

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of TracFone)	Docket No. 09-2511-01
Wireless, Inc. for Designation as an)	
Eligible Telecommunications Carrier)	Direct Testimony
In the State of Utah for the Limited)	of Cheryl Murray
Purpose of Offering Lifeline Service to)	For the Office of
Qualified Households)	Consumer Services

April 5, 2010

1 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

2 A. My name is Cheryl Murray. I am a utility analyst for the Office of
3 Consumer Services (Office). My business address is 160 East 300 South
4 Salt Lake City, Utah 84111.

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A. The purpose of my testimony is to present the policy position of the Office
7 regarding the petition of TracFone Wireless, Inc. for designation as an
8 Eligible Telecommunications Carrier (ETC) in the State of Utah.

9 **Q. PLEASE SUMMARIZE THE OFFICE'S POSITION IN THIS CASE.**

10 A. The Office recommends that the Commission should expressly condition
11 the granting of ETC status to TracFone upon the following requirements
12 being met to remedy the current deficiencies and ensure customer
13 protections.

- 14 • TracFone must contribute to the Universal Public
15 Telecommunications Service Support Fund.
- 16 • TracFone must acquire Commission approval for all of its
17 advertisements and communications with SafeLink customers.
- 18 • A process must be in place to ensure that low-income customers
19 are not taking service from multiple lifeline providers. Ideally this
20 would be done through independent verification. At a minimum
21 TracFone must recertify each customer each year of service.

- 22 • To ensure that TracFone does not draw from the Federal USF
23 beyond the usage period of its SafeLink customers, it must
24 implement a 60 day non-usage deactivation policy.

25 **Background and Overview**

26 **Q. WHAT IS TRACFONE REQUESTING OF THIS COMMISSION?**

27 A, TracFone Wireless, Inc. has petitioned the Commission for designation as
28 an ETC in the state of Utah for the limited purpose of offering lifeline
29 service to qualified households.

30 **Q. WHY IS TRACFONE REQUESTING ETC DESIGNATION?**

31 A. If granted ETC designation “TracFone will provide Lifeline service to
32 qualifying customers requesting those services throughout Utah pursuant
33 to the universal service program and in accordance with federal law.”
34 [Fuentes, direct, page 2 lines 11-13] ETC status will allow TracFone to
35 access the federal Universal Service Fund’s Lifeline fund to offset the cost
36 of providing service to qualifying customers using its SafeLink Wireless®
37 Lifeline service.¹

38 **Q. DOES TRACFONE CURRENTLY PROVIDE WIRELESS SERVICE IN**
39 **UTAH?**

40 A. Yes. TracFone has provided commercial mobile radio service (CMRS)
41 service in Utah for the past ten years.

42 **Q. HOW IS THAT SERVICE PROVIDED?**

¹ TracFone does not seek access to funds from the federal Universal Service fund for the purpose of obtaining high cost support. Fuentes direct testimony, page 15, lines 3 – 5.

43 A. TracFone does not own any facilities in Utah but is a reseller of CMRS.
44 TracFone obtains service from AT&T Mobility, T-Mobile, and Verizon
45 Wireless, which enables it to offer services anywhere in Utah where those
46 providers offer services.

47 **Q. PLEASE DESCRIBE THE SERVICES TRACFONE PROPOSES TO**
48 **PROVIDE QUALIFYING CUSTOMERS THROUGH SAFELINK®**
49 **WIRELESS.**

50 A. Qualifying low-income customers will receive an E911-compliant wireless
51 handset and 67 minutes of usage monthly, which will be automatically
52 added to the customer's account each month free of charge when enrolled
53 in TracFone's Lifeline service. Unused minutes carry over month-to-
54 month as long as the customer remains enrolled in the Lifeline program.
55 The phones remain active for one year at which time the customer will
56 need to re-qualify for lifeline eligibility. TracFone's lifeline customers will
57 be able to send and receive local phone calls where ever it provides
58 service. Free minutes can be used for domestic and international long
59 distance calls and are treated the same as any other usage. Customers
60 will also have access to directory assistance through the underlying
61 wireless carriers. Customers' calls to 911 are not deducted from minutes
62 and 911 service is available even if there are no remaining minutes in the
63 customers account.

64 **Q. WHAT HAPPENS TO PHONE SERVICE AFTER THE SIXTY-SEVEN**
65 **MINUTES HAVE BEEN UTILIZED?**

66 A. When the sixty-seven minutes have been utilized customers will either
67 have to wait until the next month for an allotment of 67 minutes of free air
68 time or they can purchase a prepaid calling card at the rate of 20 cents per
69 minute. Customers are still able to make unlimited calls to 911 even when
70 no minutes remain.

71 **Q. HOW DO ELIGIBLE CUSTOMERS ENROLL TO RECEIVE SAFELINK®**
72 **SERVICE?**

73 A. TracFone states it will conform to FCC requirements to certify and verify
74 customer eligibility.² At the time service is activated and annually
75 thereafter, customers are required to self-certify, under penalty of perjury,
76 that they are the heads of household and are only receiving Lifeline
77 service from Tracfone.³

78 **Q. IS TRACFONE APPLYING FOR STATE UNIVERSAL OR LIFELINE**
79 **FUNDS?**

80 A. TracFone indicates that it does not plan to seek reimbursement from the
81 Utah USF.⁴ However, there is no guarantee that its plans will not change
82 in the future. The Commission's order in this docket should clarify that
83 any future change requires a filing and a hearing on the matter.

² The FCC has granted forbearance to TracFone for certain FCC requirements.

³ On April 27, 2009 TracFone filed a Petition for Modification of the annual verification condition imposed by the Forbearance Order. The FCC allows TracFone to verify annual recertification of customers based on a statistically valid sample.

⁴ TracFone response 13, submitted November 23, 2009.

84 **Q. DOES TRACFONE CONTRIBUTE TO THE UNIVERSAL PUBLIC**
85 **TELECOMMUNICATIONS SERVICE SUPPORT FUND AS REQUIRED**
86 **BY RULE R746-360-4?**

87 A. TracFone asserts that it is not subject to R746-360-4 and therefore does
88 not collect from customers the Universal Public Telecommunication
89 Service Support Fund surcharge (USF) nor contribute to the USF.

90 **Q. WHAT IS THE BASIS FOR TRACFONE'S ASSERTION?**

91 A. TracFone claims that because it is a prepaid service it does not issue bills
92 to its customers and therefore does not have any billed interstate retail
93 rates and no revenues that are subject to the surcharge.

94 **Q. DOES THE OFFICE AGREE WITH THAT ASSERTION?**

95 A. No, we do not. While I can not address the legality of TracFone's position
96 it would clearly be poor public policy for an entity to be allowed draw on
97 any public funds without making appropriate contributions to public funds.

98 **Concerns of the Office of Consumer Services**

99 **Q. DOES THE OFFICE HAVE CONCERNS WITH THE GRANTING OF THE**
100 **PETITION?**

101 A. Yes. The Office has several concerns related to TracFone being granted
102 ETC designation.

103 1) In response to a data request from the DPU TracFone indicated its
104 belief that its revenues are not subject to the Universal Public

105 Telecommunications Service Support Fund and therefore it does not
106 intend to pay into the Fund.⁵

107 2) Based on the advertising samples provided in TracFone Wireless,
108 Inc.'s response to request for information dated June 1, 2009 there is a
109 lack of clarity and precision in communications with customers.

110 3) Currently there is no process in place to ensure that customers taking
111 lifeline service from TracFone are not also lifeline customers of another
112 telecommunications provider.⁶

113 4) There is no process to prevent TracFone from continuing to draw on
114 the Federal USF if a customer changes providers or abandons the use of
115 this service without notifying TracFone.

116 5) In direct testimony Mr. Fuentes states that TracFone intends to
117 aggressively advertise the availability of SafeLink Wireless® service. If
118 there is a substantial increase in the number of participants in the lifeline
119 program, the burden on federal USF will increase.

120 6) Qualifying low-income customers will receive only 67 minutes of free
121 airtime monthly, which includes incoming and outgoing calls.

122 **Q. WHAT IS THE OFFICE'S OVERALL VIEW REGARDING TRACFONE'S**
123 **SAFELINK PROGRAM?**

124 A. In general, the Office does not favor this program because we believe it
125 will only serve the needs of a very small subset of low income customers.

⁵ Response 1 dated November 23, 2009.

⁶ This concern applies not only to TracFone but any other ETC that would be providing lifeline service in a territory where another carrier is already providing lifeline service.

126 Typically people need more than 67 minutes of airtime to conduct their
127 normal communications. The Office has concerns about the affordability
128 of purchasing additional airtime at 20 cents per minute, through prepaid
129 calling cards.

130 Consumer Advocates in general are concerned with prepaid
131 wireless lifeline services. The National Association of State Utility
132 Consumer Advocates, of which the Office is a member, has been
133 examining the issue and expects to pass a resolution this June making
134 recommendations such as:

- 135 • the FCC should consider establishing minimum standards of
136 service for prepaid wireless Lifeline service that would satisfy the
137 public interest by providing adequate value for Lifeline recipients;
- 138 • the FCC should adopt a minimum standard to ensure adequate
139 value to prepaid Lifeline wireless customers from the service;
- 140 • there should be continued evaluation of appropriate federal default
141 rules for ongoing support when there is no monthly billing, carrier
142 contributions to state funds, quality of service obligations, double
143 billing, protection from fraud, recertification, and audits; and
- 144 • the FCC should investigate whether the Lifeline discount should no
145 longer be taken off the retail rate, but off some measure of
146 wholesale or forward looking cost, especially where the carrier's
147 services are not price-regulated.

148 The Office is also concerned that if TracFone pursues the aggressive
149 marketing campaign it has referenced in this case, this meager offering for
150 Lifeline service will also have a measurable and large impact on the
151 overall federal USF payout.

152 **Q. HOW DID THE OFFICE EVALUATE TRACFONE'S PETITION?**

153 A. Despite our concerns about whether this program will provide a good
154 consumer choice or unreasonably impact the federal USF, these were not
155 the primary factors we considered in our analysis. Rather, we recognize
156 that the program does bring additional choice to the Lifeline "marketplace"
157 and focused on the specific issues which we believe define this
158 Commission proceeding, namely the Utah statutes and rules.

159 **Q. PLEASE EXPLAIN THE OFFICE'S CONCERN REGARDING**
160 **PAYMENT TO THE UNIVERSAL PUBLIC TELECOMMUNICATIONS**
161 **SERVICE SUPPORT FUND.**

A. TracFone intends to draw on the
162 Federal USF to provide lifeline service to low income customers. It is
163 inappropriate and poor public policy to allow TracFone to take advantage
164 of public funds without requiring that they also contribute to public funding
165 sources.

166 **Q. PLEASE EXPLAIN THE OFFICE'S CONCERNS ABOUT THE**
167 **INFORMATION TO BE PROVIDED TO POTENTIAL TRACFONE**
168 **CUSTOMERS?**

169 A. The Office is concerned that SafeLink customers primarily receive
170 advertisement-style communications from TracFone. Customers must

171 receive detailed information explaining exactly what they will receive when
172 they sign up for lifeline service. It must be clear that they will give up any
173 subsidization for landline service they may have, TracFone will provide
174 only 67 free minutes monthly and, if needed, additional minutes must be
175 purchased with a pre-paid calling card at 20 cents a minute including the
176 minimum purchase price of a calling card, all incoming and outgoing calls
177 count against free minutes, excluding 911 calls. This information must be
178 provided in a clear concise format, not just as part of some multi-page
179 document that must be carefully studied to gain the basic, essential
180 information on which a customer would base his/her decision to sign up
181 for Safelink. Customers must be informed that:

- 182 • any subsidization for landline service will be foregone;
- 183 • a free E911 compliant wireless handset will be
184 provided. The free options associated with the handset as
185 well as options that must be paid for must be identified;
- 186 • 67 minutes of free air time will be provided monthly;
- 187 • all incoming and outgoing calls will count against free
188 minutes (excluding 911 calls);
- 189 • additional minutes may be purchased through a pre-paid
190 calling card at \$0.20 per minute. Customers should be informed of the
191 minimum cost for this card;
- 192 • precisely how texts and data are billed, and

193 • directory assistance calls count against their minutes, if in
194 fact that is the case.

195 **Q. PLEASE EXPLAIN THE OFFICE'S CONCERNS ABOUT THE**
196 **POTENTIAL FOR CUSTOMERS TO TAKE LIFELINE SERVICE FROM**
197 **MULTIPLE PROVIDERS.**

198 A. There is currently no process to cross check if a customer is receiving
199 lifeline service from another provider. This could lead to customers having
200 multiple providers of lifeline service and an increase in the Federal USF.

201 A process must be in place to ensure that low-income customers
202 are not taking service from multiple lifeline providers. Ideally this would be
203 done through independent verification. At a minimum TracFone must
204 recertify each customer each year of service.

205 **Q. PLEASE EXPLAIN THE OFFICE'S CONCERNS ABOUT CUSTOMERS**
206 **WHO ABANDON THEIR SERVICE.**

207 A. The Office is concerned that customers can sign up for SafeLink service,
208 but essentially stop using the service without actually canceling it. This
209 could lead to TracFone receiving USF support for LifeLine customers who
210 are no longer using the service.;

211 **Q. DOES THE OFFICE HAVE A PROPOSED REMEDY?**

212 A. Yes. To ensure that TracFone does not draw from the Federal USF
213 beyond the usage period of its SafeLink customers, it must implement a
214 60 day non-usage deactivation policy. This would require that if a
215 customer does not utilize phone service for 60 consecutive days TracFone

216 would remove the customer from its service and discontinue its request for
217 lifeline funds.

218 **Q HAS TRACFONE FACED OPPOSITION TO ITS REQUESTS FOR ETC**
219 **DESIGNATION IN ANY STATE?**

220 A. Yes. In fact when faced with opposition in Colorado TracFone proposed
221 to provide each SafeLink customer with 83 minutes of free airtime per
222 month – 15 minutes more than in any other state. Still facing opposition
223 TracFone withdrew the application.

224 In California the Commission found that it is not in the public
225 interest to designation as an ETC a telephone carrier that: (a) has failed to
226 pay – and refused to pay – public purpose programs surcharges and user
227 fees on its non-subsidized California intrastate revenue; and (b) argues
228 that it does not have to pay such fees because it is not a public utility. A
229 copy of the resolution is attached as OCS Exhibit 1.

230 The South Carolina Public Service Commission found the
231 TracFone ETC application not in the public interest because TracFone
232 said it would not contribute to the South Carolina Universal Service Fund.

233 In Washington TracFone revised its Lifeline offer proposing to
234 reduce the rate for additional minutes from 20 cents per minute to 10
235 cents per-minute for SafeLink customers.

236 Concern has been expressed related to the potential effect on the
237 USF. TracFone is receiving a great deal of attention from consumer

238 advocates as it requests ETC status in its attempt to gain greater access
239 to federal lifeline funds.

240 **Q. HAVE STATE COMMISSION ATTACHED ANY CONDITIONS TO THE**
241 **GRANTING OF ETC DESIGNATION TO TRACFONE?**

242 A. Yes a number of commissions have attached additional requirements or
243 conditions. Some of the conditions include: proposed language to be
244 used in all advertising is to be reviewed by a designated group with
245 modification rights; language should include information directing
246 customers to the regulators complaint unit for complaints regarding
247 service issues; customers must self certify that they are enrolled in
248 specified public assistance programs to qualify for lifeline service;
249 requiring that TracFone not seek access to the Federal USF for the
250 purpose of providing service in high cost areas; TracFone must notify the
251 commission of any future changes to its rates or terms and conditions
252 regarding lifeline service; and lifeline customers can purchase prepaid
253 calling cards for additional minutes in increments as low as \$2.00 and up
254 to \$10.00.⁷ Deactivation if no usage in 60 days (WA).

255 **Recommendations**

256 **Q. WHAT IS THE OFFICE'S RECOMMENDATION?**

257 A. The Office recommends approval of the Petition because it meets the
258 threshold established by Utah Statute and Rules. However, the
259 Commission should expressly condition the granting of ETC status

⁷ Cost for these phone cards equates to 20 cents per minute. Minutes roll-over month to month rather than expire in 60 days.

260 TracFone upon the following requirements being met to remedy the
261 current deficiencies and ensure customer protections.

262 .

- 263 1) TracFone should be required to contribute to state USF and E911;
- 264 2. TracFone should be required to submit its customer communications to
265 the Commission for review and approval;
- 266 3) Before lifeline operations begin steps should be taken to ensure no
267 customers receive lifeline services from multiple providers; and
- 268 4) TracFone should implement a 60 day deactivation process to eliminate
269 the potential for Federal USF funds being received for customers who are
270 no longer active customers with TracFone.

271 The Commission should also consider adopting some of the other specific
272 remedies included in other state orders, such as the Washington's Order
273 requiring additional minutes be billed at 10 cents per minute, to help to
274 make the overall TracFone offering more of a useful service for a low
275 income customers.

276 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

277 A. Yes.

278