

**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

**OFFICE OF THE PUBLIC COUNSEL’S STATEMENT
REGARDING TRACFONE’S TIER I MAXIMUM
LIFELINE PAYMENT WAIVER REQUEST AT FCC**

The Office Of The Public Counsel states to the Public Service Commission that the PSC’s action on TracFone’s application for ETC designation should ensure that no matter the outcome of the FCC waiver request, USF funds flow through to the Lifeline customer.

If the FCC waiver is denied, TracFone will continue under AT&T’s ILEC cap in Missouri (\$5.31). However, TracFone has represented that with or without the FCC waiver, it will provide Lifeline calling benefits equivalent to \$6.50 even though it can only draw down USF support of \$5.31. Public Counsel finds it highly unusual (if not highly unlikely) that a for profit enterprise will design its revenue stream to purposely lose revenue. It becomes even more unusual when this company subsidy is also accompanied by an additional \$1.75 that TracFone states that it will donate toward its Lifeline program out of its non USF revenues. But without the waiver, TracFone is free to make its choice to draw \$5.31 and pay \$6.50 or draw down \$5.31 in USF funds and pay Lifeline benefits of \$5.31. Public Counsel understands that is a legitimate business decision and TracFone is not required to pay \$6.50, if not mandated to do so.

However, if it represents to the FCC or the PSC that it will do so in these proceedings, that representation should become a concrete condition of ETC approval.

The FCC waiver would allow TracFone to draw USF support at the maximum rate (\$6.50) rather than the AT&T Subscriber Line Charge (SLC) cap (\$5.31). There is some presumed relationship in cost-SLC basis for USF support. The ETC mechanism that is rooted in “support,” and “support reimbursement” for “costs” moves farther from these roots as that relationship grows fuzzier. Since the issue in this proceeding is not the relative costs of TracFone or any other carrier, the focus is on where and to whom the support dollars paid flows. If the true beneficiaries of this Lifeline program are to receive the full measure of a \$6.50 TracFone draw, there must be concrete assurance that after the ILEC cap waiver, those benefits flow through to the customer in full: \$6.50 out of USF, \$6.50 to TracFone Lifeline customer.

Public Counsel concurs with the Staff’s recommended condition that TracFone should be required to “pass through” to its Missouri Lifeline customers the full amount of Lifeline support it receives from the federal Universal Service Fund. The Staff recommends that TracFone be required to provide an additional pro-rata benefit in the form of additional minutes to those customers located in the AT&T’s ILEC service territory. The open question is what \$6.50 of service is. Public Counsel suggests that the PSC’s order consider that TracFone’s pre-pay service is calculated based on call units in the customer’s “airtime tank,” and require allocation to the customer call units equivalent to those additional minutes and totaling at least \$6.50.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was emailed, mailed or hand delivered this 5th day of August 2009 to the following attorneys of record:

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