

**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)

RESPONSE TO COMPANY PETITION FOR WAIVER

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and submits this Response to Company Petition for Waiver as follows:

1. On March 9, 2009, TracFone Wireless, Inc. (“TracFone” or “the Company”) submitted to the Missouri Public Service Commission (“the Commission”) its 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 (“Petition”), requesting designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Missouri for the purpose of receiving federal “Lifeline” universal service support.

2. On May 20, 2009, Staff filed its Staff Recommendation, in which Staff recommended that TracFone be granted ETC designation in the State of Missouri for the purposes of providing Lifeline support, conditional upon certain enumerated requirements, a number of which were derived from 4 CSR 240-31.050 (hereinafter referred to as the “MoUSF Rule”) and which relate to customer certification and Company verification of customer program participation eligibility (hereinafter referred to as the “Certification and Verification Conditions”). These Certification and Verification Conditions, outlined with designations corresponding to those contained in the Staff Recommendation, are as follows:

- C. Customers shall complete an application similar to the Missouri Universal Service Board approved application, which certifies under penalty of perjury that the individual or a dependent residing in the individual's household:
 - i. receives benefits from one of the qualifying programs, identifies the program or programs which that individual receives benefits; and,
 - ii. agrees to notify the carrier if that individual ceases to participate in the program or programs;
- D. Customers shall provide documentation of participation in the applicable program(s) as identified on the application;
- E. TracFone shall develop a process for recording the type of documentation received;
- F. TracFone shall develop a process for returning or destroying the documentation once recorded;
- G. TracFone shall establish state procedures to verify a customer's continued eligibility and shall provide such procedures to the commission staff and/or the Office of Public Counsel for review within thirty days of request;
- H. TracFone shall terminate an individual's enrollment in Lifeline if the individual ceases to meet eligibility requirements.

3. On June 12, 2009, TracFone filed its Response to Staff Recommendation and Petition for Waiver ("Petition for Waiver"), in which the Company questioned the propriety of Staff's application of the Certification and Verification Requirements derived from the MoUSF Rule, and in which the Company requested a waiver from those Certification and Verification Conditions in the event that the Commission found the MoUSF Rule to be applicable to the Company's Petition.

4. The MoUSF Rule applies to TracFone's Petition. As stated in the Staff Recommendation filed in this matter, in order to receive federal universal service support an eligible telecommunications company must comply with the requirements contained in 47 CFR Section 54. 47 CFR Section 54.409(a) provides as follows:

(a) To qualify to receive Lifeline service in a state that mandates state Lifeline support, a consumer must meet the eligibility criteria established by the state commission for such support. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income.

5. Missouri is a state which mandates Lifeline support. Therefore, as provided by 47 CFR Section 54.409(a), in order to qualify for federal Lifeline support consumers must meet the eligibility criteria established by the Commission. Those criteria have been established by the Commission and are found in the MoUSF Rule.

6. In specific, Subsection Three (3) of the MoUSF Rule (4 CSR 240-31.050(3)), provides in relevant portion as follows:

(3) Individual Eligibility.

(D) Individuals who qualify for low-income or disabled support shall complete a board-approved application.

1. By completing the application, customers who qualify for low-income or disabled support shall:

A. Certify under penalty of perjury that the individual or a dependent residing in the individual's household receives benefits from one of the qualifying programs;

B. Identify the program or programs from which that individual receives benefits;

C. Sign an authorization allowing, for the duration of the applicant's participation in the low-income or disabled support program, the appropriate federal, state or local agency to confirm to the commission or its staff that the individual or a dependent

residing in the individual's household participates in the qualifying program(s) at the time the application is made, and as subsequently deemed necessary for purposes of annual verification or other examinations of eligibility; and

D. Agree to notify the carrier if that individual ceases to participate in the program or programs.

2. Customers who qualify for low-income or disabled support shall provide documentation of participation in the applicable program(s) as identified on the application.

A. The telecommunications company shall develop a process for recording the type of documentation received; and

B. The telecommunications company shall develop a process for returning or destroying the documentation once recorded.

3. The application shall be used to certify individuals for both state and federal low-income support.

4. The companies shall rely upon application and documentation of participation to provide the benefits under these programs until individuals advise the company that they are no longer qualified, until the company is advised by the commission or its staff that individuals are not eligible, or until the company does not receive annual verification as contemplated in subsection (3)(E).

(E) The telecommunications company shall establish state procedures to verify a customer's continued eligibility for the low-income or disabled customer program.

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.

A. The telecommunications company shall develop a process for recording the type of documentation received; and

B. The telecommunications company shall develop a process for returning or destroying the documentation once recorded.

3. A copy of the telecommunications company verification procedures shall be made available to the commission staff and/or the office of public counsel for review within thirty (30) days of request. If, upon review, the commission staff and/or the office of public counsel have concerns about the sufficiency of a company's verification procedures, the commission staff and/or the office of public counsel shall present those concerns to the Missouri universal service board for review.

(F) The telecommunications company shall terminate an individual's enrollment in the low-income customer or disabled customer program if the individual ceases to meet eligibility requirements or refuses to authorize the appropriate federal, state or local agency to confirm to the commission or its staff that the individual or a dependent residing in the individual's household participates in one (1) of the qualifying programs. Notification of impending termination shall be in the form of a letter separate from the individual's monthly bill. Individuals shall be allowed sixty (60) days following the date of the impending termination letter to demonstrate continued eligibility to the telecommunications company. The telecommunications company shall terminate discounted services supported by the low-income customer or disabled customer program to any customer who fails to demonstrate continued eligibility within the sixty (60)-day time period.

7. As is evident, Certification and Verification Conditions contained in the Staff Recommendation filed in this matter are derived from the MoUSF Rule. The Commission not only has the authority, but the obligation to apply the MoUSF Rule to TracFone's Petition under 47 CFR 54.409(a).

8. While Subsection Five (5) of the MoUSF Rule, 4 CSR 240-31.050(5), does in fact provide the authority for a company to file an application for a waiver or variance from the MoUSF Rule, this provision also limits the Commission's ability to grant such requests to those supported by "good cause". 4 CSR 240-31.050(5).

9. TracFone cannot establish the requisite "good cause" required in order to obtain a waiver of the MoUSF Rule, and thus a waiver of Staff's Certification and Verification Conditions. The Company argues that Staff's Certification and Verification Conditions,

intended to deter fraud in the Federal Universal Service Fund (“Federal USF”), are unwarranted in that “[f]raud has not been a problem” in the Federal USF to date. Petition for Waiver, p. 4. However, TracFone further acknowledges that based upon the Company’s “non-traditional and aggressive marketing strategy” the Company anticipates substantially increasing Lifeline enrollment in the State of Missouri. Petition for Waiver, p. 6. Staff concedes that this is a very plausible outcome. While Staff supports efforts to increase the percentage of eligible persons who actually receive Lifeline support, the huge increase in participation calls into question whether all those the Company enrolls are in fact eligible for participation. As is stated in the Company’s Petition for Waiver at pages 5-6, “[i]n 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 only in a handful of states, TracFone is already providing SafeLink Wireless Lifeline service to over 1 million customers.”

In light of this rapid expansion in customer participation in a program which has been described by the Company as “underutilized¹,” the Company unreasonably relies on historically low rates of fraudulent receipt of Federal USF low-income support claims to assume that its “aggressive efforts” will not increase the prevalence or encourage the receipt of such fraudulent claims in the future. It was Staff’s intent in establishing the Certification and Verification Conditions to guard against this potential and to serve as responsible stewards of a system partially funded by Missouri consumers.

10. Furthermore, TracFone cites as good cause for a waiver those internal procedures already established by the Company in order to identify fraud. See Petition for Waiver, pp. 5-6. Although Staff appreciates these internal controls, such controls appear to focus upon the

¹ See Petition for Waiver, page 6, paragraph 8.

identification of fraud related to duplicate customer applications, not upon the identification of fraud related to customer attestations of eligibility.

11. Finally, the Company argues that “[r]equiring 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.” Petition for Waiver, p. 6. Staff cannot understand how verification documentation can “greatly increase” an administrative burden, given the alternative found in 47 CFR 45.409(d)’s requirement that an eligible telecommunication carrier must obtain from each customer-participant signed documentation certifying under penalty of perjury customer eligibility. On the administrative level, Staff’s Certifications and Verification Conditions merely require the Company to develop and implement a procedure to receive and record one additional form of documentation from consumers.

WHEREFORE, Staff submits this Response to Company Petition for Waiver for the Commission’s information and consideration in preparation for the on-the-record presentation scheduled for July 7, 2009.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont
Assistant General Counsel
Missouri Bar No. 60892

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-5472 (Telephone)
(573) 751-9285 (Fax)
eric.dearmont@psc.mo.gov

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 29th day of June, 2009.

/s/ Eric Dearmont