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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Resolution of Certain Issues Related to the Designation of a Common Carrier as an Eligible Telecommunications Carrier	Docket No. 10-2528-01 **TRACFONE WIRELESS, INC.'S INITIAL PROPOSAL**

Pursuant to the Commission's Order issued April 14, 2011, TracFone Wireless, Inc. ("TracFone") files its Initial Proposal regarding the issues being addressed by the Commission in this proceeding.

BACKGROUND

On September 13, 2010 the Commission issued an Order in Docket No. 09-2511-01 (In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Limited Purpose of Offering Lifeline Service to Qualified Households) ("TracFone ETC Order"), in which it designated TracFone as a Lifeline-only Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (47 U.S.C. § 214(e)(2)). Although the Commission concluded that TracFone met all applicable statutory and regulatory requirements for designation as an ETC and that provision of TracFone's SafeLink Wireless® Lifeline service to low-income Utah households would serve the public interest, the Commission stayed TracFone's ETC designation pending completion of the instant proceeding to determine "the reasonable per transaction fee to utilize the DCC [Department of Community and Culture] eligibility verification database."

In accordance with the Commission's September 13, 2010 TracFone ETC Order, the Commission initially established this docket for the purpose of determining a reasonable per transaction fee to utilize the DCC's Lifeline eligibility verification database. The Commission, noting that the findings in this docket could affect other ETCs, served the notice of this proceeding on two other wireless carriers with pending ETC petitions (i.e. Virgin Mobile USA, L.P. and i-wireless, LLC).

Since the Commission opened this docket, there have been some important developments. First, the Commission has reconsidered its September 13, 2010 TracFone ETC Order twice. In an Amended Report and Order and Order on Request for Limited Reconsideration, dated December 1, 2010 ("TracFone First Reconsideration Order"), the Commission granted TracFone's request that the Commission revise the TracFone ETC Order such that TracFone would be permitted to provide Lifeline service immediately, rather than await a decision on the per transaction fee for verification of Lifeline eligibility. In the TracFone First Reconsideration Order, the Commission ordered the following:

> d. until another process is identified that will ensure continuing eligibility is verified, TracFone shall be required to use the DCC for verification of continuing eligibility, subject to DCC's willingness to provide the service and TracFone's payment of incremental costs to the DCC for verification. Processes and costs shall be determined in Docket No. 10-2528-01 or other applicable proceeding;
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> e. Alternatively, to avoid the problem of TracFone receiving benefit from the state USF fund to which is not currently

> contributing, TracFone may contribute to the state USF in a manner approved by the Commission and have its continuing eligibility verifications paid from the state USF fund. The cost of the state USF contribution could be built into TracFone's pricing structure and paid by the customer at the point of sale.

(emphasis added).

Thus, the Commission held that TracFone could either use the DCC for Lifeline verification of continuing eligibility (using costs and processes to be determined in this proceeding) or that TracFone could contribute to the state USF. The basis for presenting these two alternatives was the following: "In the case of other ETCs whose customers contribute to the state USF by paying an end-user surcharge, these costs are borne by the USF. Since TracFone claims it services are exempt from such surcharges, parties assert TracFone should bear the eligibility determination costs."[1]

The Utah Rural Telecom Association and the Office of Consumer Services asked the Commission to reconsider its finding that TracFone was not obligated to contribute to the state USF. On March 9, 2011, the Commission granted those requests and issued an Order on Reconsideration ("TracFone Second Reconsideration Order") in which it held that TracFone must contribute to the state USF and that TracFone must bear any verification costs once they are determined.[2] The Commission also stated that the DCC had advised the Commission that it would not "add[] on the pre-paid wireless lifeline phone service to [its] existing obligation under

[1] TracFone First Reconsideration Order, at 5.

[2] TracFone Second Reconsideration Order, at 12.

[the Commission] contract."[3] Thus, since this proceeding was initiated, the premise for the proceeding (i.e., the fact that the Commission had determined that TracFone was not required to contribute to the state USF, but would be relying on DCC to verify the continuing eligibility of its Lifeline customers on an annual basis) no longer exists.

The second significant development since the Commission initiated this proceeding is the expansion of issues to be considered by the Commission. The Commission's initial Notice of Scheduling Conference issued on September 16, 2010, focused on the costs to the DCC for verifying Lifeline eligibility and a per transaction fee to be paid for the DCC's verification of Lifeline eligibility . On December 2, 2010, the Commission issued a Notice of Agency Action in which it expanded the scope of this proceeding to include the process for verification of continuing eligibility of Lifeline customers, the determination of which entities will verify continuing eligibility, and the determination of a process to prevent customers from receiving duplicate service from multiple providers (double-dipping).

The Notice of Agency Action also included the following issue: "The method of calculation and recovery of costs for verifying continuing eligibility of Lifeline customers, particularly for ETCs not paying to the state USF fund." TracFone is not aware of any ETC that is not contributing the state USF. Neither is it aware of any Commission determination that any ETC or category of ETCs is not required to contribute to the state USF. As such, the Commission's articulation of the verification

[3] Id. at 10 (citing December 22, 2010 Letter from Gordon D. Walker, Director, Division of Housing and Community Development, Utah Department of Community and Culture to Commission Chairman Boyer.) Although TracFone offers a free, not a prepaid, Lifeline service, the DCC's refusal to provide Lifeline eligibility verification for "pre-paid wireless lifeline phone service" was intended to include TracFone's Lifeline service.

cost issue as focusing on ETCs that do not contribute to the state USF is no longer relevant. Indeed, the entire basis for this proceeding -- how to recover the costs of verification from ETCs that do not contribute to the state USF -- has vanished. Finally, the Commission's Supplement to Notice of Agency Action dated March 14, 2011, further expanded the scope of this proceeding to include initial certification of the eligibility of Lifeline applicants and the establishment of outreach and advertising guidelines for Lifeline service.

TracFone supports the Commission's efforts to make changes to its rules to address the verification of Lifeline customers' eligibility, as well as other issues related to Lifeline service. However, there is a pending Federal Communications Commission ("FCC") proceeding on virtually identical issues. TracFone urges the Commission to delay any modifications to its rules governing Lifeline until the FCC has determined whether the Lifeline rules should be revised. If the Commission determines that it wants to move forward with this proceeding, then any findings or rules adopted by this Commission in this proceeding should apply to all ETCs, not only those that use any specific business model, such as a prepaid model or a free service model.

INITIAL PROPOSAL

I. The Commission Should Delay Any Modifications to Its Rules Governing Lifeline Until the FCC's Lifeline Reform and Modernization Rulemaking Proceeding is Concluded.

TracFone notes that the FCC has initiated a rulemaking proceeding to consider changes to the FCC's rules governing Lifeline and Link Up eligibility, certification, verification, and outreach.[4] The FCC has asked for comment on various issues in the NPRM and interested parties filed comments on April 21, 2011. Reply comments on the majority of the issues in the NPRM, including certification and verification of Lifeline eligibility, are due May 10, 2011 and reply comments on remaining issues, including outreach, are due May 25, 2011. The issues in the FCC's proceeding is expected to issue an interim ruling in the near future to address the duplicate enrollment situations which occur when individuals claim Lifeline from multiple providers. Moreover, the FCC is required by law to take action in its rulemaking proceeding by November 2011 -- one year following receipt of a Recommended Decision from the Federal-State Joint Board on Universal Service.[5]

The issues presented in the NPRM are virtually identical to the issues presented in the Commission's March 14, 2011 Supplement to Notice of Agency Action. Both the FCC and the Commission have raised issues concerning certification of initial eligibility and verification of continued eligibility, duplicate claims for Lifeline support, and outreach and advertising requirements. Both the FCC and the Commission are considering the process and the costs of verifying Lifeline eligibility.

Lifeline is a national program designed to assist all low-income consumers throughout the United States in gaining affordable access to affordable telecommunications services. Indeed, a national low-income support program is at the heart of the universal service goals codified in the Communications Act of 1934, as

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[4] See Lifeline and Link Up Reform and Modernization, et al., Notice of Proposed Rulemaking, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, FCC 11-32, released March 4, 2011 ("NPRM").

[5] Federal-State Joint Board on Universal Service; Lifeline and Link Up, 25 FCC Rcd 15598 (Joint Board 2010).

amended ("Communications Act"). Specifically, Section 254(b)(3) of the Communications Act (47 U.S.C. § 253(b)(3)) includes among the universal service principles that consumers throughout the Nation, "including low-income consumers," have access to affordable telecommunications services. Given the fact that the FCC is in the midst of a proceeding on the same issues that are being addressed in this proceeding and that the Lifeline program is a national program funded by the federal Universal Service Fund, TracFone urges the Commission to delay any modifications to its rules governing Lifeline until the FCC has determined whether the Lifeline rules should be revised.

II. If the Commission Moves Forward with This Proceeding, the Commission Should Require the Establishment of a State Database Funded by the State USF to Which All ETCs Would Have Access.

The Commission has asked for proposals regarding how to resolve the issues in this proceeding. TracFone believes that the maintenance of a database by the appropriate state social services agencies that can indicate whether an applicant for enrollment in a Lifeline program is Lifeline-eligible, and whether or not the applicant already receives Lifeline-supported service from another ETC would simplify the enrollment process for those households applying for Lifeline benefits, would expedite the ability of ETCs to enroll qualified households in their Lifeline programs, and would enable ETCs to promptly commence delivery of Lifeline-supported services to those qualified households. Such a system would properly place responsibility for the compilation and maintenance of accurate and current eligibility information with the state agencies that are best positioned to make those determinations. However, for such a system to be effective, ETCs must be able to quickly determine whether Lifeline applicants are eligible, preferably on a real time basis.

TracFone understands that DCC currently maintains data that can be used to determine whether an applicant is eligible for Lifeline based on participation in a qualified program. However, based on discussions with DCC Staff, TracFone learned that DCC uses a manual process to verify Lifeline eligibility. Under a manual process, a DCC employee checks the computer system to confirm whether a Lifeline service applicant participates in a Lifeline-qualifying program on an individual-by-individual basis. TracFone believes that the development of a database that can be accessed by ETCs and provide a prompt response on whether an applicant is eligible, without disclosing any other information about an individual, would be the most effective way to ensuring that applicants are eligible.

A uniformly accessible database would immediately inform ETCs whether Lifeline service applicants qualify for Lifeline service and whether Lifeline customers continue to qualify for Lifeline service. Moreover, privacy concerns could be allayed by limiting database access to indicating to ETCs whether individuals are Lifeline-eligible with a yes or no response, and requiring ETCs to maintain the confidentiality of that response.[6] If the system also allowed the ETCs to record provision of Lifeline service to an individual in real-time, this would radically reduce the risk of duplicate claims for Lifeline support. Furthermore, automatic notifications could be sent by the database system both to Lifeline customers and to the ETCs if that Lifeline customer were to

[6] In certain jurisdictions, including Maryland, ETCs are required to execute confidentiality agreements as a condition of accessing state data bases to confirm Lifeline enrollment eligibility. TracFone believes that is an appropriate limitation and would be willing to execute such an agreement with DCC or another appropriate Utah entity.

become ineligible for continued Lifeline-supported services. This would enable ETCs to immediately remove customers who are no longer qualified from their Lifeline programs and would make it possible to terminate Lifeline support for those customers. Access to electronic databases would provide an efficient and uniform certification, enrollment and verification system available to all ETCs, regardless of the technology or business model attached to their Lifeline offerings.

Based on TracFone's experience in several states, TracFone believes electronic Lifeline eligibility verification will minimize the administrative burdens on ETCs and applicants. Moreover, centralizing the verification process will minimize fraud and best ensure that only qualified consumers continue to enjoy Lifeline benefits, while facilitating the ability for qualified Lifeline customers to remain in the program.

TracFone stresses that any rules governing Lifeline eligibility certification and verification should apply to all ETCs whether they are wireline or wireless carriers and whether they charge for Lifelines service, offer a prepaid service, or offer a postpaid service. The technology or business model used by the ETC should not impact how an applicant's eligibility is initially certified or annually verified. All Lifeline recipients receive a benefit and should be subject to the same standards and requirements for establishing their eligibility, irrespective of whose Lifeline program they choose to enroll.

TracFone acknowledges that there are costs associated with developing and maintaining a state database that can be accessed by all ETCs. Utah law requires that those costs be funded by the state USF, not by charging ETCs (or only certain ETCs) a per transaction verification fee. Commission Rule R746-341-4 provides:

> A. Annual Verification — The continuing eligibility of customers on the Lifeline service rate shall be verified annually.

> B. Verification Responsibilities — At least annually, the responsible agency shall provide the ETCs with information identifying customers who are eligible for Lifeline service or Link-up America Plan participation.
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> C. Verification Methods — The responsible agency will verify the continued eligibility of Lifeline customers under the program-based and income-based eligibility criteria.

Commission Rule R746-341-2(B) defines "responsible agency" as "the state government agency that administers the certification, verification, and continued verification of Lifeline enrollment." In Utah, the Commission has contracted with DCC to administer the certification, verification, and continued verification of Lifeline enrollment. Although the Commission has contracted with DCC to handle the verification process, the Commission -- not DCC -- is the responsible agency. Commission Rule R746-341-8(A), which governs the funding of Lifeline, provides: "Cost Recovery — The total cost of providing Lifeline telephone service, including the administrative costs of the ETCs and the costs incurred by the responsible agency, shall be recovered and funded as provided in 54-8b-15." Section 54-8b-15 of the Utah Code is the statute establishing the state USF and defining how state USF funds shall be used only to use funds from the state USF to cover the costs of administering the Lifeline program, including the performance of Lifeline eligibility verification tasks. Neither the Commission nor any entity -- public or private -- with whom it has contracted to provide verification services may demand that any ETCs pay contribution costs in addition to those which are provided by the state USF.

If the Commission finds that it needs additional funds to properly perform its Lifeline administration responsibilities -- whether that is to increase the amount it pays to

DCC or to enter into a contract with another entity -- then the only proper and legally-justified solution is to determine the amount of funds needed and to obtain those funds from the state USF. If it is necessary to increase the size of the state fund, then the Commission can commence a proceeding to increase the amount that all telecommunications corporations must contribute to the state USF.

III. The Commission Should Apply the Federal Requirements Governing Outreach and Advertising.

Another of the issues in this proceeding is the establishment of oversight and guidelines for Lifeline outreach and advertising to ensure that customers receive accurate information, to expand outreach to a larger percentage of the population eligible for Lifeline services, and to incorporate eligibility verification and duplicate service prevention. It is essential that low-income individuals be aware of and participate in the universal service low-income programs. Indeed, based on the Universal Service Administrative Company's most recent data, in Utah less than 50 percent of low-income households eligible are actually enrolled in Lifeline.[7] While that is somewhat above the national average, the fact remains that in Utah, more than one-half of the low-income households who are intended to benefit from the Lifeline program are not enrolled and are not benefitting. TracFone supports efforts to increase participation so that the low-income households that are intended to benefit from the program receive those benefits.

TracFone recommends that the Commission require ETCs to follow the federal standards for outreach and advertising to ensure that there is no interference with ETCs' abilities to develop their own business strategies for enrolling Lifeline customers.

[7] See 2009 Participation Rates by State, available at http://www.usac.org/li/about/participation-rate-information.aspx.

Section 214(e)(1)(B) of the Communications Act (47 U.S.C. §214(e)(1)(B)), requires ETCs to advertise the availability of Lifeline using media of general distribution. The FCC's current outreach guidelines emphasize the importance of states and carriers using outreach materials to reach households without telephone service and advertising that can be accessed by non-English speaking populations. The guidelines also provide that states and carriers should coordinate their outreach efforts with governmental agencies that administer any of the relevant government assistance programs.[8]

TracFone believes that the federal outreach requirements and guidelines are sufficient to promote consumer awareness of the universal service low-income programs. In the more than 30 jurisdictions in which TracFone is providing Lifeline service, it has observed state utility commissions and state agencies that administer public assistance programs engaging in outreach efforts and working together to administer the Lifeline program. In addition, TracFone has successfully advertised its Lifeline service in accordance with Section 214(e)(1)(B) of the Communications Act and the FCC's outreach guidelines. TracFone does not support mandatory outreach requirements that specify how ETCs must advertise because such requirements would interfere with an ETC's marketing strategy as it competes with other ETCs for Lifeline subscribers. To the extent that the Commission determines that it needs to establish more specific outreach guidelines, TracFone urges the Commission to require relevant social services agencies to treat all ETCs equally when engaging in outreach efforts. For example, if a state or agency lists carriers offering Lifeline in a particular state, all ETCs in that state must be listed.

[8] See Lifeline and Link-Up, 19 FCC Rcd 8302, ¶¶ 44-49 (2004).

Finally, TracFone notes that those ETCs who believe that Lifeline can be efficiently provided and who are motivated to actively promote their Lifeline services will do so without detailed regulations governing how they market their programs; those who would prefer not to effectively promote Lifeline are not likely to aggressively market a service which they do not want to offer. Increased outreach requirements risk discouraging provider participation in Lifeline. In contrast, allowing ETCs to craft their advertising and marketing efforts in response to the dictates of the marketplace and simplifying the administrative process by implementing an electronic certification and verification system, will provide incentives which should encourage more ETCs to enter the Lifeline services market and to actively and creatively promote the availability of their Lifeline programs.

Respectfully submitted,

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April 26, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 26th day of April, 2011, on the following:

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