

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of August, 2009.

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

**ORDER GRANTING DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

Issue Date: August 26, 2009

Effective Date: September 5, 2009

Background

On March 10, 2009, TracFone Wireless, Inc. filed a petition with the Missouri Public Service Commission for designation as an Eligible Telecommunication Carrier (ETC) under the Telecommunications Act of 1934 for the limited purpose of offering Lifeline services to qualified households. The Commission issued an order directing that notice of TracFone's application be sent to all incumbent and competitive local telecommunications companies. Also, as part of its notice, the Commission set a deadline for requests to intervene. There were no requests to intervene.

The Application

TracFone is a Delaware corporation headquartered in Florida. It is a reseller of commercial mobile radio service throughout the United States and has provided service throughout Missouri for the past 10 years. TracFone points out that its Lifeline offerings will

differ from that of other ETCs' in that TracFone will offer wireless service to low income consumers and that its Lifeline service will be free.

TracFone recognizes that under the Act,¹ ETCs must offer services, at least in part, over their own facilities and that state commissions are prohibited from designating a carrier as an ETC when that carrier offers services exclusively through resale. To address this limitation, the company sought and has received a waiver from the Federal Communications Commission.

With the exception of Commission rules 4 CSR 240-3.570(3)(A) and (B),² TracFone avers that it will offer all services required under the Act and under the Commission's rules, which include: voice grade access to public switched network; local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to 911 and E911 emergency service; access to operator and inter-exchange services; access to directory assistance; and toll limitation for qualified low-income customers.

Finally, TracFone emphasizes that because it seeks designation as an ETC solely for the purpose of providing Lifeline plans to low-income customers, it does not seek high cost support and therefore will not erode high cost support from any rural telephone company.

For all of the above reasons, TracFone avers that it is in the public interest for the Commission to grant the requested relief.

¹ 47 U.S.C. §214(e)(1)(A).

² Commission rules 240-3.570(3)(A) and (B) are relevant only to companies that issue bills to customers. TracFone is a prepaid service and does not issue bills. These rules are therefore inapplicable.

Staff Recommendation

With the exception of Commission rules 4 CSR 240-3.570(3)(A) and (B), Staff states that TracFone has committed to comply with the Commission's rules. Staff points out that because the company provides wireless service to customers on a prepaid basis, the aforementioned rules, which concern the issuance of bills to customers, are inapplicable.

Consistent with concerns of the public interest, Staff recommends that the Commission approve TracFone's application under the following conditions:

1. That TracFone receive no more support reimbursement per customer than the amount a TracFone customer would have paid in such customer's respective underlying service area;

2. Individuals shall only be eligible for Lifeline assistance if the customer requesting or receiving TracFone service participates or has a dependent residing in the customer's household who participates in a program pursuant to 42 U.S.C. sections 1396-1396v, food stamps (7 U.S.C section 51), Supplementary Security Income (SSI) (42 U.S.C. section 7), federal public housing assistance or Section 8 (42 U.S.C. section 8), National School Lunch Program's free lunch program (42 U.S.C. section 7(IV)), or Low Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. section 94);

3. TracFone shall require customers to 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(s) from which that individual receives benefits; and,
 - ii. agrees to notify the carrier if that individual ceases to participate in the program(s);
4. TracFone shall require customers to provide documentation of participation in the applicable program(s) as identified on the application;
5. TracFone shall develop a process for recording the type of documentation received;
6. TracFone shall develop a process for returning or destroying the documentation once recorded;
7. TracFone shall establish state procedures to verify a customer's continued eligibility and shall provide such procedures to the Commission's Staff or the Office of the Public Counsel for review within thirty days of a request;
8. TracFone shall terminate an individual's enrollment in Lifeline if the individual ceases to meet eligibility requirements.

Customer Certification and TracFone's Request for a Waiver

TracFone takes issue with Staff's recommended conditions that TracFone: require its customers to provide documentation of participation in an income-eligible program; develop a process for recording the type of documentation received; and, develop a process for returning or destroying the documentation once recorded. TracFone argues that these conditions are set out in the Commission's rules, which establish eligibility to receive support from Missouri's Universal Service Fund, not the federal fund from which TracFone seeks its support.

Alternatively, if the Commission concludes that its rules are applicable, TracFone seeks a waiver. TracFone posits that the federal requirement that customers self-certify that they are enrolled in an income-eligible program, coupled with computer programs TracFone has in place, is sufficient to prevent customers from fraudulently using Universal Service support.

For its request for a waiver TracFone makes the following points:

- Ease of self-certification encourages eligible consumers to participate in LifeLine and imposes minimal burdens on consumers.
- Certification of qualified program participants, under penalty of perjury, serves as an effective disincentive to abuse the system.
- As determined by the FCC, there is no evidence of fraud and abuse resulting from self-certification.
- TracFone provides service in a number of states and fraud has not been a problem.
- TracFone has internal procedures in place to identify fraud, which include computer programs that review each applicant's name, address and last 4 digits of their social security number to verify the identity of the applicant and confirm whether the address provided is associated with the applicant. TracFone has identified very few instances of potential fraud.
- Self-certification allows processing without delay.
- Requiring TracFone to review documentation from each applicant will unjustifiably and unnecessarily delay commencement of LifeLine services.
- The Commission's rules are inconsistent with the federal policy of a uniform national and deregulatory framework for CMRS.

TracFone also anticipates that with its aggressive marketing, there will be a dramatic increase in the consumers accessing the program.

As to whether the Commission's rules apply to the TracFone's request, Staff directs the Commission to 47 CFR § 54.409(a), which states:

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.

Accordingly, Staff's position is that through federal law the Commission's rules apply to TracFone's request. With regard to TracFone's request for a waiver, Staff points out that under the Commission's rules³ a showing of good cause is required and that TracFone is unable to show good cause.

Discussion

The Telecommunications Act requires that state commissions designate common carriers as an eligible telecommunications carrier if the carrier: (1) offers the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services; and (2) advertise the availability of such service and the charges therefor using media of general distribution. Finally, the state commission must find that the designation is in the public interest, convenience and necessity.⁴ Based on the application and Staff's verified memorandum, the Commission finds that designating TracFone as an Eligible Telecommunications Carrier is in the public interest and for the public's convenience and necessity.

TracFone argues that the Commission's rule with regard to customer certification is inapplicable. As pointed out by Staff, federal law specifically requires that state certification criteria be used. The Commission therefore concludes that Missouri's certification criteria are applicable.

³ Commission rule 4 CSR 240-31.050(5).

⁴ 47 U.S.C. 214 (e)(1) and (2).

Because the Commission has concluded that its customer certification criteria are applicable, TracFone requests a waiver of the Commission's rules. The Commission may waive its rules for good cause.⁵ Generally, TracFone argues that the ease of self-certification encourages eligible consumers to participate and that self-certification, as required under the federal rules, is an effective disincentive to abuse the system.

TracFone does note that it has identified very few instances of potential fraud.⁶ The company also points out that in Missouri only 10% of eligible households participate in the program and that a dramatic increase in participation is anticipated. With this in mind, the Commission finds that with an increase in participation, comes an increase in potential fraud.

TracFone goes on to argue that this Commission's certification of eligibility for Lifeline service is inconsistent with federal policy.⁷ TracFone's point is taken out of context. The quote offered by TracFone has to do with truth in billing, as the title of the proceeding suggests. In fact, the first paragraph of the reference states:

In this item, we address a Petition for Declaratory Ruling filed by the National Association of State Utility Consumer Advocates seeking to prohibit telecommunications carriers from imposing any separate line item or surcharge on a customer's bill that was not mandated or authorized by federal, state or local law. . . we also take this opportunity to reiterate certain aspects of our existing rules and policies affecting billing for telephone service.⁸

The policy to which TracFone refers relates to a uniform billing process, not a uniform policy with regard to certification of LifeLine support.

⁵ 4 CSR 240-31-050(5).

⁶ TracFone's Response to Staff Recommendation and Petition for Waiver, page 5, ¶ 6.

⁷ *Id.*, ¶ 9.

⁸ *Truth-in-Billing and Billing Format*, 20 FCC Rcd 6448, ¶ 1 (2005).

In its pleading, TracFone does, however, make reference to a relevant FCC proceeding.⁹ This is a recommended decision by the Joint Board on Universal Service to the FCC regarding LifeLine service.¹⁰ Although TracFone uses this reference as support for its position that Missouri's certification process is unwarranted, the document has numerous references concerning a desire to follow state procedures in states that have a certification process in place.¹¹ Further, these references apply to initial certification as well as continued verification.

The determination of "good cause" for a waiver rests with the Commission.¹² Federal law and policy encourages use of state certification procedures. Staff indicated that it has required use of the state certification procedures for one year and has not had complaints from carriers or customers that the procedures delay service or are inconvenient.¹³ The inconvenience of the customer supplying a document to show participation in an income-eligible program is outweighed by the benefit that customer receives. Further, that TracFone has uncovered instances of fraud using its current system shows that customers do attempt to defraud the system. Finally, this fact coupled with the expected increase in the level of participation supports the premise there may be an increase in the level of attempts to defraud. TracFone has not shown good cause to waive the Commission's rules intended to thwart customer fraud. The request for a waiver will therefore be denied.

⁹ See, footnote 6, TracFone's Response to Staff Recommendation and Petition for Waiver.

¹⁰ *In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision*, 18 FCC Rcd 6589, ¶ 1 (2003).

¹¹ See, *Id.*, ¶¶ 11, 25, 26, 27, 32 and 34.

¹² *State ex rel. Office of the Public Counsel v. Public Service Com'n of State*, 236 S.W.3d 632, 637 (Mo. 2007)

¹³ Transcript, pages 22-25.

THE COMMISSION ORDERS THAT:

1. TracFone Wireless, Inc., is granted designation as a federal Universal Service Fund eligible telecommunications carrier for wireless telecommunications service subject to those conditions as suggested by the Staff of the Commission and as set out in the body of this order.

2. TracFone Wireless, Inc. is granted a waiver of Commission rules 4 CSR 240-3.570(3)(A) and (3)(B).

3. TracFone Wireless, Inc.'s request for a waiver of Commission rule 4 CSR 240-31.050(3) is denied.

4. This order shall become effective on September 5, 2009.

5. This case shall be closed on September 6, 2009.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
Gunn, and Kenney, CC., concur.

Jones, Senior Regulatory Law Judge