

**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)
Purpose of Offering Lifeline and Link Up Service to)
Qualified Households)
Case No. TA-2009-0327

STAFF RESPONSE TO COMMISSION QUESTIONS

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

1. On August 14, 2009, the Missouri Public Service Commission issued an Order Directing Filing, ordering the parties to Commission Case No. TA-2009-0327 to file a pleading answering four questions. These questions and Staff's corresponding answers are as follows:

Question 1:

If the conditions suggested by the Staff of the Commission are imposed in granting TracFone Wireless, Inc.'s application and the Company does not comply with those conditions, can the Commission revoke TracFone's designation as an Eligible Telecommunications Carrier?

Answer 1:

Yes.

TracFone is a commercial mobile radio service (CMRS) provider that provides prepaid wireless telecommunications services.¹ TracFone is a "pure wireless reseller," in that the Company owns no telecommunications facilities, but rather resells services provided by other facilities-based carriers. In the past, in an effort to avoid the "double recovery" of federal universal service support, the Federal Communications Commission (FCC) had declined to

¹ 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, p. 2.

extend the designation of Eligible Telecommunications Carrier (ETC) to pure resellers, such as TracFone, but had not distinguished its reasoning among various types of federal universal support requested by these carriers.² To be more specific, the FCC had not considered whether providing *only* “Lifeline” and *not* “High Cost” support to a pure wireless reseller would result in a double recovery of federal funding.³

On April 9, 2008, the FCC issued its TracFone ETC Order⁴ in which it conditionally granted the petition of TracFone to be designated as an ETC in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia. The FCC dismissed without prejudice TracFone’s petition for ETC designation in the State of Florida, since the Florida Public Service Commission, like that of Missouri, asserts its own jurisdiction over the ETC designations of wireless carriers. Under the TracFone ETC Order, TracFone was designated by the FCC as eligible to receive *only* federal “Lifeline” universal service support in the above-listed states because in those jurisdictions the FCC alone, without state action, grants ETC designation. To be absolutely clear, to Staff’s knowledge, this was the first time a pure wireless reseller had been granted ETC status by the FCC.

To date, the federal universal service support which may be received by TracFone has been limited to “Lifeline” support. This distinction is pertinent to answering the question presented by this Commission because while the FCC has provided guidance as to a state commission’s authority to revoke or suspend the ETC status of a telecommunications carrier

² In the Matter of Federal-State Joint Board on Universal Service TracFone Wireless, Inc, for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, FCC 05-165 (2005) (TracFone Forbearance Order).

³ See TracFone Forbearance Order at p. 4.

⁴ In the Matter of Federal-State Joint Board on Universal Service TracFone Wireless, Inc Petition for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, Order, FCC 08-100 (2008) (TracFone ETC Order).

receiving “High Cost” support, the FCC has provided little explicit guidance as to a state commission’s ability or authority to revoke or suspend the status of an ETC receiving only “Lifeline” support. In Staff’s opinion, the lack of applicable federal regulation is the result of the newly established “Lifeline-only” designation category and the fact that the designation of a carrier receiving “Lifeline-only” support has not yet warranted revocation.

It is Staff’s position that the Commission has the authority to revoke the ETC status of a company that receives only federal “Lifeline” support. TracFone agrees. On August 20, 2009, the Company filed its Response to Order Directing Filing, in which the Company states that “[t]he Commission may revoke any Eligible Telecommunication Carrier (“ETC”) for non-compliance with applicable legal requirements, including conditions imposed by the Commission in an order designating a carrier as an ETC.”

The conditions which Staff would seek to apply to TracFone are derived from the Commission’s lawfully promulgated regulations, to which the Company must adhere in order to comply with federal law. If the Company fails to comply with the applicable regulations, Staff may bring a complaint before the Commission, seeking revocation of the ETC designation. It would be Staff’s intent in initiating this process to provide the Company with a full opportunity for notice and a hearing upon the substance of the revocation.

Question 2:

Does TracFone pay into the federal Universal Service Fund?

Answer 2:

Yes. Staff contacted the Universal Service Administrative Company (USAC) which confirmed that TracFone pays into the federal universal service fund. USAC declined to provide additional information on the payments.

Question 3:

How many other states have granted ETC designation for only low income, prepaid wireless service?

Answer 3:

In order to determine the answer to this question, Staff sent a query to the NARUC Telecommunications Subcommittee list-serve and reviewed various state commission websites:

Information was obtained from thirty (30) states and the District of Columbia. The information obtained by Staff is contained in Appendix A, attached hereto, and is summarized as follows:

- Of those jurisdictions that provided information to Staff, eighteen (18) jurisdictions have carriers with low income, prepaid wireless ETC designations. Within these jurisdictions, the following information applies:
 - The FCC has granted TracFone ETC designation in eleven (11) jurisdictions that do not assert individual jurisdiction over the ETC designations of wireless service providers;
 - Six (6) states have granted TracFone ETC designation under the exercise of state authority;
 - One (1) state has granted ETC designation to a low-income prepaid wireless company that is not TracFone.
- Five (5) states have granted TracFone ETC designation, with various conditions. A more detailed description of these conditions is contained in Appendix A, attached hereto;
- One (1) state has granted TracFone ETC designation with no conditions;
- Two (2) states indicated they have not received any requests for low income, prepaid wireless ETC designation; and

- One (1) state has rejected its only request, that of TracFone, due to non-ETC related issues with the filing.

Question 4:

Are there any, and if so which, states that have pending application of companies seeking ETC designation for low income, prepaid wireless service?

Answer 4:

Based upon the information that Staff was able to obtain, 12 states have application currently pending for low income, prepaid wireless ETC designations. Those states are: California, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Nebraska, Oklahoma, Oregon and Washington. Georgia and Michigan previously granted TracFone ETC designation with certain conditions.

WHEREFORE, Staff submits this Staff Response to Commission Questions for the Commission's information and consideration in this matter.

Respectfully submitted,

/s/ Eric Dearmont

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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 August, 2009.

/s/ Eric Dearmont

States that exercise ETC designation authority

	Has pending applications for ETC prepaid wireless	Has approved applications for ETC prepaid wireless	Has approved TracFone request	Has denied applications for ETC prepaid wireless	No applications for ETC have been filed	Imposed conditions on TracFone	Additional Comments
Alaska				X			Has pending applications for TracFone and Virgin Mobile.
California	X						
Florida		X	X			The Florida Commission granted limited ETC to provide Lifeline only contingent on TracFone providing the following conditions: Certification from every PSAP in Florida confirming that TracFone provides its customers with access to basic E911, E911 compliant handsets, and TracFone should deal directly with its customers.	
Georgia	X	X	X			Granted limited ETC to provide Lifeline only with the following conditions as applicable: ETC designation may at any time be suspended or revoked by order of the Georgia Commission, the Georgia Commission has the right to conduct audits, make services available on its internet website, file with the Commission the terms and conditions of service and rate plans and changes to the rates, terms, or conditions, and file with the Commission the proposed language to be used in all its advertising which should include the Commission's Consumer Affairs unit for complaints.	Pending application filed by Nexus Communications. Pending application for TracFone. Pending application for TracFone.
Illinois	X						Pending application for TracFone.
Indiana	X				X		Pending application for TracFone.
Iowa							
Kansas	X	X					Pending application for TracFone.
Kentucky	X						Pending application for TracFone.
Maryland	X						

Michigan	X	X	X			Granted limited ETC to provide Lifeline/Link Up with the following conditions: TracFone shall submit a certification from each 911 County Coordinator confirming that it provides its customers with access to basic E911. TracFone shall submit self-certifications from its Lifeline/Linkup customers, and the Commission will be notified on changes to its rates, terms, and conditions.	The Michigan Commission has a pending application filed by Virgin Mobile. Pending application for TracFone.
Nebraska	X						
Nevada					X		
Ohio						The Ohio Commission granted ETC designation for Lifeline service only for one year, then the ETC designation will be revisited. Granted ETC to provide Lifeline with the following conditions: Annually submit an affidavit to the Ohio Commission that TracFone has complied with the annual verification requirements, contribute to Ohio's 911 fund for all of its wireless subscribers, comply with number conservation and optimization requirements, notify the Commission of changes in rates, terms, and conditions, and provide all records and documents requested by the Commission staff.	
Oklahoma	X						Pending application from TracFone and True Wireless.
Oregon	X						Pending application from TracFone.
Washington	X						Pending application from TracFone.
West Virginia		X		X		Granted limited ETC to provide Lifeline with the following conditions: Submit a plan to prevent reimbursement for Lifeline credits paid to inactive customers or accounts, collect and maintain records to ensure the company is abiding by the plan and that it is effective, work with other carriers in its service territory to ensure that pay telephones are available, provide 61 minutes of free service per month, monitor customer usage and file the information with the Commission, TracFone shall notify the Commission if it will comply with the reporting requirements.	
Wisconsin		X		X			

States that do not exercise ETC designation authority:

	<u>FCC</u> <u>designated</u> <u>TracFone</u>	<u>FCC did</u> <u>not</u> <u>designate</u>
Alabama	X	
Connecticut	X	
Delaware	X	
District of Columbia	X	
Massachusetts	X	
New Hampshire	X	
New York	X	
North Carolina	X	
Pennsylvania	X	
Tennessee	X	
Virginia	X	

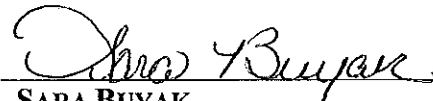
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AFFIDAVIT OF Sara Buyak

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Sara Buyak, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying staff recommendation and that the facts therein are true and correct to the best of her knowledge and belief.



SARA BUYAK

Subscribed and affirmed before me this 20th day of August 2009



CASSIE M. MELLOWAY
My Commission Expires
October 30, 2011
Cole County
Commission #07337959



NOTARY PUBLIC