

**BEFORE THE
UTAH PUBLIC SERVICE COMMISSION**

In the Matter of)
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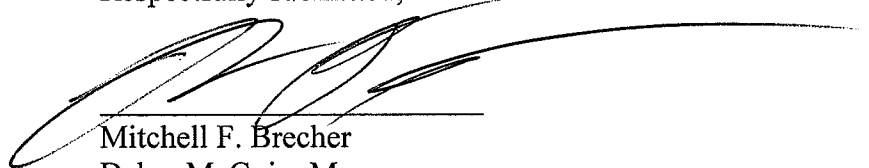
Petition of TracFone Wireless, Inc.)
for Designation as an Eligible Telecommunications)
Carrier in the State of Utah for the Limited Purpose)
of Offering Lifeline Service to Qualified Households)
)
)

Docket No. 09-2511-01

TRACFONE WIRELESS, INC.'S DIRECT TESTIMONY AND EXHIBITS

TracFone Wireless Inc., by counsel, files its Direct Testimony and Exhibits with the Public Service Commission of Utah in this matter. TracFone's Direct Testimony and Exhibits include the testimony of Jose Fuentes and Exhibits 1 through 6, inclusive, identified therein.

Respectfully submitted,



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Counsel for TracFone Wireless, Inc.

March 1, 2010

1 **Q1: WHAT IS YOUR NAME AND OCCUPATION?**

2 A: My name is Jose Fuentes. I have been TracFone Wireless, Inc.'s Director of Government
3 Relations for the past two years. I am responsible for facilitating TracFone's designation
4 as an Eligible Telecommunications Carrier by state utility commissions and for
5 implementing SafeLink Wireless® Lifeline service throughout the United States. I am
6 also the corporate spokesperson for the SafeLink Wireless® brand.

7 **Q2: WHAT IS TRACFONE?**

8 A: TracFone Wireless, Inc. is a 98%-owned subsidiary of America Movil. America Movil
9 is the 4th largest wireless telecommunications carrier in the world, serving over 186
10 million customers throughout Latin America, the Caribbean and the United States.
11 TracFone is the largest provider of prepaid wireless service in the United States serving
12 over 11 million customers under the brands TracFone®, NET10®, Straight Talk®, and
13 SafeLink Wireless®. TracFone's market share in prepaid wireless continues to grow,
14 now at over 30% according to Neilson and others. TracFone is also the 5th largest
15 wireless carrier and largest mobile virtual network operator in the United States in terms
16 of total customer counts.

17 **Q3: DOES TRACFONE HAVE A PRESENCE IN UTAH?**

18 A: TracFone is incorporated under the laws of the State of Delaware and is headquartered at
19 Miami, Florida. Its corporate offices are located at 9700 N.W. 112th Avenue, Miami, FL
20 33178. TracFone is a reseller of commercial mobile radio service throughout the United
21 States, including the State of Utah. TracFone provides service through a "virtual
22 network" consisting of services obtained from numerous licensed operators of wireless
23 networks. TracFone has provided CMRS service throughout the State of Utah

1 continuously for the past ten years. In Utah, TracFone obtains service from the following
2 underlying carriers: AT&T Mobility, T-Mobile, and Verizon Wireless. TracFone's
3 arrangements with these providers enable it to offer services wherever any of those
4 providers offer service in the State of Utah.

5 **Q4: DOES TRACFONE HAVE THE ABILITY TO PROVIDE LIFELINE?**

6 A: Yes. TracFone, through its arrangements with the underlying carriers listed above, has
7 the ability to provide all services and functionalities supported by the universal service
8 program, as detailed in the FCC Rules throughout Utah. Upon designation as an ETC,
9 TracFone will make available to consumers a Lifeline offering, under the brand SafeLink
10 Wireless®, which will provide consumers with all of the functionalities and features
11 currently provided by TracFone to existing customers. TracFone will provide Lifeline
12 service to qualifying customers requesting these services throughout Utah pursuant to the
13 universal service program and in accordance with federal law. TracFone requests ETC
14 designation statewide in all exchanges to the extent that its underlying carriers have
15 facilities and coverage. As I will explain later, all qualified Utah consumers will receive
16 67 airtime minutes each month, plus an E911-compliant wireless handset free of charge,
17 when they enroll in TracFone's Lifeline service.

18 **Q5: CAN TRACFONE DIFFERENTIATE ITSELF FROM OTHER ETCs? IF SO,**
19 **HOW?**

20 A: TracFone's Lifeline offerings differ from other ETCs' Lifeline programs in several very
21 important respects. For one thing, TracFone will offer low income consumers the
22 convenience and portability of wireless services. In addition, unlike all other ETCs'
23 Lifeline programs, TracFone's Lifeline service will provide quantities of wireless usage

1 at no charge to the consumer. Stated simply, TracFone's Lifeline service will be free to
2 qualified subscribers. Typically, Lifeline programs provide participating consumers with
3 discounts below carriers' standard rates. However, enrolled Lifeline customers still must
4 pay the ETC's discounted rates as well as standard rates for additional services and
5 features not subject to the Lifeline discount (including, for example, long distance toll
6 charges and charges for vertical features like call waiting, voice mail, and caller ID), and
7 face service termination if they fail to pay the amounts owed. For example, if a
8 provider's standard monthly charge is \$30.00 and the Lifeline customer receives a \$10.00
9 discount funded by the USF, the customer still receives an invoice for \$20.00, plus
10 additional charges incurred during the billing period. TracFone's Lifeline customers will
11 not receive any bill. Furthermore, TracFone's Lifeline customers will be able to initiate
12 and receive calls from their wireless phones while incurring no activation charges.

13 **Q6: DOES TRACFONE MEET THE REQUIREMENTS FOR ETC DESIGNATION?**

14 A: TracFone meets the requirements for ETC designation contained in both federal and Utah
15 state regulations. TracFone recognizes that the Communications Act states that ETCs
16 shall offer services, at least in part, over their own facilities and prohibits state
17 commissions from designating as an ETC a telecommunications carrier that offers
18 services exclusively through the resale of another carrier's services. However, on
19 September 8, 2005, the FCC granted a petition filed by TracFone that requested the FCC
20 to exercise its forbearance authority with respect to the facilities-based service
21 requirement ("TracFone Forbearance Order"). The TracFone Forbearance Order is
22 attached to my testimony as Exhibit 1. In an Order dated April 11, 2008, the FCC
23 granted all of TracFone's pending petitions for designation as an ETC in ten states and

1 the District of Columbia, subject to the conditions set forth in the TracFone Forbearance
2 Order.

3 **Q7: HAVE OTHER STATES FOLLOWED THE FCC'S FORBEARANCE ORDER?**

4 A: Yes; thirteen state commissions have designated TracFone as an ETC, including the
5 Florida Public Service Commission, the Georgia Public Service Commission, the Illinois
6 Commerce Commission, the Louisiana Public Service Commission, the Maine Public
7 Utilities Commission, the Maryland Public Service Commission, the Michigan Public
8 Service Commission, the Missouri Public Service Commission, the New Jersey Board of
9 Public Utilities, the Public Utilities Commission of Ohio, the Texas Public Utility
10 Commission, the West Virginia Public Service Commission, and the Wisconsin Public
11 Service Commission. TracFone has enrolled nearly three million qualified low-income
12 households in its Lifeline program since obtaining those ETC designations. TracFone
13 also anticipates that other state commissions will designate it as an ETC in the near
14 future.

15 **Q8: WHAT FUNCTIONS WILL TRACFONE OFFER TO LIFELINE SUBSCRIBERS**
16 **IF GRANTED ETC STATUS?**

17 A: TracFone will offer upon designation as an ETC in Utah, all of the services and
18 functionalities required by the FCC's Rules and Utah's regulations. These services and
19 functionalities include the following:

20 Voice Grade Access to the Public Switched Network.

21 The voice grade access provided by TracFone enables a user of
22 telecommunications services to transmit voice communications, including signaling the

1 network that the caller wishes to place a call, and to receive voice communications,
2 including receiving a signal indicating there is an incoming call.

3 Local Usage.

4 As part of the voice grade access to the public switched telephone network, an
5 ETC must provide local calling. TracFone provides subscribers the ability to send and
6 receive local phone calls wherever it provides service. Moreover, local usage is included
7 in TracFone's calling plan. The FCC Rules require an ETC applicant to show it has a
8 local usage plan comparable, although not identical, to that offered by the ILECs in the
9 same service areas. Further, the FCC has not adopted any minimum local usage
10 requirements. As a designated ETC, TracFone will comply with any applicable
11 minimum local usage requirements established by the FCC.

12 Wireless and wireline services, though increasingly substitutable for each other,
13 are different from each other and they are priced differently. Unlike any ILECs' or other
14 ETCs' Lifeline plans, TracFone's Lifeline offerings will go beyond those of other
15 providers in a very important respect: TracFone's Lifeline customers will receive as part
16 of Lifeline service specified amounts of free wireless service. That is, Lifeline customers
17 will be able to use TracFone's service to initiate and receive specified amounts of
18 wireless calling -- local and long distance, including international calls to more than 60
19 destinations -- with no charge to the customers.

20 Dual Tone Multi-Frequency (DTMF) Signaling or Its Functional Equivalent.

21 DTMF signaling allows carriers to provide expeditious call set-up and call detail
22 information and enables modem usage. All telephone handsets provided by TracFone
23 are DTMF-capable as required by federal law.

1 Single-party service or Its Functional Equivalent.

2 Single-party service means that only one party will be served by a subscriber line
3 or access loop in contrast to a multi-party line. TracFone provides customers with
4 single-party access for the duration of every phone call.

5 Access to 911 and E911 Emergency Service.

6 TracFone provides universal access to the 911 system for its customers.
7 TracFone has implemented and will continue to implement enhanced 911 services
8 consistent with the FCC's Rules and orders applicable to wireless resellers. Given that
9 TracFone is a reseller, it does not own or operate any facilities. TracFone has the ability
10 to remain functional in emergency situations. TracFone provides service in Utah by
11 reselling services of underlying wireless network carriers, including AT&T Mobility, T-
12 Mobile, and Verizon Wireless. Those network operators have implemented state-of-the-
13 art network reliability standards and TracFone and its customers benefit from their high
14 standards. Throughout its more than ten years of existence, TracFone has never received
15 a complaint about a 911 system failure.

16 Access to Operator Services.

17 TracFone offers all of its customers access to operator services.

18 Access to Interexchange Service.

19 TracFone does not impose separate charges for interexchange calls. Long
20 distance calling is included in TracFone's service with no additional charge.

1 Access to Directory Assistance.

2 All TracFone customers, including those customers located in Utah, have access
3 to directory assistance services provided by TracFone's vendors.

4 Toll Limitation for Qualified Low-Income Customers.

5 There is no need for TracFone to offer a toll limitation feature to qualifying low-
6 income customers. Since TracFone's service is a prepaid service, no customers will be
7 disconnected for failure to pay toll charges or, for that matter, any other charges.

8 TracFone treats long distance minutes of use as any other usage and the customers are not
9 subject to additional charges for toll services.

10 **Q9: WILL TRACFONE OFFER LINK UP SERVICE IN UTAH?**

11 A: TracFone does not seek designation as an ETC for the purpose of offering Link Up
12 service to customers. In the Forbearance Order, the FCC only forbears from applying the
13 facilities requirement to TracFone for the purpose of offering Lifeline service.

14 **Q10: HOW QUICKLY WILL TRACFONE BE ABLE TO START PROVIDING**
15 **LIFELINE SERVICE?**

16 Within a very reasonable timeframe, since TracFone provides service in Utah by reselling
17 service which it obtains from underlying facilities-based providers. Each of those
18 providers' networks are operational and are largely built out. Thus, TracFone already
19 serves those areas. The only delay will be the time needed to implement procedures and
20 internal systems to offer the Lifeline program.

21 **Q11: HOW RELIABLE IS TRACFONE'S QUALITY OF SERVICE?**

22 A: As a reseller of other carriers' wireless services, TracFone's service is of the same quality
23 and reliability as that of its underlying vendors. I cannot assure the Commission that
24 TracFone will never experience service disruptions. Occasional dropped calls and

1 inconsistent coverage depending on atmospheric conditions are a fact of life in the
2 wireless industry. However, TracFone's service is as reliable as that of any other wireless
3 provider serving the Utah market. To demonstrate its commitment to high service
4 quality, TracFone will comply with the CTIA - The Wireless Association® Consumer
5 Code for Wireless Service. A copy of the CTIA Code is attached as Exhibit 2.

6 TracFone's SafeLink Wireless® service is also subject to a Privacy Policy available to all
7 customers on its website at www.safelinkwireless.com. A copy of the SafeLink
8 Wireless® Privacy Policy is attached as Exhibit 3.

9 **Q12: HOW WILL TRACFONE ENSURE THAT ELIGIBLE CUSTOMERS ARE**
10 **MADE AWARE OF ITS SERVICES?**

11 A: TracFone will aggressively advertise the availability of its SafeLink Wireless® Lifeline
12 service and the associated charges using media of general distribution, in accordance with
13 the requirements under federal and Utah state law. TracFone plans to utilize such
14 marketing and outreach efforts as necessary and appropriate to ensure that as many
15 eligible consumers as possible avail themselves of TracFone's prepaid wireless Lifeline
16 offering. TracFone understands that it will be competing with other ETCs in Utah,
17 including the incumbent local exchange carriers, to be chosen by consumers to be their
18 Lifeline service provider. TracFone will utilize traditional means for promoting the
19 availability of its Lifeline program. These means will include print and broadcast
20 advertising in media outlets most likely to reach consumers eligible for Lifeline. These
21 would include national publications as well as local and community newspapers, and
22 commercial broadcast stations, especially those stations whose programming is targeted
23 to significant lower income communities including, for example, Spanish language

1 stations in areas with significant Spanish-speaking populations. Sample print
2 advertisements are attached as Exhibit 4.

3 **Q13: WILL TRACFONE COMPLY WITH THE LIFELINE CERTIFICATION AND**
4 **VERIFICATION REQUIREMENTS?**

5 A: TracFone understands that this Commission requires wireless ETCs to follow the FCC's
6 certification and verification requirements. TracFone will certify and verify consumer
7 eligibility in accordance with the FCC's requirements.

8 **Q14: WHY SHOULD TRACFONE BE DESIGNATED AS AN ETC?**

9 A: The FCC has determined that designation of competitive ETCs promotes competition and
10 benefits consumers by increasing customer choice, innovative services, and new
11 technologies. Designation of TracFone as an ETC will provide a valuable alternative to
12 the existing Lifeline wireline and wireless services available in Utah. TracFone's
13 Lifeline service will provide public interest benefits, including larger local calling areas,
14 the convenience and security afforded by mobile telephone service, the opportunity for
15 customers to control their costs by purchasing in advance only the volumes of service
16 which they need and supplementing those quantities on an as-needed basis after
17 exhausting their monthly supply of free service, availability of important vertical features
18 such as caller ID and voice mail at no additional charge, and, availability of E911 service
19 in accordance with the FCC's E911 requirements. In addition, TracFone's inclusion of
20 all distance calling (local and long distance) within its calling plans will enable
21 consumers to avoid the risk of becoming burdened with large and unanticipated charges
22 for toll calling.

1 **Q15: IS TRACFONE ADDRESSING THE CURRENT ECONOMIC DOWNTURN?**

2 A: TracFone's SafeLink Wireless® Lifeline service offers important benefits that are
3 especially needed by low income Utah residents in this time of economic downturn. As
4 the Commission is aware, Utah has been substantially impacted by the foreclosure crisis
5 and by a significant decrease in gambling and touring spending. Furthermore, the Dow
6 Jones Industrial Average, a primary indicator of the health of the economy, has
7 substantially declined since 2008. Thus, the savings accounts upon which many Utah
8 residents depend for emergencies and for retirement have been significantly eroded.
9 According to the United States Bureau of Labor Statistics, as of December 2009, Utah
10 experienced an unemployment rate of 6.7 percent. These conditions have had a
11 significant impact on Utah residents. The availability of a mobile telephone is critical to
12 many unemployed Utah residents' efforts to search for other employment opportunities.
13 Without a mobile telephone, unemployed individuals face extreme difficulty in finding a
14 job. A mobile telephone allows individuals to be reached at any time and location and
15 enables unemployed individuals to respond to potential employers immediately. In
16 addition, a mobile telephone assists employed low-wage individuals by allowing those
17 individuals to stay in contact with employers, manage relationships with supervisors, and
18 respond to requests to work additional shifts or hours. TracFone's SafeLink Wireless®
19 Lifeline program will enable thousands of Utah residents, including residents seeking
20 employment and residents with low-wage positions, to obtain a handset and wireless
21 service which would otherwise be unavailable to them.

22 **Q16: WHY DOES UTAH NEED ANOTHER ETC?**

1 A: As I will describe in a few moments, a substantial majority of Utah residents who are
2 eligible for Lifeline benefits are not enrolled in a Lifeline program with an ETC. Based
3 on data published by the Universal Service Administrative Company, Sprint Spectrum is
4 the only wireless ETC receiving Lifeline support from the federal Universal Service
5 Fund's Lifeline. However, Sprint Spectrum does not have a significant number of
6 Lifeline customers in Utah as evidenced by the fact that it received Lifeline support of
7 \$302 in 2008 and \$674 for the first three quarters in 2009. While TracFone does not
8 know the precise causes for the underutilization of a program established to provide
9 discounted telecommunications services to low income households, based on its
10 experience in other states, it believes that its Lifeline service will attract a significant
11 number eligible low income Utah consumers. The relevant portions of USAC FCC
12 Filings, Second Quarter Appendices - 2010, Chart LI05, is attached as Exhibit 5.

13 **Q17: WILL DESIGNATION OF TRACFONE AS AN ETC SERVE THE PUBLIC**
14 **INTEREST?**

15 A: Yes. The FCC has identified factors to be considered in determining whether designation
16 of an additional ETC would serve the public interest. These include the benefits of
17 increased competitive choice and the unique advantages of the applicant company's
18 service offerings.

19 **Q18: WHAT ARE SOME BENEFITS OF INCREASED COMPETITIVE CHOICE?**

20 A: The benefits of competitive choice are especially valuable in situations in which wireless
21 providers like TracFone seek to provide service to rural communities and elsewhere. The
22 availability of a wireless competitive alternative benefits those rural consumers who often
23 must drive significant distances to work, schools, stores, and other community locations.

1 TracFone's prepaid wireless service alternative will provide all Lifeline qualified
2 consumers with convenient and affordable telecommunications service, both from their
3 residences and when they are away from their homes.

4 TracFone believes that many consumers, including qualified Lifeline customers,
5 view the portability and convenience of wireless service as a modern necessity, not a
6 luxury. Parents need to be able to reach their children wherever they may be, and vice
7 versa; persons seeking employment opportunities need to be reachable by potential
8 employers, even when they are away from home; persons need to be able to call for
9 emergency assistance while away from home, since not all emergencies requiring 911
10 access occur at home. TracFone recognizes that not all Lifeline-eligible low income Utah
11 consumers will select TracFone's SafeLink Wireless® offering. Some consumers will
12 prefer the traditional Lifeline plans of other ETCs, such as that of their incumbent
13 wireline local exchange carrier. For those consumers who would prefer the benefits of a
14 wireless Lifeline plan, SafeLink Wireless® will provide an important alternative.

15 According to FCC data, Utah's statewide Lifeline participation rate is 12.4 percent of
16 eligible households. In other words, nearly ninety percent of low income Utah
17 households which are eligible to participate in Lifeline are not doing so. TracFone
18 expects that qualified consumers will elect to participate in Lifeline, if a wireless option
19 is available, and that the availability of competing Lifeline programs will encourage
20 greater participation in Lifeline. In fact, since late 2008 when TracFone commenced
21 offering SafeLink Wireless® Lifeline service in three states (Tennessee, Virginia, and
22 Florida), TracFone has substantially increased the number of Lifeline participants in each

1 state where SafeLink Wireless® is offered. For example, in each of those states,
2 TracFone has increased Lifeline enrollment by more than one hundred percent.

3 **Q19: WHAT ARE THE ADVANTAGES OF TRACFONE'S SERVICE OFFERINGS.**

4 A: As described earlier in my testimony, TracFone's entire business model is predicated on
5 providing easy-to-use, pay-as-you-go, affordable wireless telecommunications service to
6 consumers to whom wireless service would be otherwise unavailable or unaffordable.
7 TracFone offers consumers an opportunity to acquire wireless service using state-of-the-
8 art handsets and such features as caller ID, voice mail, text messaging, and long distance
9 calling without toll charges, as well as international calling to more than 60 destinations.
10 Because TracFone's service requires no term contracts, no minimum service periods or
11 volume commitments, no credit checks, and no early termination fees, the service is
12 available to everyone – irrespective of age; irrespective of residency; irrespective of
13 creditworthiness. Moreover, TracFone's prepaid service is unique in that usage
14 information and remaining balance information is stored in the handsets and is thus
15 available to consumers on a "real-time" basis. TracFone's prepaid service offers
16 Lifeline-qualified customers access, quality and price.

17 **Q20: WHAT ARE THE GENERAL TERMS OF TRACFONE'S SAFELINK**
18 **WIRELESS® LIFELINE SERVICE?**

19 A: Each Utah TracFone Lifeline customer will be provided with 67 minutes of use each
20 month. Those minutes will be automatically added to each customer's prepaid account
21 balance each month. Unused minutes will carry over from month-to-month so long as
22 the customer remains enrolled in the Lifeline program. In addition, Lifeline customers
23 will be allowed to purchase additional usage cards at a rate of \$0.20 per minute.

1 TracFone pledges that one hundred percent of the federal Lifeline support it receives will
2 be flowed through to Lifeline customers in the form of free usage. In addition, TracFone
3 will provide each Lifeline customer with a monthly benefit of \$3.50 which it funds from
4 its own resources. TracFone will make available E911-compliant handsets to its
5 participating Lifeline customers at no charge. TracFone will pre-activate handsets
6 provided to qualified customers, enroll the customers in the Lifeline plan, and allocate the
7 appropriate number of minutes of usage to the customers' accounts. The handsets will be
8 delivered to customers upon enrollment in the program with the first month's free usage
9 allotment already activated. The phones will remain active for one year even if no
10 additional usage is purchased. Low income customers who have limited access to
11 communications sources will gain immediate and free access to wireless
12 telecommunications service simply by turning on the handsets provided by TracFone. A
13 copy of the SafeLink Wireless® service terms and conditions is attached as Exhibit 6.

14 **Q21: WHAT KIND OF IMPACT WILL TRACFONE HAVE ON THE UNIVERSAL**
15 **SERVICE FUND IF GRANTED ETC STATUS?**

16 A: The FCC considered the impact on the USF when determining whether to grant
17 TracFone's petitions for designation as an ETC and concluded that designation of
18 TracFone as an ETC for the limited purpose of offering Lifeline would not have a
19 significant impact on the USF. The FCC noted in its decision granting TracFone
20 forbearance from the facilities requirement for ETCs: "Any increase in the size of the
21 fund would be minimal and is outweighed by the benefit of increasing eligible
22 participation in the Lifeline program, furthering the statutory goal of providing access to
23 low-income consumers."

1 Whatever impact classification of TracFone as an ETC will have on the universal
2 service fund will be negligible. TracFone seeks ETC designation solely to enable it to
3 offer Lifeline benefits to eligible low income consumers. TracFone does not seek access
4 to funds from the federal Universal Service Fund for the purpose of obtaining high cost
5 support. In 2007, low-income support accounted for only 11.8 percent of the distribution
6 of the total universal service fund, while high-cost support accounted for 61.6 percent. It
7 is important to recognize the differences between low income funding for the Lifeline
8 program and high cost funding. With Lifeline, ETCs only receive USF support for
9 customers they obtain. If TracFone acquires Lifeline customers currently served by other
10 ETCs, TracFone will gain the Lifeline support for those customers, but the ETCs losing
11 the customers will lose the support. TracFone will only increase the amount of USF
12 Lifeline funding in situations where it obtains new Lifeline customers; that is, customers
13 not currently enrolled in other ETCs' Lifeline programs. In contrast, with high cost
14 support, when new ETCs enter the market and capture customers from the existing ETCs,
15 both the incumbent ETCs and the new ETCs receive high cost support -- based on the
16 incumbent LECs' costs, thereby increasing the size of the USF.

17 Significantly, TracFone's designation as an ETC will not increase the number of
18 persons eligible for Lifeline support. As stated in the Communications Act, the universal
19 service fund was established to ensure that quality services are available to all individuals
20 at just, reasonable, and affordable rates. TracFone's ability to increase the Lifeline
21 participation rate of qualified low-income individuals will further the goal of Congress to
22 provide all individuals with affordable access to telecommunications service.

1 **Q22: ARE THERE ANY OTHER WAYS IN WHICH TRACFONE'S DESIGNATION**
2 **AS AN ETC WILL BENEFIT THE PUBLIC INTEREST IN UTAH?**

3 A: As a national leader in prepaid wireless services, TracFone has done much to advance the
4 availability of wireless service for those portions of the population for whom wireless
5 service is otherwise unavailable or, if available, is too costly and requires term duration
6 and volume commitments which are beyond the means of many consumers.

7 Moreover, designation of TracFone as an ETC will serve the public interest by
8 further promoting the extensive role TracFone plays in the provision of communications
9 services to lower income and lower volume users, transient users, as well as other
10 consumers who either choose not to enter into long-term service commitments or who are
11 unable to meet the credit requirements necessary to obtain service from other wireline or
12 wireless carriers. TracFone's "pay-as-you-go" wireless service enables consumers to
13 enjoy the convenience and security of wireless telecommunication without being subject
14 to extensive credit reviews and long-term service commitments which historically have
15 limited the availability of wireless service to many Americans, including many Utah
16 residents.

17 **Q23: IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD TO YOUR**
18 **TESTIMONY?**

19 A: Based on my testimony above, I would like to reiterate that TracFone meets all legal
20 requirements for designation as an ETC and that designation of TracFone as an ETC for
21 the limited purpose of providing Lifeline service to low-income Utah households will
22 serve the public interest. Accordingly, the Public Service Commission of Utah should
23 unconditionally and promptly grant TracFone's petition for designation as an eligible

1 telecommunications carrier so that TracFone may commence providing its SafeLink
2 Wireless® service to low income Utah households at the earliest possible time.

Exhibit 1

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

ORDER

Adopted: September 6, 2005

Released: September 8, 2005

By the Commission: Commissioner Abernathy issuing a statement.

I. INTRODUCTION

1. In this Order, we address a petition filed by TracFone Wireless, Inc. (TracFone)¹ pursuant to section 10 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act)² requesting that the Commission forbear from the requirement that a carrier designated as an eligible telecommunications carrier (ETC) for purposes of federal universal service support provide services, at least in part, over its own facilities.³ TracFone requests that its eligibility for federal universal service support be limited to Lifeline only. Subject to the conditions that we describe below, we grant TracFone forbearance from the facilities requirement for ETC designation for Lifeline support only.⁴

II. BACKGROUND

2. Procedural History: TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider (*i.e.*, a pure wireless reseller) that provides prepaid wireless telecommunications services. On June 8, 2004, TracFone filed a Petition for Forbearance from section 214(e) of the Act, which requires that an ETC offer service using its own facilities or a combination of its own facilities and resale of another carrier's services (Forbearance Petition or Petition).⁵ Contemporaneously with its Petition, TracFone filed

¹ TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004 (Forbearance Petition or Petition). On February 17, 2005, pursuant to section 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until September 6, 2005, the date on which TracFone's Petition shall be deemed granted in the absence of a Commission decision that the Petition fails to meet the standard for forbearance under section 10(a). *TracFone Wireless, Inc.'s Petition 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, 20 FCC Rcd 3677 (2005).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ 47 U.S.C. § 214(e).

⁴ We note that this grant of forbearance does not establish TracFone as an ETC. We will address TracFone's petitions for ETC designations in subsequent orders.

⁵ On June 24, 2004, the Bureau issued a Public Notice seeking comment on TracFone's Petition for Forbearance. *Parties are Invited to Comment on TracFone Wireless' Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and Petition for Forbearance from Application of Section 214*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 11264 (2004). Comments and replies to the June 24th Public Notice were received

with the Commission petitions for ETC designation for several states.⁶ On August 8, 2004, TracFone, in its reply comments, and shortly thereafter in its applications for ETC designation, amended its Petition and related ETC applications to limit its eligibility for federal universal service support to the Lifeline portion of the low-income program.⁷ TracFone states that it will meet all ETC obligations except for the requirement to “own facilities” and commits to providing its Lifeline customers with access to E911 service, regardless of activation status and availability of prepaid minutes, and to requiring its customers to self-certify they are receiving only one Lifeline-supported service.⁸ On September 24, 2004, TracFone amended its Petition a second time to include a request for forbearance from section 54.201(i) of the Commission’s rules, which provides that state commissions shall not designate as an ETC a carrier that offers services supported by federal universal service support mechanisms exclusively through resale of another carrier’s service.⁹

3. Applicable Statutes and Rules: The Act provides that only an ETC shall be eligible for universal service support.¹⁰ To be eligible for ETC designation, a carrier must meet certain statutory requirements including offering service over its own facilities or a combination of its own facilities and resale of another

on July 26 and August 9, 2004, respectively. In response to certain comments, TracFone limited its Petition to Lifeline support in its August 9th reply comments. Because TracFone modified its Petition in its reply comments, commenters did not provide comment in the Forbearance proceeding on the Lifeline-only limitation. Despite this fact, commenters did address the Lifeline-only limitation in the related TracFone ETC proceedings, which TracFone likewise modified to reflect the request for limited universal service support. *See The Wireline Competition Bureau Seeks Comment on Petitions Concerning Eligible Telecommunications Designations and the Lifeline and Link-up Universal Service Support Mechanism*, CC Docket No. 96-45 and WC Docket No. 03-109, Public Notice, 19 FCC Rcd 20462 (2004).

⁶ TracFone has eight ETC petitions pending before the Commission. *See* TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed June 8, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed June 21, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed June 21, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45, filed November 9, 2004.

⁷ TracFone Reply Comments, filed August 9, at 2-3 (August Reply Comments). *See* TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed Aug. 16, 2004.

⁸ TracFone Reply Comments, filed October 4, 2004, at 3-4 (October Reply Comments); August Reply Comments at 10.

⁹ 47 C.F.R. § 54.201(i); TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004.

¹⁰ 47 U.S.C. § 254(e).

carrier's service.¹¹ Only ETCs may receive high-cost and low-income support.¹² The low-income support mechanism of the universal service fund consists of the Lifeline and Link-Up programs.¹³

4. Collectively, the Lifeline and Link-Up programs are designed to reduce the monthly cost of telecommunications service and the cost of initial connection, respectively, for qualifying consumers. Lifeline provides low-income consumers with discounts of up to \$10.00 off of the monthly cost of telephone service.¹⁴ Link-Up provides low-income consumers with discounts of up to \$30.00 off of the initial costs of installing telephone service.¹⁵ Recognizing the unique needs and characteristics of tribal communities, enhanced Lifeline and Link-Up provide qualifying low-income individuals living on tribal lands with up to \$25.00 in additional discounts off the monthly costs of telephone service and up to \$70.00 more off the initial costs of installing telephone service.¹⁶ TracFone seeks eligibility to receive support only for the Lifeline portion of the low-income program.¹⁷

¹¹ 47 U.S.C. § 214(e)(1)(A).

¹² A carrier need not be an ETC to participate in the schools and libraries or rural health care programs. 47 U.S.C. § 254(h)(1)(A) and (B)(ii). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015, para. 449 (1997 *Universal Service Order*) (concluding that any telecommunications carrier, not just ETCs, may receive universal service support for providing supported services to schools and libraries); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114-5, para. 19 (1999) (*Fourteenth Order on Reconsideration*) (finding that although only ETCs may receive universal service support, a non-ETC that provides supported services to eligible rural health care providers may offset the value of the discount provided against its universal service contribution obligation and, to the extent such discount exceeds its contribution obligation, receive a refund).

¹³ 47 C.F.R. §§ 54.401, 54.411.

¹⁴ See 47 C.F.R. § 54.401(a)(2).

¹⁵ See 47 C.F.R. § 54.411(a)(1).

¹⁶ See 47 C.F.R. §§ 54.405(a)(4), 54.411(a)(3). Under the Commission's rules, there are four tiers of federal Lifeline support. All eligible subscribers receive Tier 1 support which provides a discount equal to the ETC's subscriber line charge. Tier 2 support provides an additional \$1.75 per month in federal support, available if all relevant state regulatory authorities approve such a reduction. (All fifty states have approved this reduction.) Tier 3 of federal support provides one half of the subscriber's state Lifeline support, up to a maximum of \$1.75. Only subscribers residing in a state that has established its own Lifeline/Link-Up program may receive Tier 3 support, assuming that the ETC has all necessary approvals to pass on the full amount of this total support in discounts to subscribers. Tier 4 support provides eligible subscribers living on tribal lands up to an additional \$25 per month towards reducing basic local service rates, but this discount cannot bring the subscriber's cost for basic local service to less than \$1. See 47 C.F.R. § 54.403.

¹⁷ August Reply Comments at 3 (requesting eligibility for Lifeline only support); October Reply Comments at 4 (specifying it does not seek eligibility for Link-Up support). TracFone has filed details of two proposed Lifeline plans. TracFone Wireless, Inc. *Ex Parte* Supplement to Petition for Forbearance and Petitions for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, at 3-5, filed July 15, 2005. The first plan, the "Pay-As-You-Go" Lifeline Plan, provides Lifeline customers with access to the network for one year and 30 minutes of airtime each month. Under TracFone's proposal, the cost of this plan would be completely subsidized by the Lifeline support. *Id.* at 3-4. The second plan, the "Net10 Pay-As-You-Go" Lifeline Plan, would require the Lifeline customer to purchase buckets of minutes to be used in an identified period of time that are discounted from TracFone's retail price to reflect the Lifeline subsidy. *Id.* at 4-5. One variation under this plan would require Lifeline customers to redeem coupons monthly. *Id.* TracFone states that, under any plan, the Administrator would provide support to TracFone as it does to all other recipients of Lifeline support; that is, TracFone's Lifeline support will be calculated on a monthly basis and distributed on a quarterly basis. Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 3, filed August 22, 2005.

5. The Commission has in the past declined to extend ETC status to pure resellers. In the 1997 *Universal Service Order*, the Commission found that the plain language of the statute requires that a carrier seeking ETC designation must own facilities, at least in part, thus precluding a carrier that offers services solely through resale from being designated as eligible.¹⁸ The Commission reasoned, without distinguishing among the various universal service support programs, that it was appropriate to deny pure resellers universal service support because pure resellers could receive the benefit of universal service support by purchasing wholesale services at a price that includes the universal service support received by the incumbent provider.¹⁹ Later in the 1997 *Universal Service Order*, the Commission found that although resellers were not eligible to receive universal support directly, they were not precluded from offering Lifeline services. Resellers could offer Lifeline services by purchasing services at wholesale rates pursuant to section 251(c)(4) that reflect the customer-specific Lifeline support amount received by the incumbent local exchange company (LEC) and then passing these discounts through to qualifying low-income customers.²⁰ The Commission, in so finding, considered only that the underlying carrier was an incumbent LEC, subject to price-regulated resale obligations. Further, the Commission declined to forbear from the facilities requirement, finding that the statutory criteria had not been met.²¹ Making no finding with respect to the first two prongs, the Commission concluded that forbearance was not in the public interest because allowing pure resellers to receive universal service support would result in double recovery by the resellers.²² In making this finding, however, the Commission again did not distinguish among the various universal service support programs. Specifically, it did not consider whether providing only Lifeline support directly to a pure wireless reseller would result in double recovery.

III. DISCUSSION

6. For the reasons provided below, we conditionally grant TracFone's Petition and forbear from section 214(e) of the Act and sections 54.201(d)(1) and 54.201(i) of our rules for the purpose of considering its Petitions for ETC Designation for Lifeline support only.²³ If ultimately granted ETC status, TracFone will be eligible only for Lifeline support. As a limited ETC, TracFone would not be eligible to receive support for the other supported services under the low-income program nor would it be eligible, as an ETC, to receive support for services supported by the other universal support mechanisms.²⁴ We will address TracFone's petitions for ETC designation in subsequent orders. In sum, this grant is conditional on TracFone (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides it provides Lifeline service; (d) obtaining a certification from each Public Safety

¹⁸ *Id.* at 8875, para. 178 (adopting Joint Board's analysis and conclusion); see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 172-73, paras. 160-161 (1996).

¹⁹ 1997 *Universal Service Order*, 12 FCC Rcd at 8866, para. 161 and 8875, para. 178.

²⁰ *Id.* at 8972, para. 370. The Commission noted that it would reassess this approach in the future if the Lifeline program appeared to be under-utilized. *Id.*

²¹ *Id.* at 8875-6, para. 179.

²² *Id.*

²³ In addition, and on our own motion, we forbear from section 54.201(d)(1) of the Commission's rules. 47 C.F.R. § 54.201(d)(1). This section mirrors section 214(e) of the Act and requires that ETCs be facility-based, at least in part. We apply the same forbearance analysis we applied to section 214(e) to this section of our rules in determining that forbearance is warranted.

²⁴ See n.16, *supra*, for discussion regarding participation by non-ETCs in the schools and libraries and rural health care programs.

Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) requiring its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.²⁵ Finally, as explained below, within thirty days of the release of this Order, we require TracFone to file with the Commission a plan outlining the measures it will take to implement these conditions.

7. Section 10 of the Act requires that the Commission forbear from applying any regulation or any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in section 10(a) are satisfied. Specifically, section 10(a) provides that the Commission shall forbear from applying such provision or regulation if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.²⁶

8. In addition, when considering the public interest prong under section 10(a)(3), the Commission must consider “whether forbearance . . . will promote competitive market conditions.”²⁷ If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.²⁸ Forbearance is warranted, however, only if all three prongs of the test are satisfied. For the reasons explained below, we find that TracFone satisfies all three prongs.

9. This Petition requires that we consider the statutory goals of two related but different provisions of the Act. We first examine the statutory goals of universal service in section 254 specifically in the

²⁵ Commenters have raised concerns about the administrative costs, complexities, and burdens of granting this Petition and presumably the associated ETC designation petitions. See Letter from Robin E. Tuttle, USTelecom, to Marlene Dortch, FCC, CC Docket No. 96-45 (filed August 17, 2005) (USTelecom August 17 *Ex Parte*). We believe that this conditional forbearance will serve to further the statutory goal of the providing telecommunications access to low-income subscribers while establishing the necessary safeguards to protect the universal service fund and the functioning of the low-income support mechanism. To the extent, however, that our predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, the parties can file appropriate petitions with the Commission and the Commission has the option of reconsidering this forbearance ruling. See *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21508-9, para. 26 n.85 (2004); see also *Petition of SBC Communications Inc. for Forbearance from Structural Separations Requirements of Section 272 of the Communications Act of 1934, As Amended, and Request for Relief to Provide International Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, 19 FCC Rcd 5211, 5223-24, para. 19 n.66 (2004); *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6th Cir. 1998). Additionally, we note that the conditions we impose here will be incorporated into any grant of the ETC designation petitions and any violation of such conditions may result in loss of ETC status.

²⁶ 47 U.S.C. § 160(a).

²⁷ 47 U.S.C. § 160(b).

²⁸ *Id.*

context of “low-income consumers.”²⁹ We then consider the statutory purpose underpinning the facilities requirement in section 214(e) as it relates to qualifying for federal low-income universal service support. After careful examination of the regulatory goals of universal service as applied to low-income consumers, we determine that a facilities requirement for ETC designation is not necessary to ensure that a pure wireless reseller’s charges, practices, classifications or regulations are just and reasonable when that carrier seeks such status solely for the purpose of providing Lifeline-supported services. Indeed, for the reasons provided below, we find that the facilities requirement impedes greater utilization of Lifeline-supported services provided by a pure wireless reseller.

10. Universal service has been a fundamental goal of federal telecommunications regulation since the passage of the Communications Act of 1934.³⁰ Congress renewed its concern for low-income consumers in the Telecommunications Act of 1996 when it established the principles that guide the advancement and preservation of universal service.³¹ Specifically, the Act directs the Commission to consider whether “consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas, ... have access to telecommunications [services] ... at rates that are reasonably comparable to rates charged ... in urban areas.”³² We therefore examine the facilities requirement from which TracFone seeks forbearance in light of the statute’s goal of providing low-income consumers with access to telecommunications services.

11. Just and Reasonable: As an initial matter, we note that a provision or regulation is “necessary” if there is a strong connection between the requirement and regulatory goal.³³ Section 10(a)(1) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline support only is necessary to ensure that the charges, practices, classifications or regulations are just and reasonable and not unjustly or unreasonably discriminatory.

12. We find that the facilities requirement is not necessary to ensure that TracFone’s charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only. The Commission has in the past declined to extend ETC status to pure resellers because it was concerned about double recovery of universal service support.³⁴ In making this decision, however, the Commission considered the issue in the context of wireline resellers and without differentiating among the types of universal service support and the basis of distribution. Lifeline support, designed to reduce the monthly cost of telecommunications services for eligible consumers, is distributed on a per-customer basis and is directly reflected in the price that the eligible customer pays.³⁵ Because it is customer-specific, a carrier who loses a Lifeline customer to a reseller would no longer receive the Lifeline support to pass through to that customer. Thus, a wireless reseller who serves a Lifeline-eligible customer and receives Lifeline support directly from the fund does not receive a double recovery. By comparison, where the wholesale carrier is an incumbent LEC subject to price-regulated resale under section 251(c)(4), the rate at which the reseller obtains the wholesale service is based on a state-mandated percentage

²⁹ 47 U.S.C. § 254(b)(3).

³⁰ 47 U.S.C. § 151 (“to make available, so far as possible, *to all the people* of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and communication service with adequate facilities at reasonable rates”) (emphasis added).

³¹ 47 U.S.C. § 254(b); *see 1997 Universal Service Order*, 12 FCC Rcd at 8789, para. 21 and 8793, para. 27.

³² 47 U.S.C. § 254(b)(3) (emphasis added).

³³ *See CTIA v. FCC*, 330 F.3d 502, 512 (2003).

³⁴ *1997 Universal Service Order*, 12 FCC Rcd at 8861, 8873, 8875, paras. 151-152, 174, and 178.

³⁵ 47 C.F.R. §§ 54.401, 54.504.

discount off of the incumbent LEC's retail rate for the service, and any Lifeline support received by the incumbent LEC would therefore be reflected in the price charged to the reseller.³⁶ In this scenario, a reseller that also received Lifeline support could recover twice: first because the benefit of the Lifeline support is reflected in the wholesale price and second because the reseller also receives payment directly from the fund for the Lifeline customer. That, however, is not the case before us. TracFone, as a CMRS provider, does not purchase Lifeline-supported services from incumbent LEC providers. Because TracFone's CMRS wholesale providers are not subject to section 251(c)(4) resale obligations, the resold services do not reflect a reduction in price due to Lifeline support. Therefore, we find that allowing TracFone to receive Lifeline support directly from the fund would not result in double recovery to TracFone and that the logic of the *1997 Universal Service Order* does not apply here.

13. We agree with TracFone that, as a reseller, it is by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory.³⁷ We note that TracFone's Lifeline offering will compete with at least one other Lifeline offering whether from the underlying CMRS provider, if an ETC, or from the incumbent wireline carrier.³⁸ We also believe that this competition will spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. We note that TracFone has created a wireless prepaid product that is neither dependent upon the retail service offerings of its underlying carriers nor simply a rebranding of the underlying carrier's retail service offering which may provide a valuable alternative to eligible consumers.³⁹

14. For the reasons provided above, we find that the requirements of the first prong of section 10(a) are met. Where, as here, the wireless reseller is forgoing all universal service support but Lifeline, which is customer-specific and is designed to make telecommunication service affordable to eligible consumers, the facilities requirement is unnecessary to preserve the integrity of the universal service program or the fund. By limiting TracFone's eligibility to Lifeline support, the facilities requirement is not necessary to ensure that TracFone's charges, practices, and classifications are just and reasonable.

15. Consumer Protection: Section 10(a)(2) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation only for Lifeline support is necessary for the protection of consumers. We find that imposing a facilities requirement on a pure wireless reseller is not necessary for the protection of consumers subject to the conditions described below. Specifically, we conclude that forbearance from this provision will actually benefit consumers. Indeed, if TracFone is ultimately granted limited ETC status, it would be offering Lifeline-eligible consumers a choice of providers not available to such consumers today for accessing telecommunications services. The prepaid feature may be an attractive alternative for such consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts. We also note that TracFone has committed to ensuring that all of its consumers will be able to place enhanced 911 (E911) calls from their handsets even if the consumer's service is not active or does not have prepaid minutes available.⁴⁰

³⁶ See 47 C.F.R. § 251(c)(4).

³⁷ Forbearance Petition at 5.

³⁸ See 47 C.F.R. § 54.405(a) (requiring ETCs to offer Lifeline service).

³⁹ TracFone states that its customers pay in advance for minutes of use, without term contracts or termination fees, other extraneous or pass-through fees, credit checks, or deposits. TracFone also states that its pricing is uniform across its service areas despite the costs associated with any particular underlying carrier. Forbearance Petition at 3-4.

⁴⁰ August Reply Comments at 10.

16. Given the importance of public safety, we condition this grant of forbearance on TracFone's compliance with the E911 requirements applicable to wireless resellers, as modified below, for all Lifeline customers. In light of the condition discussed below, that TracFone ensure its customers receive only one Lifeline-supported service, we find it essential that TracFone's Lifeline-supported service be capable of providing emergency access. Given the possibility that this Lifeline-supported service will be the customers' only means of accessing emergency personnel, we require that TracFone provide its Lifeline customers with access to basic and E911 service immediately upon activation of service.⁴¹ We note that this condition is consistent with TracFone's representation that its Lifeline customers will be able to make emergency calls at any time.⁴² To demonstrate compliance with this condition, TracFone must obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service. TracFone must furnish copies of these certifications to the Commission upon request.⁴³ As an additional condition, TracFone must provide only E911-compliant handsets to its Lifeline customers, and must replace any non-compliant handset of an existing customer that obtains Lifeline-supported service with an E911-compliant handset, at no charge to the customer. The Commission has an obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety.⁴⁴ The provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises, and this Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers.⁴⁵ We believe that these conditions are necessary to ensure that TracFone's Lifeline customers have meaningful access to emergency services. We reiterate that, with the possibility that the Lifeline service will be the customer's only access to emergency services and given the potential gravity of harm if such Lifeline customers cannot obtain such access, we believe that these conditions will further the protection of such Lifeline customers.

17. We are not persuaded by some commenters' concerns regarding the impact on the size of the universal service fund and the associated contribution obligation if we grant this Petition.⁴⁶ Because section 10(a)(2) requires that we consider the welfare of all "consumers," we must consider the effect a grant of this Petition will have on consumers who will likely shoulder the effects of any increased contribution obligation since carriers are permitted to recover their contribution obligations from

⁴¹ Under section 20.18(m) of our rules, wireless resellers have an independent obligation, beginning December 31, 2006, to provide access to basic and E911 service, to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver E911 information to the appropriate PSAP. 47 C.F.R. § 20.18(m). Section 20.18(m) further provides that resellers have an independent obligation to ensure that all handsets or other devices offered to their customers for voice communications are location-capable. *Id.* Under our rules, this obligation applies only to new handsets sold after December 31, 2006. *Id.* As a condition of this grant of forbearance, however, we require that TracFone, if granted ETC status, meet the requirements of section 20.18(m) for all of its Lifeline customers as of the date it provides such Lifeline service.

⁴² August Reply Comments at 10 (given E911 capabilities of its service and handsets, TracFone envisions that its service "really will serve as a 'lifeline' for those eligible customers participating in the program").

⁴³ We recognize that, as a practical matter, if TracFone's underlying facilities-based licensee has not deployed the facilities necessary to deliver E911 information to the appropriate PSAP, TracFone will not be able to offer Lifeline-supported service to customers residing in that area.

⁴⁴ *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum and Order, FCC 05-148, para. 144 (rel. August 8, 2005).

⁴⁵ *Id.*

⁴⁶ *See, e.g.*, Comments of TDS Telecommunications Corp., filed September 20, 2004, at 5-6 (TDS Comments).

customers.⁴⁷ If TracFone is able to obtain ETC designation for Lifeline-only services, we do not expect this to significantly burden the universal service fund and thus negatively affect consumers through increased pass-through charges of the carriers' contribution obligations. The Commission has recognized the potential growth of the fund associated with high-cost support distributed to competitive ETCs.⁴⁸ TracFone, however, would not be eligible for high-cost support. In 2004, low-income support accounted for only 14 percent of the distribution of the total universal service fund; whereas, high-cost support accounted for 64.2 percent.⁴⁹ Any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers. Significantly, granting TracFone's Petition will not have any effect on the number of persons eligible for Lifeline support.

18. We further safeguard the fund by imposing additional conditions on this grant of forbearance. Specifically, as a further condition of this grant of forbearance and in addition to all other required certifications under the program, we require that TracFone require its Lifeline customers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are the head of household and only receive Lifeline-supported service from TracFone.⁵⁰ The penalties for perjury must be clearly stated on the certification form. Additionally, in order to further strengthen the head of household requirement, we require that TracFone track its Lifeline customer's primary residential address and prohibit more than one supported TracFone service at each residential address.⁵¹ These conditions are consistent with TracFone's representations in the record.⁵² In light of these safeguards, we are not dissuaded from granting forbearance by concerns of double recovery relating to customers receiving Lifeline support for more than one service.⁵³ We recognize, however, that the potential for more than one

⁴⁷ See 47 C.F.R. § 54.712.

⁴⁸ See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1577, para. 31 (2004); see also *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6433-4, para. 25 (2004).

⁴⁹ Wireline Competition Bureau, Federal Communications Commission, *Trends in Telephone Service*, Table 19.1 and Chart 19.1 (June 2005). As of March 2004, the average monthly federal support per non-tribal Lifeline customer was \$8.55. *Id.* at Table 19.7. See 47 C.F.R. § 54.403. Tribal customers are eligible for up to an additional \$25 per month in Lifeline support. 47 C.F.R. § 54.403(a)(4).

⁵⁰ October Reply Comments at 3-4 (commitment to require Lifeline customers to self-certify that they do not receive support from any other carrier). To monitor compliance, we require that TracFone maintain the self-certifications and provide such documentation to the Commission upon request.

⁵¹ See Reply Comments of TracFone Wireless, Inc. to Petition for ETC Designation in Virginia, filed September 7, 2004, at 7-8 (fully capable of fulfilling all record keeping requirements and has the ability to track each consumer's primary residence). See also Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, CC Docket No. 96-45, filed July 13, 2005 (capable of fulfilling certification and verification requirements) (TracFone July 13 *Ex Parte*).

⁵² See n.56 and n.57 above. We point out that these conditions are in addition to, and do not supplant, the certification and verification eligibility already required by our rules for federal default states and any similar state rules for the non-federal default states. See, e.g., 47 C.F.R. § 54.410 (requiring initial certification and annual verification of eligibility).

⁵³ See TDS Comments at 5-6; Reply Comments of the United State Telecom Association, filed October 4, 2004, at 6 and n.18; letter from Katherine O'Hara, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 1, filed August 9, 2005 (Verizon *Ex Parte*); USTelecom August 17 *Ex Parte* at 4.

Lifeline-supported service per eligible consumer is an industry-wide problem.⁵⁴ We are confident that these conditions of this grant of forbearance will eliminate this concern with respect to TracFone's customers. Additionally, we encourage comment on this issue in the *Comprehensive Universal Services Program Management* proceeding to address the potential for abuse throughout the industry.⁵⁵

19. USTelecom raised concerns about the fact that TracFone distributes its service through retail outlets.⁵⁶ USTelecom argues that TracFone will not have the requisite control over the retailer's employees to ensure compliance with Lifeline rules and certifications. We recognize that this may be a problem and thus require that TracFone distribute its Lifeline service directly to its Lifeline customers. Specifically, customers may purchase handsets at TracFone's retail outlets, however, we require that TracFone deal directly with the customer to certify and verify the customer's Lifeline eligibility. Of the two methods for certifying and verifying customer eligibility offered by TracFone, we reject the point of sale procedures that would allow TracFone Lifeline customers to submit qualifying information to the retail vendor.⁵⁷ TracFone must have direct contact with the customer, whether by telephone, fax, Internet, in-person consultation or otherwise, when establishing initial and continued eligibility.

20. Certain commenters argue that the prepaid, resold nature of TracFone's proposed service offering will facilitate fraud, waste, and abuse in the Lifeline program.⁵⁸ We find that this concern is more properly addressed in any order resolving TracFone's petitions for designation as an ETC. In the ETC designation proceedings, if TracFone's petitions are granted, we will address how Lifeline support will be calculated and distributed if the prepaid nature of TracFone's service offering requires such clarification.

21. In light of the conditions we have outlined here, we believe that appropriate safeguards are in place to deter waste, fraud, and abuse. We strive to balance our objective of increasing participation in the low-income program with our objective of preventing and deterring waste, fraud, and abuse. We find that we have struck the appropriate balance here. We are also mindful of the fact that other prepaid pure wireless carriers may similarly seek eligibility for Lifeline-only support. Given the safeguards we put in place aimed at ensuring that only eligible consumers receive such support and that they receive such support only once, we do not believe that similar requests will have a detrimental impact on the fund. We note that to the extent any similarly situated prepaid wireless reseller seeks forbearance from these requirements for the purpose of providing only Lifeline support, it will be expected to comply with all the conditions we impose upon TracFone herein.

22. Accordingly, we find that, subject to the 911 and E911 conditions and the self-certification and address limitation conditions set out above, the ETC facilities-based requirement is not necessary for consumer protection. We thus conclude that the second prong of section 10(a) is satisfied.

23. Public Interest: Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline

⁵⁴ See Verizon *Ex Parte* at 1; USTelecom August 17 *Ex Parte* at 2, 4.

⁵⁵ See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109 and CC Docket Nos. 96-45, 97-21, FCC 05-124, para. 22 (rel. June 14, 2005) (*Comprehensive Universal Services Program Management*).

⁵⁶ See USTelecom August 17 *Ex Parte* at 4.

⁵⁷ TracFone July 13 *Ex Parte* at 2-3.

⁵⁸ Letter from Jeffrey S. Lanning, USTelecom, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 3-5, filed August 26, 2005; Reply Comments of Verizon, filed October 4, 2004, at 3.

support only is in the public interest. In this instance, based on the record before us, we find that the statutory goal of providing telecommunications access to low-income consumers outweighs the requirement that TracFone own facilities, where TracFone, should it be designated an ETC, will be eligible only for Lifeline support. Thus, we find that requiring TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live.

24. The Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying low-income consumers.⁵⁹ Presently only about one-third of households eligible for low-income assistance actually subscribe to the program.⁶⁰ We recently expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.⁶¹ On July 26, 2005, we launched a joint initiative with the National Association of Regulatory Utility Commissioners to raise awareness of our Lifeline and Link-Up programs among low-income consumers.⁶² We believe even more can be done to further expand participation to those subscribers that qualify and thus further the statutory goal of section 254(b). Therefore, consistent with the Commission's assertion in the *1997 Universal Service Order* concerning under-utilization of the program, we conclude it is appropriate to consider the relief requested with the goal of expanding eligible participation in the program.⁶³ With only about one-third of Lifeline-eligible households actually subscribing, we believe that granting TracFone's Petition serves the public interest in that it should expand participation of qualifying consumers. Accordingly, we conclude that forbearing from the facilities requirement for Lifeline support only, subject to the conditions set forth above satisfies the requirements of section 10(a)(3).

25. Within thirty days of this release of this Order, we require that TracFone file with the Commission a plan outlining the measures it will take to implement the conditions outlined in this Order. This plan will be placed on public notice and will be considered by the Commission in TracFone's ETC designation proceedings. For the foregoing reasons and subject to the conditions above, we find that the third prong of section 10(a) is satisfied.

26. Finally, we reject USTelecom's argument that TracFone has not requested forbearance from the facilities requirement in section 254(e) and that without such forbearance TracFone cannot fulfill the obligations of an ETC. Specifically, section 254(e) requires that "a carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁶⁴ USTelecom emphasizes that the words "facilities" and "services" are joined by the conjunctive article "and" and therefore an ETC must use any universal support received for facilities as well as services.⁶⁵ We disagree with USTelecom's interpretation. First, we read this provision together with the sentence that precedes it. The preceding sentence states that only an ETC "shall be eligible to receive *specific* Federal universal service support."⁶⁶ The next sentence, which USTelecom quotes, then

⁵⁹ 47 C.F.R. § 54.401.

⁶⁰ *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305, para. 1 and Appendix K at Table 1.B.

⁶¹ *Id.* at 8305, para 1.

⁶² *FCC and NARUC Launch "Lifeline Across America" to Raise Awareness of Lifeline and Link-Up Programs*, News Release, July 26, 2005.

⁶³ *1997 Universal Service Order*, 12 FCC Rcd at 8972, para. 370.

⁶⁴ 47 U.S.C. § 254(e).

⁶⁵ USTelecom August 17 *Ex Parte* at 5 n.1.

⁶⁶ 47 U.S.C. § 254(e) (emphasis added).

requires that “*such service*”, which we find refers to the specific universal support from the previous sentence, be used only for purposes “for which the support is intended.” Reading these sentences together in their entirety, we find that Congress intended that a carrier must use the universal support received to meet the goals of the specific support mechanism under which it was distributed. For example, a carrier who receives specific Lifeline support must use that support to reduce the price of access to telecommunications services for the eligible customer. Second, we note that not all the nominalized verbs in the sentence quoted by USTelecom, “provision,” “maintenance,” and “upgrading,” can be read to apply to both facilities and services. What for example would it mean to “maintain” a “service” apart from the “facilities”? We also note that the nominalized verbs themselves are joined by the conjunctive article “and”. Therefore, extending USTelecom’s logic, any universal support received by a carrier must always be used for the provision, maintenance, *and* upgrading of *both* facilities and services. The terms maintenance and upgrading as generally associated with a carrier’s network and not with service itself. Thus, USTelecom’s reading of section 254(e) would require us to interpret the term “service” as surplusage – a result that must be avoided when the statute admits to other interpretations.⁶⁷ We find the more appropriate reading is to consider these terms in the disjunctive. Thus, we conclude that an ETC receiving Lifeline support uses this specific universal service support for the purposes for which it was intended when it reduces the price of the Lifeline service by the amount of the support.

IV. ORDERING CLAUSE

27. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 160, 214, and 254, the Petition for Forbearance filed by TracFone Wireless, Inc. on June 8, 2004, and amended on August 9, 2004 and September 24, 2004, IS GRANTED subject to the conditions set forth above and, on our own motion, we forbear from enforcing 47 C.F.R. § 54.201(1)(d).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁷ See, e.g., *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001); *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Federal-State Joint Board on Universal Service; Petition of 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).*

I am very pleased to join in today's decision, which will help expand the availability of Lifeline subsidies to low-income users of resold wireless telecommunications services. In the 1996 Act, Congress directed the Commission to ensure that all Americans, "including low-income consumers," have access to telecommunications services and information services. One critical component of the Commission's effort to guarantee such access is the Lifeline program, which provides discounts to monthly telephone service for the less fortunate among us. Unfortunately, however, a 2004 analysis performed by Commission staff indicated that only about a third of households eligible for Lifeline support actually subscribe to the program.

While it is clear that today's action will not close that gap on its own, I believe it is essential that we take all possible steps to ensure that low-income users are not barred from utilizing available support on the basis of the specific technologies they wish to use or the specific business plans pursued by their service providers. By providing support to resold wireless services, we are indeed extending a "line" to customers who might not otherwise make use of the Lifeline program, and thus are helping to fulfill Congress's vision of truly *universal* service.

Exhibit 2

CTIA

Consumer Code *for* Wireless Service

To provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs, the CTIA and the wireless carriers that are signatories below have developed the following Consumer Code. The carriers that are signatories to this Code have voluntarily adopted the principles, disclosures, and practices here for wireless service provided to individual consumers.

THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THIS CODE WILL:

ONE

DISCLOSE RATES AND TERMS OF SERVICE TO CONSUMERS

For each rate plan offered to new consumers, wireless carriers will make available to consumers in collateral or other disclosures at point of sale and on their web sites, at least the following information, as applicable: (a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies and the trial period during which no early termination fee will apply.

TWO

MAKE AVAILABLE MAPS SHOWING WHERE SERVICE IS GENERALLY AVAILABLE

Wireless carriers will make available at point of sale and on their web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps will contain an appropriate legend concerning limitations and/or variations in wireless coverage and map

usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers will request and incorporate coverage maps from roaming partners that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

T H R E E

PROVIDE CONTRACT TERMS TO CUSTOMERS AND CONFIRM CHANGES IN SERVICE

When a customer initiates service with a wireless carrier or agrees to a change in service whereby the customer is bound to a contract extension, the carrier will provide or confirm the material terms and conditions of service with the subscriber.

F O U R

ALLOW A TRIAL PERIOD FOR NEW SERVICE

When a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including airtime usage, may still apply.

F I V E

PROVIDE SPECIFIC DISCLOSURES IN ADVERTISING

In advertising of prices for wireless service or devices, wireless carriers will disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows: (a) activation or initiation fees; (b) monthly access fees or base charges; (c) any required contract term; (d) early termination fees; (e) the terms and conditions related to receiving a product or service for "free;" (f) the times of any peak and off-peak calling periods; (g) whether different or additional charges apply for calls outside of the carrier's network or outside of designated calling areas; (h) for any rate plan advertised as "nationwide," (or using similar terms), the carrier will have available substantiation for this claim; (i) whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term; (j) whether any additional taxes, fees or surcharges apply; and (k) the amount or range of any such fees or surcharges collected and retained by the carrier.

S I X

SEPARATELY IDENTIFY CARRIER CHARGES FROM TAXES ON BILLING STATEMENTS

On customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal state or local governments. Carriers will not label cost recovery fees or charges as taxes.

S E V E N

**PROVIDE CUSTOMERS THE RIGHT TO TERMINATE SERVICE
FOR CHANGES TO CONTRACT TERMS**

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.

E I G H T

PROVIDE READY ACCESS TO CUSTOMER SERVICE

Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

N I N E

**PROMPTLY RESPOND TO CONSUMER INQUIRIES AND COMPLAINTS
RECEIVED FROM GOVERNMENT AGENCIES**

Wireless carriers will respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.

T E N

ABIDE BY POLICIES FOR PROTECTION OF CUSTOMER PRIVACY

Each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online.

Exhibit 3

Privacy Policy

SAFELINK WIRELESS® service is U.S. government supported program for Income eligible households provided by TracFone Wireless.

Please read the TRACFONE Privacy Policy.

TRACFONE Wireless has instituted a comprehensive set of privacy policies and procedures to ensure that its Web site visitors' privacy is never compromised. The purpose of this privacy notice is to inform our Web site visitors of the type of information that TRACFONE, or a credit card processing partner acting on its behalf, collects from the Web site, how the information is gathered, how it is utilized, how long it is retained and how visitors can restrict its use or disclosure.

The primary focus of TRACFONE's privacy policy is to ensure that all Web site visitors' customer identification, which we term "customer identifiable information," is kept private at all times. As the term suggests, "customer identifiable information" is information which can be associated with a specific individual or entity, including, for example, a customer's name, address, or telephone number, e-mail address and information about online activities that are directly linked to them.

The collection of customer identifiable information is a critical element in the day-to-day operation of the Web site to allow TRACFONE to maintain the highest level of customer service for all Web site visitors. It is a common practice and often a necessity for companies, governments, or other organizations to collect customer identifiable information in order to conduct business and offer services.

TRACFONE always strives to safeguard the customer identifiable information obtained from its Web site users and visitors (collectively, "customers") from any unauthorized intrusions.

TRACFONE may contact people on the home phone number they enter on our website, input into our automated phone system or give to an agent in case of technical difficulties, promotions and/or reminders.

General

TRACFONE will not sell, trade, or disclose to third parties any customer identifiable information derived from the registration for, or use of, a TRACFONE product or service -- including customer names and addresses -- without the consent of the customer. TRACFONE will, however, disclose customer identifiable information as required by subpoena, search warrant, or other legal process or in the event that such customer is engaging in unlawful use of our Web site.

When TRACFONE uses third parties to perform services on its behalf, TRACFONE will request that such third parties protect your customer identifiable information consistently with this privacy policy. However, we cannot ensure that all of your customer identifiable information will never be disclosed, as regulatory and/or other requirements may make disclosure necessary.

Collection and Use:

In some instances, TRACFONE may collect information that is not "customer identifiable information." Some examples of this type of information include the type of Internet browser you are using, the type of operating system you have configured on your computer, and the domain name of the Web site and/or Internet Service Provider from which you are linked to our Web site. TRACFONE primarily uses this information for market research and optimizing its systems in order to deliver the best customer experience possible.

TRACFONE may collect and use customer identifiable information for various purposes, including but not limited to, billing purposes, to provide or change service, to anticipate and resolve problems with your service, or to inform you of products and services that better meet your needs. This means that TRACFONE may use your customer identifiable information, in conjunction

with information available from other sources, to market new services that may be of interest to you, but TRACFONE will not disclose your customer identifiable information to third parties who want to market products to you.

Declining e-mail offers:

TRACFONE will only send our customers e-mail regarding promotional offers or other news if a customer specifically grants us permission. A customer has the right to choose not to receive TRACFONE e-mail direct marketing communications by simply notifying us of their preference. This process is commonly termed opting-out or unsubscribing. At any time, a customer can unsubscribe from our e-mail list by clicking on the unsubscribe link found at the bottom of every message or promotion delivered electronically to our customers. Upon such choice, TRACFONE (a) will not contact that customer directly with TRACFONE promotional messages, and (b) will not use customer identifiable information obtained from that customer's registration to contact that customer with TRACFONE product or service messages. A customer may also choose not to receive such messages by notifying TRACFONE via fax or mail.

Security:

TRACFONE has gone to great lengths to implement technology and security features to safeguard the privacy of your customer identifiable information from unauthorized access or improper use, and TRACFONE, based on its judgment, will continue to enhance its security procedures as new technology becomes readily available. However, since there is no such thing as "perfect Internet security", TRACFONE cannot provide any guarantees of 100% security compliance.

E-mail Contents:

TRACFONE will not read or disclose to third parties private e-mail communications that are transmitted using TRACFONE services except as required to operate the service or as otherwise authorized by law.

Improper Conduct:

TRACFONE may also use customer identifiable information to investigate and help prevent potentially unlawful activity or activity that threatens the network or otherwise violates the customer agreement for that service.

Account Information:

TRACFONE honors requests from customers for account information and will correct any such information, which may be inaccurate. Customers may contact TRACFONE to verify that appropriate corrections have been made.

Cookies

When you visit our Web site, we may store information on your computer that allows us to identify you immediately. This process is often referred to as "cookie" technology. More specifically, a cookie is a commonly used Internet standard which stores, in a very small text file on the customer's hard disk, information specific to the customer. Our Web site makes limited use of cookies in an effort to improve our level of service to our Web site visitors. Cookies cannot be accessed by any other Web site other than

the Web site issuing the cookie. The private features of our Web site are only accessible when cookies are enabled in the customer's browser. If a customer does not wish to utilize cookies, this feature may be disabled within the customer's Web browser. However, by disabling cookies, a customer will not have access to private areas of our Web site through that browser.

Other Web sites

Since TRACFONE's Web site contains links to other Web sites, we are not responsible for the content or privacy practices employed by these other Web sites. It is possible that on some occasions, these third party Web sites may in fact collect personal information from our customers. We recommend that you examine the privacy policies of such third party Web sites prior to submitting any personal information, as they may differ from ours.

In some instances, our Web site content is also featured on other Web sites with differing or non-existent privacy policies. These Web sites may collect personal information from their customers that may or may not be used in conjunction with our Web site information. Prior to supplying any personal information to any third party company linking to our Web site, please read and understand their privacy policy.

Advertisements

Advertisements may appear on pages throughout our Web site. Some advertisements may request information directly from our customers or take our customers to Web sites that may request personal information. TRACFONE has no control over its advertisers' privacy policies, so please examine the privacy policy of any company advertising on our Web site prior to submitting any personal information.

Third Party Advertising Companies

We may use third-party advertising companies to serve ads on our behalf. These companies may employ cookies and action tags (also known as single pixel gifs or web beacons) to measure advertising effectiveness. Any information that these third parties collect via cookies and action tags is completely anonymous. If you would like more information about this practice and your choices, [click here](#). You may also visit the Advertising.com Privacy Policy, [click here](#).

Surveys

Occasionally, we may conduct surveys on our Web site. Surveys are conducted at random and are completely voluntary to our Web site visitors. The survey may require a customer to provide customer identifiable information in exchange for the information or services provided by the survey. We may use this information in an aggregate manner to better tailor the type of services, information, and advertising that are provided on our Web site.

Policy Changes

TRACFONE reserves the right to change its privacy policy by publishing new terms on its Web site at any time and your access and use of the TRACFONE Web site thereafter constitutes your acknowledgment and acceptance of such amended policy. This privacy policy does not create any legal right for you or any third parties.

Children

TRACFONE Web sites are not structured to attract children under the age of 13. TRACFONE believes there is no information on its Web site, which is inappropriate or objectionable for viewing by children.

TRACFONE does not knowingly, directly or passively, collect information from children under the age of 13. If we create offers and products that make it appropriate to collect information from children under the age of 13, we will notify you of the change in this Policy. We also will ask a parent to confirm his/her consent in advance of any collection, use or disclosure of that information. We do not collect any information that is not submitted to us. We only use personally identifiable information so that we may better understand our users' needs and send information to users regarding new services or offerings, including but not limited to any sweepstakes or other offering. We do not sell any personally identifiable information or disclose any personally identifiable information to third parties.

Ordering online products and services from TRACFONE is limited to adults (ages 18+). However you should be aware that wireless devices and services purchased for family use may be used by minors without the knowledge of TRACFONE. If that happens, any information collected from the usage will appear to be the personal information of the actual adult subscriber and treated as such under this Policy.

Questions?

Please direct any questions or comments regarding our privacy policy to information@tracfone.com.

Exhibit 4

30-Sheets

2013 CHANNEL

FREE government-supported cell phone.
FREE monthly minutes.

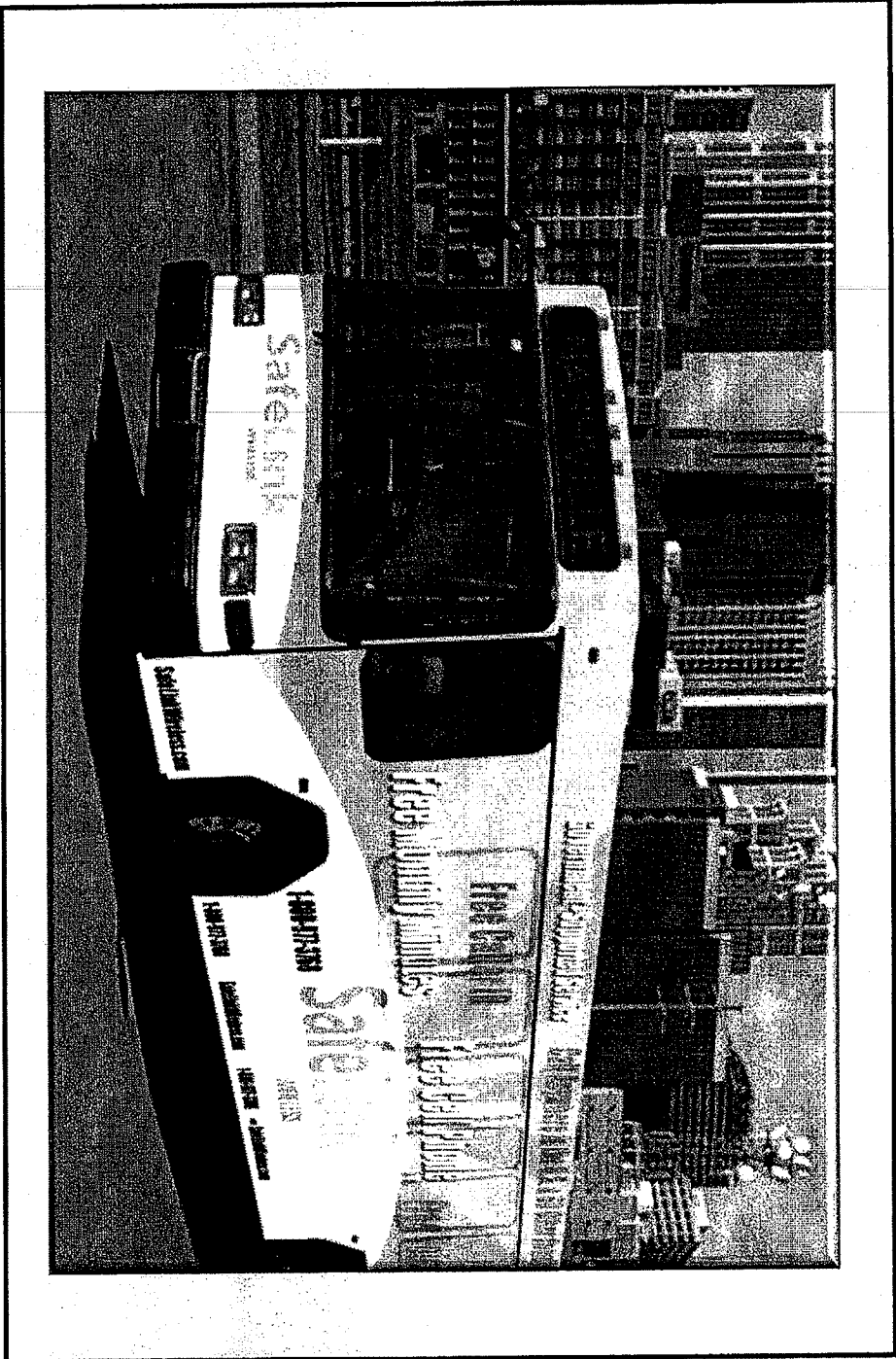
1-800-977-3768

SafelinkWireless.com

Safelink

Safe Link
WIREFLESS

Bus Wraps



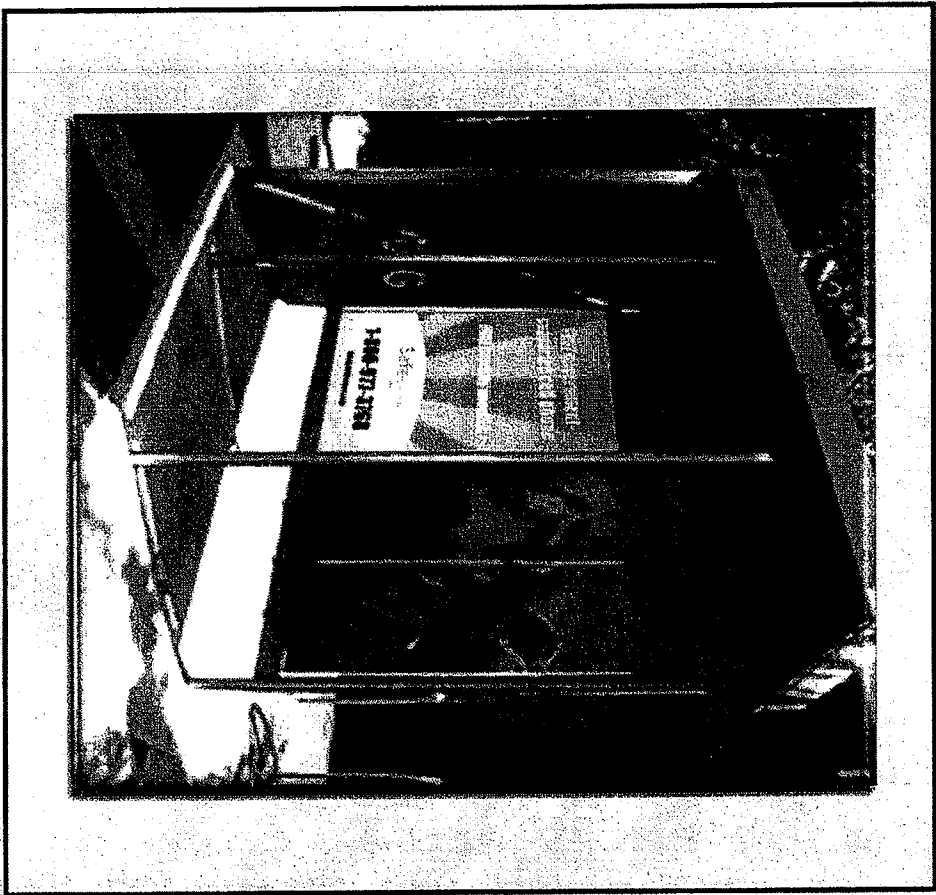
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Bus Shelters



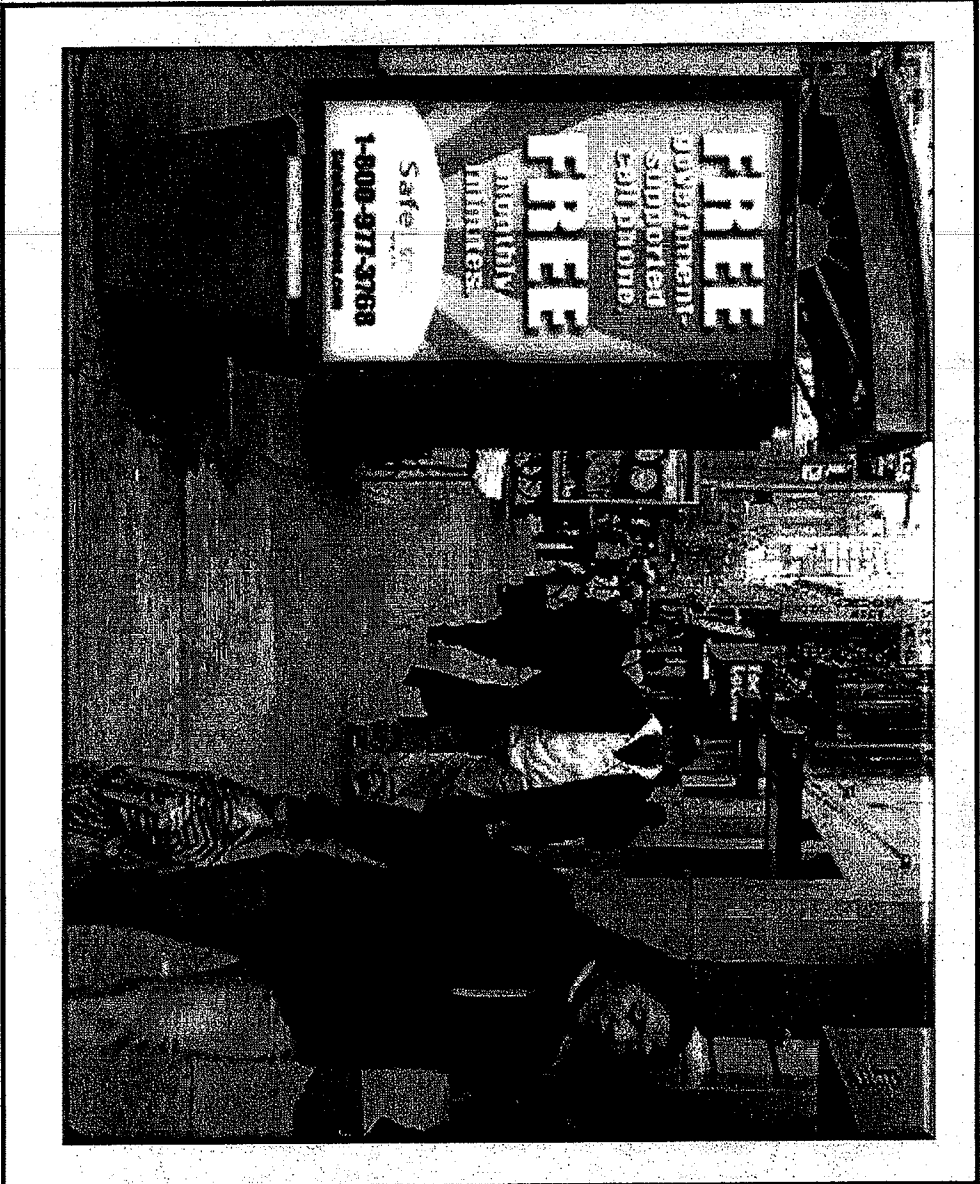
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Bus Interior Cards



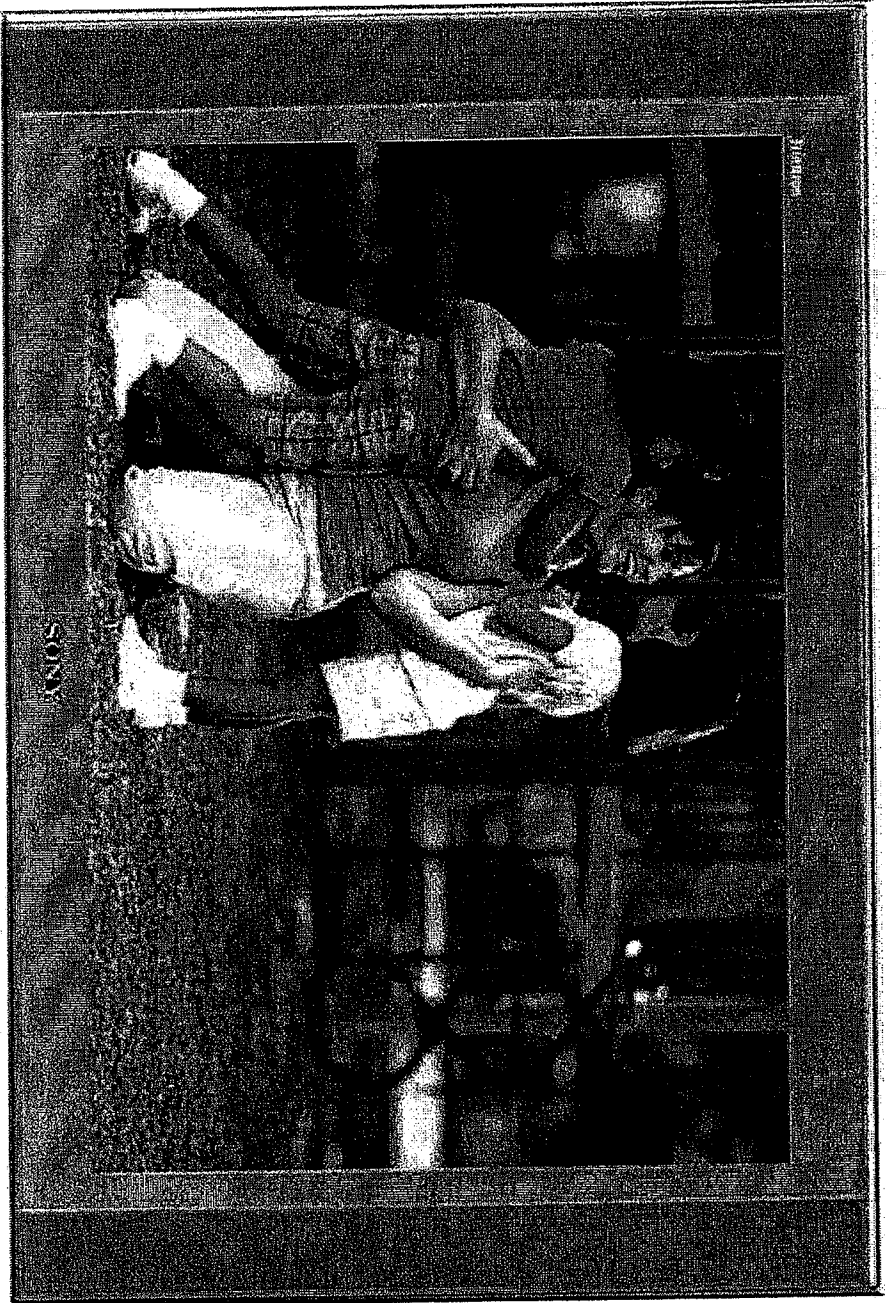
Safe Sink
WIRELESS

Pay Phone Kiosks



SafeLink
WIRELESS

SAFELINK WIRELESS COMMERCIAL SPOT



SafeLink
WIRELESS

Web Page

The screenshot shows the Safelink Wireless website interface. At the top, there is a navigation bar with links: Home, About Us, Features, Benefits, and Help. Below this is a search bar and a list of services: Lifeline, Senior Discount, and Text-to-911. The main content area features a large image of a mobile phone with 'SafeLink' on the screen. To the right of the phone, the text reads: 'Safelink Wireless is a government supported program that provides a free cell phone and airtime each month for income-eligible customers.' Below this text is a search bar with a 'GO' button. On the left side, there are three icons with text: a person icon for 'Am I eligible for Safelink?', a question mark icon for 'Is this really free?', and a phone icon for 'How do I sign up?'. At the bottom, there are links for 'Learn More', 'Enroll Now', and 'Airtime'. The footer contains the website URL 'www.safelinkwireless.com' and the phone number '1-877-337-2339'.

SafeLink
WIREFLESS