

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

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

STAFF RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and submits its Staff Response to Order Directing Filing as follows:

1. On July 14, 2009, the Missouri Public Service Commission (the Commission) issued its Order Directing Filing, ordering Staff to file a pleading discussing the implications of a waiver request filed by TracFone Wireless, Inc. (TracFone or the Company) with the Federal Communications Commission (FCC).

2. For the Commission’s information, TracFone currently has two (2) waiver requests pending before the FCC, the approval of which may carry implications related to the Commission’s decision in this matter.

3. On May 4, 2009, the Company filed with the FCC its Petition for Waiver¹, requesting a waiver of 47 C.F.R. § 54.403(a)(1). 47 C.F.R. § 54.403(a)(1) provides that the amount of “Tier One” Federal Lifeline support available to those providers designated as Eligible Telecommunications Carriers (ETC’s) shall equal “[t]he tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service...”. As applied

¹ Petition for Waiver, In the Matter of TracFone Wireless, Inc.’s Petition for Waiver of 47 C.F.R. § 54.403(a)(1), CC Docket No. 96-45.

to the TracFone Petition² before the Commission, 47 C.F.R. § 54.403(a)(1) mandates that if granted ETC status by the Commission, that TracFone’s “Tier One” Federal Lifeline support be limited to the End User Common Line Charge (referred to in the Staff Recommendation³ as the Subscriber Line Charge, or SLC), of those ILEC’s certificated in the State of Missouri. Because the ILEC AT&T has a lower SLC than the other ILEC’s certificated in the State (\$5.31 versus \$6.50), 47 C.F.R. § 54.403(a)(1) mandates that TracFone’s “Tier One” support be limited to lower amount (\$5.31) in those areas served by the ILEC AT&T. Compliance with 47 C.F.R. § 54.403(a)(1) has been emphasized in the Staff Recommendation as evidenced by Staff’s proposed condition that “TracFone receive no more in support reimbursement than the customer would have paid for service in the respective underlying ILEC service area.”⁴ To date, TracFone has not expressed to Staff its opposition to this condition.

If TracFone’s Petition for Waiver is granted by the FCC, the practical effect will be TracFone’s ability to recover an amount of “Tier One” Federal Lifeline support equal to the maximum amount charged by any ILEC in the State of Missouri. TracFone will receive \$6.50 in “Tier One” support for each and every qualifying Missouri customer, as opposed to \$5.31 for those qualifying customers located in AT&T’s service area.

Without stating a position as to TracFone’s Petition for Waiver, should the FCC grant such waiver, Staff concedes that its related condition will no longer apply. However, Staff emphasizes that the request contained in TracFone’s Petition for Waiver is conditioned upon the Company’s representation that TracFone will “pass through to its customers the full amount of

² See 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, and the First and Second Amendments thereto.

³ See Staff Recommendation, filed on May 20, 2009.

⁴ See Staff Recommendation, p. 3.

Lifeline support it receives from the federal Universal Service Fund (USF).”⁵ Thus, if TracFone’s Petition for Waiver is granted by the FCC, Staff recommends that the Commission condition the approval of TracFone’s Missouri Petition on the provision of an additional pro-rata benefit (additional minutes) to those customers located in the service territory of the ILEC AT&T.

4. On April 27, 2009, the Company filed with the FCC its Petition for Modification of Annual Verification Condition⁶ (Petition for Modification), requesting that the FCC modify an existing condition related to annual customer verification.⁷ Currently, TracFone must verify annually that *each* customer is the head of that customer’s household and that the customer receives Lifeline-supported service exclusively from TracFone. As stated in TracFone’s Petition for Modification, “TracFone requests that the annual verification condition imposed on it in the TracFone Forbearance Order be modified to allow TracFone to verify annually that its Lifeline customers are heads of household and received Lifeline-supported service only from TracFone through use of *a statistically-valid sample of those customers*.”⁸

If granted by the FCC, the request contained in TracFone’s Petition for Modification may have an effect upon the Petition before this Commission. 47 CFR § 54.410(c)(1) states as follows:

(1) By one year from the effective date of these rules, eligible telecommunications carriers in states that mandate Lifeline support must comply with state verification procedures to validate consumers’ continued eligibility for Lifeline. The eligible telecommunications carrier must be able to document that it is complying with the state regulations and verification requirements.

⁵ Petition for Waiver, p. 1.

⁶ Petition for Modification of Annual Verification Condition, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45.

⁷ The subject condition was initially imposed by the FCC in 2005 in its order conditionally granting the Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(1) (the TracFone Forbearance Order).

⁸ Petition for Modification, p. 3. Emphasis added.

Missouri is a state that mandates Lifeline support. The corresponding annual verification requirements and procedures are contained in 4 CSR 240-31.050(3)(E), which states as follows:

1. State verification procedures may include, but are not limited to, compliance with federal verification requirements, processes or guidelines.
2. Whenever an individual requests support on the basis of participation in any program other than that initially identified, state verification procedures shall include self-certification updates and documentation of participation for any program in which an individual has not previously self-certified and documented.

The Commission's rules concerning annual verification allow the Commission to impose upon an ETC the federal requirements, although the Commission has the authority to mandate verification procedures that are more stringent.

At issue currently in the case before this Commission is TracFone's pending request for a waiver of Commission Rule 4 CSR 240-31.050, which includes the above provisions concerning the annual verification requirements for those companies which receive support from the Missouri USF. The impact of the FCC's decision on TracFone's Missouri offering is dependent upon the Commission's decision regarding TracFone's pending waiver request. If the Missouri Commission denies TracFone's request for a waiver of Commission Rule 4 CSR 240-31.050 then the decision of FCC will not control the verification requirements that may be imposed upon TracFone in the State of Missouri. In other words, the Commission will have the ability to impose verification conditions in addition to those mandated by the FCC. In the alternative, if the Commission approves TracFone's pending waiver request then TracFone will comply with federal verification requirements, as those requirements are subsequently determined by the FCC.

WHEREFORE, Staff submits this Staff Response to Order Directing Filing for the Commission's information and consideration.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 21st day of July, 2009.

/s/ Eric Dearmont