)(1)(A) of the Communications Act states that ETCs shall offer services, at least in part, over their own facilities and that Section 54.201(i) of the FCC’s Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier’s services. However, as described at Section II.B of this Petition, on June 8, 2004, TracFone filed with the FCC a petition requesting that the FCC exercise its forbearance authority under Section 10 of the

² See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, ¶¶ 40-43 (2005).

Communications Act (47 U.S.C. § 160) with respect to the facilities-based service requirement.³ The FCC granted the petition for forbearance in an Order dated September 8, 2005.⁴ In an Order dated April 11, 2008, the FCC granted all of TracFone's pending petitions for designation as an ETC, subject to the conditions set forth in the TracFone Forbearance Order.⁵

A. The Missouri Public Service Commission Has Jurisdiction to Designate TracFone as an ETC.

Section 214(e)(2) of the Communications Act authorizes state commissions, such as the Missouri Public Service Commission, to designate ETC status for federal universal service purposes.⁶ Indeed, "state commissions have the primary responsibility for the designation of eligible telecommunications carriers under Section 214(e)(2)."⁷ Although Section 332(c)(3)(A) of the Communications Act prohibits states from regulating the entry of or the rates charged by any provider of commercial mobile service or any private mobile service, this prohibition does

³ 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 ("Petition for Forbearance").

⁴ 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) ("TracFone Forbearance Order"). A copy of the TracFone Forbearance Order is attached hereto as Exhibit 2.

⁵ 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) ("TracFone ETC Order"). A copy of the TracFone ETC Order is attached as Exhibit 3.

⁶ See Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) ("USF Order").

⁷ Federal-State Joint Board on Universal Service, Twelfth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 93 (2000).

not allow states to deny wireless carriers ETC status.⁸ Therefore, the Commission is authorized to designate TracFone as an ETC.

Section 214(e)(2) of the Communications Act provides that a State commission shall designate a common carrier as an ETC, if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) requires a carrier designated as an ETC to offer the 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 discussed in Section II.D. of this Petition, TracFone will advertise the availability of its Lifeline and Link Up plans and the associated charges using media of general distribution.

As noted above, the FCC decided to forbear from applying the facilities-based requirement for ETCs to TracFone. 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.” As such, the Commission is required by Section 10(e) to act in accordance with the FCC’s TracFone Forbearance Order, and therefore, may not apply the facilities-based requirement to TracFone. Indeed, the Florida Public Service Commission, the Georgia Public Service Commission, and the Michigan Public Service

⁸ USF Order, at 8858-59, ¶ 145.

Commission already have complied with the FCC's Forbearance Order and have designated TracFone as an ETC in those states.⁹

B. TracFone Will Provide Service Through Resale.

In the TracFone Forbearance Order, the FCC granted TracFone's Petition for Forbearance subject to certain conditions. The FCC explained that requiring "TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live."¹⁰ The FCC also stated that grant of TracFone's petition for forbearance "serves the public interest in that it should expand participation of qualifying consumers" in the under-utilized low-income program.¹¹ The low income program supported by the Universal Service Fund includes both the Lifeline and Link Up programs.

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

⁹ Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order, Docket No. 26282 (Georgia Public Service Commission: May 6, 2008); Application for Designation as an Eligible Telecommunications Carrier (ETC) by TracFone Wireless, Inc. for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order No. PSC-08-0418-PAA-TP, Docket No. 070586 (Florida Public Service Commission: June 23, 2008); Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996, Order, Case No. U-15625 (Michigan Public Service Commission: October 21, 2008) (attached as Exhibits 4, 5 and 6).

¹⁰ TracFone Forbearance Order, ¶ 23.

¹¹ Id. ¶ 24.

date it provides Lifeline service; (d) TracFone obtaining a certification from each Public Service Answering Point (“PSAP”) where TracFone provides 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 FCC required TracFone to describe how it would implement each of these conditions. In October 2005, TracFone described to the FCC how it would comply with each of the FCC’s stated conditions. TracFone committed to providing all Lifeline customers with access to basic and E911 service even if the customer has no remaining prepaid minutes on his or her handset. TracFone further represented that it will provide new Lifeline customers with an E911-compliant handset and will replace any existing customers’ non-E911-compliant handsets with a compliant handset free of charge at the time such customers enroll in Lifeline. TracFone also stated that its Lifeline enrollment forms will require each applicant to certify under penalty of perjury that he or she is the head of the household and that he or she receives Lifeline service only from TracFone. In addition, TracFone explained that its enrollment form will require each applicant to list a primary residential address which TracFone will use to check its customer records to ensure that the applicant is not receiving Lifeline service for more than one handset associated with a particular address. TracFone also will verify annually using FCC-approved sampling methods that its Lifeline customers are still heads of households and that they only receive Lifeline service from TracFone

TracFone suggested an alternative to obtaining a certification from each PSAP where TracFone provides Lifeline service confirming that TracFone provides its Lifeline customers

with access to 911 service regardless of the availability of prepaid minutes on a customer's handset and that TracFone's Lifeline customers have E911 compliant handsets. However, the FCC did not accept TracFone's suggestion. Therefore, in states in which TracFone was designated as an ETC by the FCC, TracFone is working to obtain PSAP certifications as described in the TracFone Forbearance Order.¹²

In the TracFone ETC Order, the FCC approved TracFone's plan for complying with those conditions.¹³

C. TracFone Offers All Required Services and Functionalities.

TracFone offers, or will offer upon designation as an ETC in Missouri, all of the services and functionalities required by Sections 54.101(a) and 54.202(a) of the FCC's Rules (47 C.F.R. §§ 54.101(a), 54.202(a)) and Mo. Code Regs. tit. 4, § 240-3.570(3)(C), including the following:¹⁴

1. Voice Grade Access to the Public Switched Network.

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

¹² The PSAP certification condition imposed by the FCC has been difficult to implement and has resulted in delaying the availability of TracFone's SafeLink Wireless Lifeline service in several jurisdictions. Thus, on November 21, 2008, TracFone petitioned the FCC to modify the PSAP certification condition. In the petition, TracFone asks the FCC to permit TracFone to self-certify that its customers will have access to basic and E911 service if a PSAP does not respond to a request for certification within 90 days, provided that TracFone confirm with its underlying network providers that TracFone's customers 911 calls are treated by those carriers in the same manner that they treat their own retail customers' 911 calls. That petition remains pending.

¹³ TracFone ETC Order, ¶ 23.

¹⁴ The FCC's Rules require an applicant for ETC status to demonstrate that it satisfies network build-out and improvement requirements (47 C.F.R. § 54.202(a)(1)(ii)) and to provide 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.

Hertz and 4,000 Hertz for a bandwidth of approximately 3500 Hertz.¹⁵ 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.

2. Local Usage.

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 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. FCC Rule 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 LEC in the area.¹⁶ Importantly, the 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 requirements.¹⁷ As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the FCC.

Wireless and wireline services, though increasingly substitutable for each other, are different from each other and they are priced differently. Unlike any ILECs' or other ETCs' Lifeline plans, TracFone's Lifeline offerings will go beyond those of other providers in a very

¹⁵ See USF Order, at 8810-11, ¶¶ 63-64; see 47 C.F.R. § 54.101(a)(1).

¹⁶ Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6385, ¶ 33 (2005).

¹⁷ Id. ¶ 32.

important respect: TracFone's Lifeline customers will receive as part of Lifeline service specified amounts of free wireless service. That is, Lifeline customers will be able to use TracFone's service to initiate and receive specified amounts of wireless calling -- local and long distance -- with no charge to the customers.

3. Dual Tone Multi-Frequency ("DTMF") Signaling or Its Functional Equivalent.

DTMF signaling allows carriers to provide expeditious call set-up and call detail information and enables modem usage.¹⁸ 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).

4. Single-party service or Its Functional Equivalent.

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.¹⁹ TracFone provides customers with single-party access for the duration of every phone call in accordance with 47 C.F.R. § 101(a)(4). TracFone does not provide "multi-party" or "party line" services.

5. Access to 911 and E911 Emergency Service.

The FCC has declared that access to emergency services is essential.²⁰ TracFone provides universal access to the 911 system for its customers. TracFone has implemented and will continue to implement enhanced 911 ("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. In particular, TracFone will fully comply with

¹⁸ USF Order, 12 FCC Rcd at 8814, ¶ 71.

¹⁹ Id. at 8810, ¶ 62.

²⁰ Id. at 8815, ¶ 72.

the FCC's E911 requirements applicable to wireless resellers.²¹ Pursuant to the FCC's E911 Order, providers that use other carriers' facilities to provide wireless voice service to customers have an obligation to comply with the FCC's E911 rules "to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP [public service answering point]."²² TracFone will make available access to E911 service in accordance with applicable FCC requirements. In addition, in accordance with 47 C.F.R. § 54.202(a)(2), TracFone has the ability to remain functional in emergency situations. As described in this Petition, TracFone provides service in Missouri by reselling services of underlying wireless network carriers, including Alltel, AT&T, US 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. Throughout its ten years of existence, TracFone's service reliability has compared favorably with that of any facilities-based operator in the wireless telecommunications industry.

6. Access to Operator Services.

TracFone offers all of its customers access to operator services, in accordance with 47 C.F.R. § 54.101(a)(6).

7. Access to Interexchange Service.

TracFone customers can use TracFone's services to complete toll calls as required by 47 C.F.R. § 54.101(a)(7). In fact, TracFone does not impose separate charges for interexchange calls. Long distance calling is included in TracFone's service with no additional charge.

²¹ See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340 (2003).

²² Id. at 25378-79, ¶ 91.

8. Access to Directory Assistance.

All TracFone customers receive access to directory assistance service through the TracFone virtual network as required by 47 C.F.R. § 54.101(a)(8). Specifically, all TracFone customers, including those customers located in Missouri, have access to directory assistance services provided by TracFone's vendors.

9. Toll Limitation for Qualified Low-Income Customers.

There is no need for TracFone to offer a toll limitation feature to qualifying low-income customers. Since TracFone's service is a prepaid service, no customers will be disconnected for failure to pay toll charges or, for that matter, any other charges. TracFone treats long distance minutes of use as any other usage and the customers are not charged separately for toll services. Inasmuch as 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 what they already have paid for or what service quantities they have been provided to them under the Lifeline program. Thus, TracFone's prepaid services are especially beneficial to lower 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.

D. TracFone Will Be Able to Serve the Designated Areas Within a Reasonable Time.

TracFone provides service in Missouri 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 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. Indeed, it already serves those areas. 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 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) and Mo. Code Regs. tit. 4, § 240-3.570(3)(C)(3).

E. Service Quality Commitments.

As a reseller of other carriers' wireless services, TracFone's service is of the same quality and reliability as that of its underlying vendors. TracFone cannot assure the Commission that it will never experience service disruptions. 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 Missouri market. To demonstrate its commitment to high service quality, TracFone will comply with the CTIA - The Wireless Association® Consumer Code for Wireless Service in accordance with 47 C.F.R. § 54.202(a)(3) and Mo. Code Regs. tit. 4, § 240-3.570(2)(B). In addition, TracFone's Privacy Policy is available to all customers on its website at <http://www.tracfone.com> and it is attached as Exhibit 7.

F. TracFone Will Advertise the Availability of Supported Services.

TracFone 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 Section 214(e)(1)(A) of the Communications Act and Section 54.201(d)(2) of the FCC's Rules (47 C.F.R. § 54.201(d)(2)) and Mo. Code Regs. tit. 4, § 240-3.570(2)(A)(6). 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 understands that it will be competing with other ETCs in Missouri, including the incumbent local exchange carriers, to be chosen by consumers to be their Lifeline service provider. TracFone 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 would 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.

In addition, TracFone 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. Retail vendors such as Rent-a-Center, Dollar General Stores, Walgreen's, CVS, and even Wal-Mart, 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. Retailers are strongly encouraged to display all advertising materials provided by TracFone. While TracFone does not require retailers to use the TracFone-provided advertising materials in their stores, TracFone's past experience with retailers is that many retailers choose to display the advertising. 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 has been the case in the past.

The Commission should be aware that TracFone has had previous experience marketing Lifeline service and was profoundly successful. In October 2005, following the devastation caused by Hurricane Katrina, the FCC established a special Lifeline program which enabled wireless providers to be designated as ETCs to offer a one-time Lifeline service to persons in the states of Louisiana, Mississippi, and Alabama who had been displaced by the hurricane.²³ TracFone was one of the first providers to be designated as an ETC under the FCC's Hurricane Katrina program. Within a period of several months, TracFone was able to enroll nearly 30,000 hurricane victims in its Lifeline program using marketing efforts similar to those proposed herein, as well as other methods intended to address the special challenges of reaching out to potential Lifeline customers who had lost their homes, and were residing in temporary locations - - often far away from their home communities. TracFone believes that its advertising and outreach efforts detailed above will result in increased participation in the Lifeline program, as well as increased participation in the Link Up program. The Commission's grant of TracFone's ETC Petition will promote the important goal of increasing Lifeline and Link Up participation.

²³ Federal-State Joint Board on Universal Service, 20 FCC Rcd 16883 (2005). Under the Hurricane Katrina Lifeline program, ETCs provided \$130.00 in support to qualified customers in the form of a free wireless handset and at least 300 free minutes. If the subscriber did not need a handset, then the subscriber could opt instead for a Lifeline-supported package of greater than 300 minutes. Id. ¶¶ 13, 22.

G. TracFone Will Comply with the Lifeline and Link Up Certification and Verification Requirements in 47 C.F.R. §§ 54.410 and 54.416.

Sections 54.410 and 54.416 of the FCC's Rules require ETCs to comply with certification of eligibility and verification of continued eligibility requirements for Lifeline and Link Up participation. TracFone is only seeking funds from the federal USF. Therefore, TracFone will certify and verify consumer eligibility in accordance with the FCC's rules governing certification and verification of Lifeline and Link Up eligibility.

H. TracFone Requests Designation Throughout Its Service Area in Missouri.

TracFone is not a rural telephone company as defined in Section 153(37) of the Communications Act (47 U.S.C. § 153(37)). Thus, TracFone is required to describe the geographic area(s) within which it requests designation as an ETC.²⁴ TracFone requests designation as an ETC for its entire service area in Missouri. TracFone, through its resale of wireless services provided by its underlying vendors in Missouri, provides service in every Zip Code in the State of Missouri. Accordingly, TracFone seeks ETC status throughout the entire State of Missouri.

TracFone reiterates the fact that it is applying for ETC designation solely to utilize USF funding to provide Lifeline and Link Up plans to qualified low income consumers. It does not seek and will not accept high cost support. Therefore, its designation as an ETC will cause no growth in the high cost portions of the USF and will not erode high cost support from any rural telephone company. TracFone's authorized service area covers the telephone company service areas of all ILECs operating in Missouri.²⁵ The Commission may designate TracFone as an ETC

²⁴ Public Notice - Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, FCC 97-419, 12 FCC Rcd 22947 (1997).

²⁵ See Missouri's ILECs (attached as Exhibit 9).

in non-rural areas that TracFone serves without redefining the service areas of non-rural telephone companies. The Commission may designate TracFone as an ETC in rural telephone company service areas upon a finding that such designation would serve the public interest.²⁶

III. Designation of TracFone as an ETC in the State of Missouri Would Serve the Public Interest.

As noted above, TracFone seeks certification as an ETC in areas served by rural telephone companies, as well as in areas served by non-rural telephone companies. Consequently, the Communications Act requires that the Commission determine that TracFone's designation as an ETC would serve the public interest.²⁷

The FCC has determined that “[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”²⁸ This is particularly applicable in the rural areas served by TracFone within the State of Missouri -- areas that in most cases are not presently served by competitive wireline carriers that could provide an alternative to the incumbent LECs. Designation of TracFone as an ETC will provide a valuable alternative to the existing telecommunications services available in these areas. Those public interest benefits include larger local calling areas, the convenience and security afforded by mobile telephone service, the opportunity for customers to control their costs by purchasing in advance only the volumes of service which they need and supplementing those quantities on an “as needed” basis after

²⁶ See 47 C.F.R. § 54.207(c).

²⁷ 47 U.S.C. § 214(e)(2); see Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, ¶ 42 (2005) (“We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.”).

²⁸ See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, *Memorandum Opinion and Order*, 16 FCC Rcd 48, 55 (2000).

exhausting their monthly supply of free service, and, availability of E911 service in accordance with the FCC's E911 requirements. In addition, TracFone's inclusion of toll calling within its calling plans will enable consumers to avoid the risk of becoming burdened with large and unanticipated charges for toll calling.

TracFone's SafeLink Lifeline and Link Up service offers important benefits that are especially needed by low income Missourians in this time of economic downturn. As the Commission is aware, the Dow Jones Industrial Average, a primary indicator of the health of the economy, is at a 12 year low. Thus, the savings accounts upon which many Missourians depend for emergencies and for retirement have been significantly eroded. Both the number of unemployed persons (11.6 million) and the unemployment rate (7.6 percent) in the United States rose in January 2009. Over the past 12 months, the number of unemployed persons has increased by 4.1 million and the unemployment rate has risen by 2.7 percentage points.²⁹ In January 2009, Missouri experienced an unemployment rate of 8 percent.³⁰ This unemployment rate, higher than the national average, has had a significant impact on Missourians.

As noted above, the availability of a mobile telephone will be critical to many of those unemployed Missourians' efforts to search for other employment opportunities. Without a regular paycheck, wireless telephone service would be a luxury beyond the means of many of those persons. TracFone's SafeLink Lifeline and Link Up programs will enable thousands of Missourians to obtain wireless service which would otherwise be unavailable to them. Finally, more than 2.3 million American homeowners faced foreclosure proceedings last year, an 81

²⁹ Bureau of Labor Statistics, Employment Situation Summary, USDL 09-0117, Feb. 6, 2009, at <http://www.bls.gov/news.release/empsit.nr0.htm>, viewed on Feb. 24, 2009.

³⁰ See "Employment Quick Facts for January 2009" at <http://www.dolir.mo.gov/>, viewed on March 2, 2009.

percent increase from 2007.³¹ The dire economic situation facing an increasing number of Missourians indicates that now, more than ever, low income individuals can greatly benefit from the advantages offered by TracFone's SafeLink Lifeline and Link Up service. TracFone's Lifeline and Link Up service will allow low income Missourians, including many who have been adversely impacted by the failing economy or job loss, to have access to free wireless service to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.

Designation of TracFone as an ETC will also provide an incentive to the incumbent LECs serving those portions of the state to improve their existing networks in order to remain competitive, resulting in improved services to consumers. Designation of TracFone as an ETC will also benefit consumers because support to services provided by TracFone will help assure that quality services are available at "just, reasonable, and affordable rates" as envisioned in the Communications Act.³²

The FCC has identified factors to be considered in determining whether designation of an additional ETC would serve the public interest. These factors require the Commission to weigh whether the benefits of an additional ETC would outweigh potential harms. The factors to be considered include: 1) the benefits of increased competitive choice; and 2) the unique advantages of the applicant company's service offerings.³³ As described in the following paragraphs, TracFone meets these criteria.

³¹ "Foreclosure Activity Increases 81 Percent in 2008," RealtyTrac Press Release, Jan. 15, 2009, at <http://www.realtytrac.com/ContentManagement/pressrelease.aspx>, viewed on Feb. 24, 2009.

³² See 47 U.S.C. § 254(b)(1).

³³ See 47 C.F.R. § 54.202(c).

A. The Benefits of Increased Competitive Choice.

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the FCC for more than three decades.³⁴ However, the benefits of competitive choice are especially valuable in situations in which wireless providers like TracFone seek to provide service to rural communities and elsewhere. As the FCC recognized in Highland Cellular, some households in rural communities do not have access to the public switched network through the incumbent local exchange carrier. Moreover, the availability of a wireless competitive alternative benefits those rural consumers who often must drive significant distances to work, schools, stores, and other community locations.³⁵ TracFone's prepaid wireless service alternative will provide consumers with convenient and affordable telecommunications service, both from their residences and when they are away from their homes.

TracFone believes that many consumers, including qualified Lifeline and Link Up customers, view the portability and convenience of wireless service as a modern necessity, not a luxury. Parents need to be able to reach their children wherever they may be (and vice versa); persons seeking work need to be reachable by potential employers; persons need to call for emergency assistance while away from home. According to FCC data, Missouri's statewide Lifeline participation rate is only 10.3 percent of eligible households.³⁶ In other words, almost

³⁴ See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

³⁵ Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 6422, ¶ 23 (2004).

³⁶ 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 2007 Participation Rates by State, available at <http://www.usac.org/li/about/participation-rate-information.aspx>.

ninety percent of low income Missouri households which are eligible to participate in Lifeline are not doing so. TracFone expects that qualified consumers will elect to participate in Lifeline, and take advantage of the free handset available under TracFone's Link Up plan, if a wireless option is available.

B. Unique Advantages of TracFone's Service Offerings.

As described elsewhere in this Petition, TracFone's entire business model is predicated on providing easy-to-use, pay-as-you-go, affordable wireless telecommunications service to consumers to whom wireless service would be otherwise unavailable or unaffordable. TracFone offers consumers an opportunity to acquire wireless service using state-of-the-art handsets and such features as caller ID, voice mail, text messaging, and long distance calling without toll charges. Because TracFone's service requires no term contracts, no minimum service periods or volume commitments, no credit checks, and no early termination fees, the service is available to everyone – irrespective of age; irrespective of residency; irrespective of creditworthiness. Moreover, TracFone's prepaid service is unique in that usage information and remaining balance information is stored in the handsets and is thus available to consumers on a "real-time" basis. TracFone's prepaid service offers Lifeline-qualified customers access, quality and price. None of the incumbent providers nor those other non-incumbent ETCs serving the areas covered by TracFone in Missouri offer service to consumers under comparable conditions.

TracFone will offer the following Lifeline and Link Up plans to its customers. Under the plans, TracFone's customers will receive free monthly service, free airtime each month, and a free handset. A description of the Lifeline and Link Up plans are as follows:

TracFone SafeLink Wireless Lifeline Plan

Each TracFone Lifeline customer will be provided with a specified number of minutes of use each month. The amount of free minutes of airtime to be provided will be based on the

amount of federal Universal Service Fund low income support available pursuant to the rules of the Federal Communications Commission. TracFone will calculate the number of minutes each Lifeline customer will receive per month to ensure that each Lifeline customer receives the full value of the Lifeline discount to which he or she is entitled, based upon the amount of the Lifeline discount required by the Commission. Those minutes will be automatically added to each customer's prepaid account balance each month. Unused minutes will roll over from month-to-month so long as the customer remains enrolled in the Lifeline program. In addition, Lifeline customers will be allowed to purchase special low volume usage cards. Those cards -- available only to Lifeline customers -- will be sold in denominations of \$3.00, \$5.00 and \$10.00. The per minute rate for usage purchased with such low volume cards will be \$0.20 per minute. That is TracFone's lowest per minute rate and is normally only available through the purchase of higher volume cards. The Lifeline low volume cards will be sold through retail vendors whose stores are frequented by lower income consumers. TracFone pledges that one hundred percent of the federal Lifeline support it receives will be flowed through to Lifeline customers in the form of free usage.³⁷

TracFone Link Up Plan

The Link Up program reduces eligible low-income consumers' charges for commencing telephone service by one-half of the telephone company's charge, or \$30.00, whichever is less.³⁸ Unlike wireline telephone service and traditional post-paid wireless service, the primary start-up cost or "connection" cost to a prepaid wireless customer is the acquisition of the wireless

³⁷ TracFone reserves the right to modify its Lifeline and Link Up plans based on changes in market conditions or the amount of USF support available. However, under all Lifeline and Link Up plans, 100 percent of federal and state required Lifeline and Link Up support will be provided to Lifeline and Link Up customers in the form of free usage.

³⁸ 47 C.F.R. § 54.411(a)(1).

handset. TracFone will make available handsets to its participating Lifeline customers at no charge. TracFone's average cost of purchasing handsets is above \$50.00 per unit. The provision to Lifeline customers of those handsets at no charge to the customers will be funded through the Link Up program.

TracFone will pre-activate handsets provided to qualified customers,³⁹ enroll the customers in the Lifeline plan, and allocate the appropriate number of minutes of usage to the customers' accounts. The handsets will be delivered to customers upon enrollment in the program with the first month's free usage allotment already activated. The phones will remain active for one year even if no additional usage is purchased. Low income customers who have limited access to communications sources will gain immediate and free access to wireless telecommunications service simply by turning on the handsets provided by TracFone.

C. Impact on the Universal Service Fund.

The FCC has considered the impact on the USF when determining whether to grant TracFone's petitions for designation as an ETC.⁴⁰ Whatever impact classification of TracFone as an ETC will have on the universal service fund will be negligible. TracFone seeks ETC designation solely to enable it to offer Lifeline and Link Up benefits to eligible low income consumers. TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of obtaining high cost support. As noted in the FCC's TracFone Forbearance Order, "the potential growth of the fund associated with high-cost support distributed to competitive ETCs" is not relevant to carriers seeking support associated with the low-income program.⁴¹ In

³⁹ Customers who do not qualify for Lifeline must purchase a handset and then activate it by calling TracFone's Customer Care department from a landline telephone or by completing a form on TracFone's website.

⁴⁰ TracFone ETC Order, ¶ 16 n.47.

⁴¹ TracFone Forbearance Order, ¶ 17.

2006, low-income support accounted for only 11.8 percent of the distribution of the total universal service fund, while high-cost support accounted for 61.6 percent.⁴² “Any increase in the size of the fund [associated with granting TracFone’s ETC petition] would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline and Link Up programs, furthering the statutory goal of providing access to low-income consumers.”⁴³ Indeed, the FCC has acknowledged the benefits of designating a carrier as an ETC, when the carrier only seeks to participate in the USF’s low income programs. The FCC included the following statement in a May 1, 2008 Order in which it established an interim cap on high-cost support:

Moreover, there are advantages to obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support. In particular, the ability of competitive ETCs to receive low-income universal service support shows value in obtaining and maintaining ETC designation separate and apart from high-cost support. Indeed, TracFone Wireless, Inc. (TracFone) sought forbearance from section 214(e)(1) of the Act so that it could seek designation as an ETC eligible only to receive universal service Lifeline support. TracFone took this step because “offering prepaid plans which make wireless service available to low income users ... has been a critical component of TracFone's business strategy since the company’s inception.” Other ETCs may have similar business strategies. Further, by offering Lifeline and Link Up service, a competitive ETC may attract new subscribers that may not otherwise have taken telephone service. This would increase a competitive ETC’s base of subscribers and, consequently, lower its average cost of serving all of its subscribers. Moreover, competitive ETCs may be eligible for separate universal service support at the state level.⁴⁴

Furthermore, it is important to recognize the differences between low income funding for the Lifeline and Link Up programs and high cost funding. With Lifeline and Link Up, ETCs

⁴² Wireline Competition Bureau, Federal Communications Commission, Trends in Telephone Service, Table 19.1 and Chart 19.1 (2008).

⁴³ TracFone Forbearance Order, ¶ 17.

⁴⁴ High-Cost Universal Service Support, et al., Order, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (released: May 1, 2008), ¶ 30.

only receive USF support for customers they obtain. If TracFone acquires Lifeline customers currently served by other ETCs, TracFone will gain the Lifeline support for those customers, but the ETCs losing the customers will lose the support. TracFone will only increase the amount of USF Lifeline funding in situations where it obtains new Lifeline customers, i.e., customers not currently enrolled in other ETCs' Lifeline programs. TracFone will also gain Link Up funding for each new customer. In contrast, with high cost support, when new ETCs enter the market and capture customers from the existing ETCs, both the incumbent ETCs and the new ETCs receive high cost support -- based on the incumbent LECs' costs, thereby increasing the size of the USF.

D. Designation of TracFone as an ETC Will Benefit the Public Interest of Consumers Throughout Missouri.

In addition to meeting the public interest factors, TracFone, if designated as an ETC, will also serve the public interest because TracFone will participate in the Lifeline and Link Up programs as required by the FCC's Rules and will otherwise comply with all FCC and Commission Rules governing universal service programs, which are designed to ensure that the public interest standards of the Communications Act are achieved. As a national leader in prepaid wireless services, TracFone has done much to advance the availability of wireless service for those portions of the population for whom wireless service is otherwise unavailable or, if available, is too costly and requires term duration and volume commitments which are beyond the means of many consumers.

Moreover, grant of TracFone's Petition will serve the public interest in increasing the number of ETCs in Missouri. By increasing the number of carriers eligible for federal USF support, the amount of federal USF dollars distributed to Missouri consumers may increase. Missouri residents are substantial net contributors to the federal universal service programs,

contributing more than \$4.1 million to the federal USF than was received by Missouri from the federal USF in 2007.⁴⁵ Thus, it only seems equitable that a greater share of this federal funding be made available to Missouri residents, especially low income Lifeline and Link Up-eligible Missouri residents. By granting ETC status to TracFone, the Commission will enable TracFone to increase the number of Missouri residents receiving Lifeline and Link Up support, thereby increasing the amount of USF money flowing into Missouri.

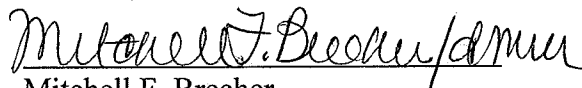
Finally, designation of TracFone as an ETC will serve the public interest by further promoting the extensive role TracFone plays in the provision of communications services to lower income and lower volume users, transient users, as well as other consumers who either choose not to enter into long-term service commitments or who are unable to meet the credit requirements necessary to obtain service from other wireline or wireless carriers. TracFone's "pay-as-you-go" wireless service enables consumers to enjoy the convenience and security of wireless telecommunication without being subject to extensive credit reviews and long-term service commitments which historically have limited the availability of wireless service to many Americans, including many Missouri residents. For all the reasons described herein, designation of TracFone as an ETC will serve the public interest.

⁴⁵ See Universal Service Monitoring Report, CC Docket No. 98-202, 2008, Table 1.12.

CONCLUSION

Based on the foregoing, TracFone contends that the requirements for eligibility for designation as an ETC have been met. Accordingly, TracFone requests that the Missouri Public Service Commission promptly grant its petition for designation as an eligible telecommunications carrier.

Respectfully submitted,


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