

**BEFORE THE
UTAH PUBLIC SERVICE COMMISSION**

In the Matter of)

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 REBUTTAL TESTIMONY AND EXHIBITS

TracFone Wireless Inc., by counsel, files its Rebuttal Testimony and Exhibits with the Public Service Commission of Utah in this matter. TracFone's Rebuttal Testimony and Exhibits include the testimony of Jose Fuentes and Exhibits 7 through 11, inclusive, identified therein.

Respectfully submitted,

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1 **Q: 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 **Q: DID TRACFONE SUBMIT A PETITION FOR DESIGNATION AS AN**
8 **ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF UTAH?**

9 A: Yes, TracFone filed its ETC petition with the Commission on August 26, 2009.

10 **Q: HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS COMMISSION**
11 **PROCEEDING CONCERNING TRACFONE'S ETC PETITION?**

12 A: Yes. On behalf of TracFone, I provided direct written testimony and exhibits to the
13 Commission on March 2, 2010.

14 **Q4: WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

15 A: The testimony I am providing today responds to the testimony and exhibits filed by the
16 Utah Division of Public Utilities ("Division"), the Utah Office of Consumer Services
17 ("Office"), Salt Lake Community Action Program ("SLCAP") and Utah Rural Telecom
18 Association ("URTA") on April 5, 2010.

19 **Q: HAVE YOU REVIEWED THE TESTIMONY OF CASEY COLEMAN FILED ON**
20 **BEHALF OF THE DIVISION?**

21 A: Yes.

22 **Q: WHAT IS YOUR UNDERSTANDING OF MR. COLEMAN'S TESTIMONY?**

1 A: Mr. Coleman’s testimony states that TracFone meets the requirements for ETC
2 designation outlined by the Federal Communications Commission (“FCC”) and the
3 Commission, and that the Division recommends that the Commission grant TracFone’s
4 ETC petition subject to two conditions. The first condition is that TracFone should pay
5 all applicable surcharges and contribute to funds that are required of wireless carriers.
6 The second condition is that TracFone should follow similar verification methods
7 established by the State to ensure that individuals qualify for the Lifeline subsidy.

8 **Q: WHAT IS TRACFONE’S RESPONSE TO THE DIVISION’S TESTIMONY?**

9 A: TracFone is very appreciative of the Division’s recommendation that the Commission
10 should grant its ETC petition. As I will discuss later, regarding the first condition, the
11 surcharges discussed in the Division’s testimony are not applicable to TracFone.
12 Furthermore, whether any such surcharges are applicable to TracFone should be
13 determined in a separate proceeding. Regarding the second condition concerning
14 verification, TracFone agrees to follow the Lifeline eligibility verification methods
15 established by the State to ensure that only qualified individuals receive Lifeline benefits.

16 **Q: WHAT SURCHARGES DOES THE DIVISION ASSERT TO BE APPLICABLE**
17 **TO TRACFONE?**

18 A: The Division asserts that TracFone should pay surcharges to support the Universal Public
19 Telecommunications Service Support Fund (“Utah USF”) and to fund 911 service, as
20 well as other applicable surcharges which Mr. Coleman does not identify.

21 **Q: IS TRACFONE REQUIRED TO PAY SURCHARGES TO THE UTAH USF?**

22 A: While I am not an attorney, I understand that TracFone’s revenues are not subject to rule
23 R746-360-4. R746-360-4 provides that surcharges to support the Utah USF are applied

1 to intrastate retail rates and that the “surcharge shall equal 0.25 percent of billed intrastate
2 retail rates.” TracFone, as a prepaid wireless service provider, does not issue bills to its
3 customers. Therefore, it does not have any billed intrastate retail rates and does not have
4 any revenues subject to the surcharge. I believe that the reason why the regulations base
5 USF contributions on “billed intrastate retail rates” is to enable those providers who
6 render bills to their customers to recover the USF contribution amounts from those
7 customers through the billing process. Providers of prepaid service such as TracFone
8 have no opportunity to recover USF contribution amounts from their customers through
9 the billing process.

10 **Q: IS TRACFONE REQUIRED TO CONTRIBUTE TO ANY FUNDS TO SUPPORT**
11 **911 SERVICE IN UTAH?**

12 A: I understand that under Utah law, TracFone is not required to contribute any amounts to
13 support 911 service in Utah. Section 69-2-5(1)(3)(ii) of the Utah Code provides that “a
14 county, city or town within which 911 emergency telecommunications service is
15 provided may levy monthly an emergency telecommunications charge on . . . each
16 revenue producing access line with a billing address within the boundaries of the county,
17 city or town.” Section 69-2-5.6 of the Utah Code also provides for an emergency
18 services telecommunications charge to fund statewide 911 service. This charge “shall be
19 . . . billed and collected by the person that provides . . . radio communications access line
20 services.” TracFone, as a prepaid provider, does not render bills nor does it have
21 customers with billing addresses. Therefore, it is not legally obligated to contribute to a
22 county, city or town 911 fund or to the statewide 911 fund. I also understand that Section

1 69-2-5.6, which governs the statewide 911 fund, has been repealed, effective July 1,
2 2011.

3 **Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE TERM “BILLING**
4 **ADDRESS” AS USED IN THE UTAH CODE.**

5 A. In lay terms, the statutory phrase “billing address” is the address where customer invoices
6 or bills are sent to customers. If there are no bills associated with a service, there would
7 be no billing address. So far as I am aware, the term “billing address” although
8 mentioned in the statute is not defined in the statute nor is it explained in any relevant
9 Utah case law. However, in 2008, the State of Michigan Court of Appeals had occasion
10 to construe the term “billing address” in a case involving that state’s 911 fee law -- a law
11 very similar to that of Utah. In TracFone Wireless, Inc. v. Department of Treasury and
12 Emergency Telephone Service Committee, the Michigan Court of Appeals stated as
13 follows: “Because the meaning of ‘billing address’ entails actually sending bills on an
14 account to a customer, the fact that plaintiff might know where its customers live does
15 not necessarily mean that plaintiff has a ‘billing address’ for those customers. **In other**
16 **words, there can be no billing address if there is no billing.**” I believe that the logic of
17 the Michigan Court of Appeals case is sound and is relevant to the Utah statute as well.
18 If a statute as enacted imposes an obligation to collect 911 fees from customers with a
19 billing address, and no bills are rendered to the customer at any address, there can be no
20 billing address and the statute would not be applicable. A copy of the Michigan case is
21 provided as Exhibit 7. The Michigan Court of Appeals in that case did the responsible
22 thing -- it applied the state’s laws as enacted, not as some might have preferred the laws
23 to have been enacted. It is possible that, had the Michigan legislature been aware at the

1 time of the law’s enactment that some telecommunications providers offered services on
2 a non-billed basis, the law might have been written differently. It is similarly possible
3 that the Utah legislature may also have enacted different statutes. If, in the future, the
4 legislature concludes that 911 fees should be paid by consumers of non-billed services
5 (*i.e.*, consumers without a “billing address”), it may enact legislation which achieves that
6 objective. Revising Utah statutory law is the responsibility of the state legislature, not the
7 Commission and certainly not the parties who have submitted testimony in this
8 proceeding.

9 **Q: IS TRACFONE AWARE OF ANY UTAH AUTHORITY, INCLUDING A**
10 **COMMISSION, STATE TAX COMMISSION, OR UTAH STATE COURT**
11 **ORDER, THAT REQUIRES PREPAID WIRELESS CARRIERS TO PAY**
12 **AMOUNTS TO THE UTAH USF OR A UTAH 911 FUND?**

13 A: No. TracFone is not aware of any such order.

14 **Q: SHOULD THE ISSUE OF WHETHER THE UTAH USF AND 911 SURCHARGES**
15 **BE RESOLVED AS PART OF THIS ETC PROCEEDING?**

16 A: As I stated, no Utah entity has indicated to TracFone that the Utah USF or 911 fund
17 statutes are applicable to TracFone. Moreover, neither the Commission nor the State Tax
18 Commission has initiated any enforcement proceedings against TracFone. TracFone
19 suggests that the issue of whether it is paying applicable statutory fees should not be
20 addressed in this proceeding. If the Commission deems it necessary to determine
21 whether TracFone is legally obligated to pay any fees, it should open a separate
22 proceeding to address that issue.

1 TracFone faced a similar issue before the Maine Public Utilities Commission
2 (“Maine PUC”). In the Maine PUC proceeding regarding TracFone’s ETC petition, the
3 Maine PUC raised this issue of whether TracFone was obligated to make contributions to
4 certain Maine funds, including the Maine USF and Maine Telecommunications
5 Education Access Fund (“MTEAF”). TracFone contended that it was not obligated to
6 contribute to those funds because under applicable laws, contributions were based on
7 billed intrastate revenues, and TracFone, as a prepaid wireless carrier does not bill its
8 customers. In the order designating TracFone as an ETC, the Maine PUC noted that its
9 designation of TracFone as an ETC did not “absolve TracFone of any obligations it may
10 have to abide by the Commission’s Rules regarding contributions to MUSF, MTEAF and
11 payment of other regulatory fees.” The Maine PUC decided to “open an investigation in
12 a separate docket into whether TracFone is required to contribute to MUSF and MTEAF,
13 and whether TracFone is in compliance with its obligations to pay other applicable
14 regulatory fees.” The Maine PUC’s Order designating TracFone as an ETC and the
15 Maine PUC Notice of Investigation are provided as Exhibits 8 and 9. Like the Maine
16 PUC, this Commission should open a separate docket to address any statutory fee issues,
17 rather than resolve those issues in this ETC proceeding.

18 **Q: IS THE APPLICABILITY OF STATE FEES TO PREPAID CARRIERS AN**
19 **ISSUE THAT IS UNIQUE TO TRACFONE?**

20 **A:** No. The inability to collect 911 and other fees from customers of non-billed services,
21 such as prepaid wireless services, is an industry-wide issue faced by all providers of such
22 services. TracFone has addressed this issue before various commissions, including the
23 FCC. As noted by TracFone in Reply Comments filed with the FCC regarding its

1 petition for ETC designation in Pennsylvania, providers of prepaid wireless services
2 cannot and do not collect surcharges that are required to be collected from end users.
3 TracFone’s Reply Comments are provided as Exhibit 10. As noted in footnote 7 of those
4 Reply Comments, Sprint Nextel, Verizon Wireless, and T-Mobile indicated in responses
5 to data requests filed in a Connecticut Department of Utility Control proceeding, that they
6 do not collect E911 surcharges from their customers in any state. More recently,
7 Verizon Wireless stated on the record in a proceeding before the California Public
8 Utilities Commission (“California PUC”) that it does not collect or remit that state’s
9 public purpose program surcharges on any of its prepaid customers. Similarly, T-Mobile
10 responded to an inquiry letter from the Staff of the California PUC that it collects and
11 remits those fees only from its billed customers. The point here is not to criticize the
12 practices and policies of other companies. Rather, it is to demonstrate to the Utah
13 Commission that no providers of prepaid services are able to collect and remit fees on
14 users if they have no collection mechanism such as the billing process. Furthermore, the
15 National Conference of State Legislatures (“NCSL”) issued a resolution in July 2009
16 regarding the collection of 911 fees on wireless prepaid service. In the resolution, NCSL
17 noted “the lack of a billing relationship between the prepaid wireless user and the sellers
18 and providers of prepaid wireless service means the existing collection methodologies are
19 not well suited to prepaid wireless.” The NCSL resolution endorsed point-of-sale model
20 legislation as a means to collect 911 fees. The NCSL resolution is provided as Exhibit
21 11. TracFone and other companies have advocated point-of-sale fee collection methods
22 as being the most efficient and most equitable means for collecting such fees from
23 consumers of prepaid services. More importantly, point-of-sale fee collection methods

1 ensure that **all** customers of prepaid services contribute to the support of 911, universal
2 service and other fee supported public programs.

3 **Q: HAVE ANY STATES ENACTED POINT OF SALE LEGISLATION?**

4 A: Yes. Some states have enacted laws regarding their state 911 funds to address the fact
5 that prepaid providers do not render bills. These laws allow collection of 911 fees at the
6 point of sale. The following states have point of sale laws that apply to the collection of
7 911 fees: Indiana (HB 1086); Louisiana (Louisiana Administrative Code, § 61:1.5401);
8 Maine (Maine Code, Title 25, Chapter 352, § 2927); South Carolina (H4551); Texas
9 (Texas Health and Safety Code, § 771.0712); Virginia (HB 754); West Virginia (West
10 Virginia Code, § 11-15-30); and Wisconsin (Wisconsin Statutes, § 196.025(6)). In
11 addition, several other states are currently considering point of sale legislation, including
12 Colorado, Illinois, Kansas, Massachusetts, Mississippi, New York, Oklahoma,
13 Pennsylvania, Rhode Island, and Tennessee.

14 **Q: HOW SHOULD THE COMMISSION ADDRESS THE ISSUE OF HOW TO**
15 **APPLY STATE MANDATED FEES TO PREPAID CARRIERS?**

16 A: The state legislature is responsible for modifying state laws to accommodate changes in
17 industries, markets, and business models. It is not the responsibility of regulatory
18 commissions to expand state statutes so as to encompass entities and activities which they
19 believe should be covered. Neither is it appropriate for parties to Commission
20 proceedings to advocate application of fee obligations in a manner wholly inconsistent
21 with the statutes which create those obligations. Utah is not the first state where attempts
22 have been made to subject TracFone to state requirements which are not applicable to it
23 or to delay approval of TracFone's ETC applications based on disputes regarding such

1 fees. In such states, TracFone has consistently worked cooperatively with legislators,
2 regulatory departments, and other stakeholders to develop and implement new laws
3 which achieve state objectives but which do so in an equitable, nondiscriminatory and
4 competitively neutral manner as required by Section 253 of the Communications Act of
5 1934 (47 U.S.C. § 253).

6 **Q: GOING BACK TO THE SECOND CONDITION PROPOSED BY THE**
7 **DIVISION, DOES TRACFONE AGREE TO USE UTAH'S LIFELINE**
8 **VERIFICATION PROCESSES?**

9 **A:** TracFone understands and agrees with the Division's concern about the potential for
10 fraud in the Lifeline program. The Division recommends that TracFone utilize the
11 Department of Community and Culture ("DCC") knowledge and databases to ensure that
12 only one individual per household is receiving Lifeline benefits. As recommended by the
13 Division, TracFone agrees to follow the same procedures as other ETCs in Utah to verify
14 a potential customer's eligibility for Lifeline.

15 **Q: HAVE YOU REVIEWED THE TESTIMONY OF CHERYL MURRAY FILED ON**
16 **BEHALF OF OCS?**

17 **A:** Yes.

18 **Q: WHAT IS YOUR UNDERSTANDING OF MS. MURRAY'S TESTIMONY?**

19 **A:** Ms. Murray states that OCS recommends approval of TracFone's ETC petition subject to
20 four conditions: (1) TracFone must contribute to the Utah USF; (2) TracFone must
21 acquire approval of all advertisements and communications with its Lifeline customers;
22 (3) TracFone must ensure that customers do not receive Lifeline services from multiple

1 providers; and (4) TracFone should implement a non-usage policy to deactivate
2 customers who do not use their Lifeline service for 60 days.

3 **Q: WHAT IS TRACFONE'S GENERAL RESPONSE TO OCS'S TESTIMONY?**

4 A: TracFone greatly appreciates OCS's support of its ETC petitions. Regarding the
5 proposed conditions, TracFone agrees with some of the conditions, but does not agree
6 with others.

7 **Q: DOES TRACFONE AGREE TO CONTRIBUTE TO THE UTAH USF?**

8 A: No. As I explained in detail, the Utah statute imposing a surcharge on
9 telecommunications carriers to be paid to the Utah USF is not applicable to TracFone
10 because it is a prepaid carrier. As I stated, this issue should be resolved in a separate
11 proceeding or through the legislative process. OCS raises its concern that TracFone may
12 seek funds from the Utah USF in the future. TracFone reconfirms its representations that
13 it will not seek funds from the Utah USF.

14 **Q: WHAT IS TRACFONE'S POSITION REGARDING OBTAINING APPROVAL
15 OF ALL ADVERTISEMENTS AND COMMUNICATIONS TO ITS LIFELINE
16 CUSTOMERS?**

17 A: TracFone's current advertisements and communications with its Lifeline customers
18 provide sufficient information regarding its SafeLink Wireless® Lifeline service. As the
19 Division's testimony notes, its review of TracFone's sample advertisements satisfied the
20 Division that TracFone will advertise the availability of its services and charges using
21 media of general distribution. Furthermore, TracFone provides each of its customers
22 with a welcome packet when the customer receives the handset. The welcome packet
23 provides details regarding the Lifeline service, including the number of free monthly

1 minutes and a notification that only one Lifeline benefit is permitted per household. A
2 Lifeline customer may also contact TracFone by telephone or e-mail to clarify any of the
3 terms of service. Furthermore, there is no Commission rule that requires Commission
4 approval of a carrier's advertisements or communications with its customers. TracFone
5 is not aware of any other ETC providing Lifeline service in Utah whose advertising must
6 be submitted to the Commission for approval. Imposing such a requirement on TracFone
7 would be unfair, discriminatory, burdensome, and unnecessary.

8 **Q: WHAT DOES TRACFONE DO TO ENSURE THAT CUSTOMERS DO NOT**
9 **RECEIVE LIFELINE SERVICES FROM MULTIPLE PROVIDERS?**

10 **A:** As OCS acknowledges, there is no process to cross check if a customer is receiving
11 Lifeline service from another provider. TracFone shares OCS's concern about potential
12 fraud in the Lifeline program, but this is not an issue unique to TracFone. As one of the
13 conditions in the FCC's Order granting TracFone forbearance of the facilities-based
14 requirement that normally applies to ETCs, TracFone, at the time of enrollment and
15 annually thereafter, obtains a self-certification under penalty of perjury from every
16 Lifeline customer that the customer is head of household and only receives Lifeline-
17 supported service from TracFone. This FCC-imposed condition of forbearance is unique
18 to TracFone. No other ETCs operating in Utah are subject to that condition. Therefore,
19 TracFone is better positioned than other ETCs to prevent so-called "double dipping" (*i.e.*,
20 obtaining Lifeline-supported service from multiple providers). No ETCs have access to
21 information regarding whether their customers are receiving Lifeline benefits from
22 another ETC. OCS's suggestion that TracFone recertify each customer each year is
23 beyond the federal and Utah requirements. As SLCAP states in its testimony, the current

1 eligibility certification system is not designed to search addresses to verify whether a
2 customer is already receiving Lifeline support.

3 **Q: HOW DOES TRACFONE ENSURE THAT IT DOES NOT RECEIVE LIFELINE**
4 **SUPPORT FOR CUSTOMERS WHO ABANDON THEIR SERVICE?**

5 A: TracFone has established and implemented in consultation with other state
6 commissions a non-usage policy that addresses the concerns raised by OCS. TracFone's
7 non-usage policy covers inactive handsets assigned to customers that are enrolled in its
8 Lifeline program. Under the policy, if SafeLink Wireless® customers go two months
9 without any usage independent of the service end date, their service will be deactivated
10 and they will be given a 30 day grace period to reactivate. Usage includes, but is not
11 limited to, making calls, receiving calls, sending text messages, receiving text messages,
12 or adding airtime.

13 Customers who have been deactivated following 60 days of non-usage may
14 participate in the Lifeline program in the future. Customers who advise TracFone during
15 the 30 day grace period following 60 days of non-usage that they wish to continue to
16 receive Lifeline service will be reinstated as a Lifeline customer. Customers who advise
17 TracFone after the 30 day grace period following 60 days of non-usage that they want to
18 receive Lifeline service will be re-enrolled as a Lifeline customer, assuming that such
19 customers remain qualified for Lifeline benefits. When a customer is reinstated (during
20 the 30 day grace period) or re-enrolled (after the 30 day grace period), that customer's
21 handset will receive any unused minutes that accrued during the 60 day non-usage period
22 and the 30 day grace period. In addition, after a customer is reinstated or re-enrolled as a

1 Lifeline customer, TracFone will recommence its provision of monthly allotments of
2 minutes to the customer's handset.

3 Once a customer has been deactivated after 60 days of non-usage, TracFone will
4 cease seeking reimbursement from the federal USF for that customer. However, if a
5 customer is reinstated as a Lifeline customer during the 30 day grace period following 60
6 days of non-usage, TracFone will seek reimbursement from the federal USF for the
7 Lifeline benefits that accrued during the 30 day grace period. If a customer is re-enrolled
8 as a Lifeline customer after the 30 day grace period following 60 days of non-usage,
9 TracFone will resume seeking reimbursement from the federal USF following such
10 customer's re-enrollment.

11 **Q: DOES OCS ACCURATELY DESCRIBE THE STATUS OF TRACFONE'S ETC**
12 **PETITIONS IN OTHER JURISDICTIONS?**

13 A: No. OCS inaccurately asserts that TracFone withdrew its ETC petition in Colorado
14 because it faced opposition. URTA also mischaracterizes the reason for TracFone's
15 withdrawal of its ETC petition in Colorado. On December 22, 2009, TracFone notified
16 the Colorado Public Utilities Commission that it was withdrawing without prejudice its
17 application for ETC designation. As explained in that withdrawal notice, there remain
18 unresolved questions about the applicability of that state's 911 fees to prepaid wireless
19 services under current state law. TracFone has been working with members of the public
20 safety/911 community to develop a legislative solution which will contain an appropriate
21 fee collection and remittance process for prepaid wireless services. TracFone withdrew
22 its ETC application so that those legislative efforts can proceed. Following enactment of
23 appropriate 911 legislation, TracFone plans to resubmit its ETC application in Colorado.

1 **Q: WHAT IS THE STATUS OF TRACFONE’S ETC PETITION IN CALIFORNIA?**

2 A: By letter dated December 16, 2009, TracFone notified the California PUC that it was
3 voluntarily withdrawing its petition for designation as an ETC. It had become clear to
4 TracFone that disagreements between TracFone and the California PUC’s staff regarding
5 the application of provisions of the California Public Utilities Code would jeopardize
6 timely approval of the ETC petition. Given those differences, TracFone determined that
7 its resources and those of the California PUC, its staff, and other interested persons,
8 would be better spent seeking clarification of those provisions and establishment of
9 appropriate rules to govern the collection and remittance of public purpose program fees
10 from customers of prepaid wireless services. Despite TracFone’s notice of withdrawal,
11 the PUC denied TracFone’s ETC petition.

12 The California PUC’s denial of TracFone’s ETC petition was based on its view
13 that TracFone is a “public utility” under California law and as such, is required to pay
14 certain fees. TracFone contends that it is not a “public utility” as that term is defined and
15 interpreted under California law. TracFone also has explained to the California PUC that
16 the inability of prepaid wireless providers to collect and remit that state’s public purpose
17 program and user surcharges is not unique to TracFone and that other providers of
18 prepaid services are not collecting and remitting such surcharges on all or on portions of
19 their prepaid customers. On January 19, 2010, TracFone filed with the California PUC
20 an Application for Rehearing of the Resolution that denied its ETC petition (No. A.10-
21 01-015). That application remains pending. The California PUC recently has
22 commenced a rulemaking proceeding into the aforementioned fee questions (P.09-12-
23 018). TracFone is actively participating in that proceeding along with other stakeholders.

1 Upon resolution of those issues and establishment of appropriate rules, TracFone plans to
2 renew its efforts to obtain ETC designation in California.

3 **Q: IS TRACFONE AN ETC IN SOUTH CAROLINA?**

4 A: Yes. On March 30, 2010 the South Carolina Public Service Commission issued an Order
5 Approving TracFone's wholly-owned subsidiary, SafeLink Wireless, Inc., as an ETC,
6 Docket No. 2009-144-C, Order No. 2010-231.

7 **Q: HAVE YOU REVIEWED THE TESTIMONY OF SONYA L. MARTINEZ FILED**
8 **ON BEHALF OF SLCAP?**

9 A: Yes.

10 **Q: WHAT IS YOUR UNDERSTANDING OF MS. MARTINEZ'S TESTIMONY?**

11 A: Ms. Martinez states the Commission should impose three conditions on TracFone it is
12 designated as an ETC: (1) TracFone should increase the number of free monthly
13 minutes; (2) TracFone should state the cost of adding minutes on its communications;
14 and (3) the Company should utilize Utah's eligibility certification process and pay an
15 appropriate fee for doing so.

16 **Q: IS TRACFONE WILLING TO INCREASE THE NUMBER OF FREE MONTHLY**
17 **MINUTES PROVIDED TO ITS LIFELINE CUSTOMERS?**

18 A: At this time, TracFone has no plans to increase the number of free monthly minutes
19 provided to Lifeline customers in Utah or elsewhere. However, TracFone is constantly
20 monitoring marketplace and other developments with a view toward adjusting its Lifeline
21 program based on marketplace changes as well as changes in the regulatory environment.
22 TracFone currently provides Lifeline service to nearly three million customers in 24
23 jurisdictions. Only a small percentage of those customers (about seven percent) purchase

1 additional airtime minutes. Low-income consumers in Utah, just like the low-income
2 consumers in those 24 jurisdictions, have the right to choose which Lifeline program
3 meets their needs. TracFone's Lifeline service does not require the consumer to pay any
4 amount for service. Low-income Utah consumers can determine for themselves whether
5 TracFone's free Lifeline service is beneficial to them. While TracFone's SafeLink
6 Wireless® plan does not include unlimited local calling like most wireline Lifeline
7 programs do, TracFone's plan allows calls to and from all destinations --
8 intrastate/interstate, local and long distance. It also allows calling to more than 100
9 international destinations. Also included at no additional charge to customers are
10 important features such as voice mail, call waiting and caller ID. Most importantly,
11 TracFone's SafeLink Wireless® customers never receive bills for additional service or
12 additional usage and do not risk termination of service for non-payment of bills which
13 include such additional charges. As evidenced by the nearly three million customers who
14 are enrolled in SafeLink Wireless® service, many low-income consumers believe this
15 program provides excellent value. For Lifeline-eligible consumers in Utah who do not
16 believe that the SafeLink Wireless® program provides sufficient value or meets their
17 needs, other providers' Lifeline services are available.

18 **Q: WHAT IS SLCAP'S CONCERN WITH TRACFONE'S COMMUNICATIONS**
19 **ABOUT ITS LIFELINE SERVICE?**

20 A: SLCAP is concerned that consumers will be enticed by the free service and will either
21 have a service with limited minutes if they choose not to purchase additional minutes or
22 will have a service that costs more than a traditional Lifeline service if they do purchase
23 additional minutes.

1 **Q: IS THIS A VALID CONCERN?**

2 A: No. When consumers apply for the Lifeline service, the number of free monthly minutes
3 is disclosed. The SafeLink Wireless® terms and conditions, as well as information on its
4 website and the airtime calls themselves, which are available online and in retail stores,
5 disclose the cost for additional minutes. As I testified earlier, low-income Utah
6 consumers can determine for themselves whether TracFone’s free Lifeline service would
7 be beneficial to them. Furthermore, if a Lifeline customer determines that it does not
8 want to continue using TracFone’s Lifeline service, the customer can simply cease using
9 the service without incurring any fees. SLCAP’s assertion that Lifeline customers would
10 incur reconnection charge when the customers enroll in another provider’s Lifeline
11 program is unsupported and incorrect. Not all ETCs charge for connection or activation.
12 For example, TracFone does not impose any activation or connection charges. For those
13 ETCs which do impose such charges, low-income consumers may qualify for financial
14 assistance through the federal Link-Up program.

15 **Q: IS TRACFONE WILLING TO UTILIZE UTAH’S CERTIFICATION SYSTEM**
16 **FOR ELIGIBILITY FOR LIFELINE SERVICES?**

17 A: Yes. TracFone understands that the DCC certifies consumers as being eligible for
18 Lifeline when the consumers apply for energy assistance. DCC also certifies new
19 Lifeline customers by reviewing Lifeline applications through its database and then
20 advising the ETC that the customer is eligible for Lifeline. TracFone is willing to work
21 with DCC and the Commission to participate in this certification process.

22 **Q: IS TRACFONE WILLING TO PAY A FEE FOR THE DCC’S CERTIFICATION**
23 **OF INDIVIDUALS’ ELIGIBILITY TO RECEIVE LIFELINE BENEFITS?**

1 A: Based on TracFone's experience in the states in which it offers Lifeline, TracFone
2 expects to receive a substantial number of Lifeline applications each week. TracFone is
3 willing to discuss the payment of an appropriate amount to DCC for the certification
4 process. However, such fees should be applied to all ETCs in a nondiscriminatory
5 manner. TracFone would object to be being asked or required to pay fees for DCC's
6 assistance which are not borne by other ETCs who also utilize DCC's services and access
7 its data bases.

8 **Q: HAVE YOU REVIEWED THE TESTIMONY OF DUNCAN MEREDITH FILED**
9 **ON BEHALF OF URTA?**

10 A: Yes.

11 **Q: WHAT IS YOUR UNDERSTANDING OF MR. MEREDITH'S TESTIMONY?**

12 A: Mr. Meredith raises three issues regarding TracFone's ETC Petition: (1) TracFone's
13 commitment not to seek support from the Utah USF; (2) TracFone's failure to pay 911
14 fees; and (3) whether TracFone charges its customers for certain public programs.

15 **Q: WILL TRACFONE SEEK SUPPORT FROM THE UTAH USF?**

16 A: No. As I testified earlier, TracFone will not seek support from the Utah USF. In this
17 regard, it should be noted that TracFone has been designated as an ETC in 27
18 jurisdictions, and has never sought support from a state USF in any of those jurisdictions.

19 **Q: IS TRACFONE OBLIGATED TO PAY ANY 911 FEES IN UTAH?**

20 A: No. As I testified earlier, TracFone is not obligated to contribute to any local or state
21 Utah 911 funds. Moreover, the issue of whether and how TracFone is required to collect
22 911 fees from prepaid wireless customers and remit such collected fees should not be
23 resolved in this proceeding. A separate proceeding or a legislative solution would be the

1 most efficient way to determine whether TracFone, and other prepaid carriers, are
2 required to collect and remit 911 fees.

3 **Q: DOES TRACFONE CONTRIBUTE TO THE POISON CONTROL CENTER**
4 **FUND?**

5 A: I understand that under Utah law, TracFone is not required to contribute to the Poison
6 Control Center Fund. Section 69-2-5.5 of the Utah Code provides that radio
7 communication access lines that are subject to an emergency services
8 telecommunications charge levied by a county, city or town are also subject to an
9 additional charge to fund the Poison Control Center to be “billed and collected” by the
10 service provider. As I testified earlier, TracFone is not required to collect and remit 911
11 fees. Since the fees for support of the Poison Control Center are required by the same
12 statute which governs 911 fees, the Poison Control Center fees are not applicable to
13 providers whose customers do not have “billing addresses” for the same reasons.

14 **Q: DOES TRACFONE CONTRIBUTE TO THE FUND TO PROVIDE HEARING**
15 **AND SPEECH IMPAIRED PERSONS WITH TELECOMMUNICATIONS**
16 **DEVICES (“TDD FUND”)?**

17 A: Under Utah law, TracFone is not required to contribute to the TDD Fund. Section 54-8b-
18 10 imposes a surcharge on each residence access line of each customer to a local
19 exchange of any telephone corporation. Section 54-8b-10(4)(d) provides that the
20 surcharge “shall be separately identified on customer bills.” Commission Rule R746-
21 240-2 defines local exchange carrier as: “A telecommunications corporation that
22 provides the local access line services within the geographic territory authorized by the
23 Commission.” TracFone, as a wireless reseller, is not required to obtain authority to

1 provide service from the Commission. As such, it is not subject to the requirement to
2 collect and bill surcharges to support the TDD Fund. Moreover, as a prepaid wireless
3 carrier, TracFone does not issue bills to its customers. Therefore, TracFone is not legally
4 obligated to contribute to the TDD Fund.

5 **Q: HAS TRACFONE RECEIVED SUPPORT FOR ITS ETC PETITION IN UTAH?**

6 A: Yes. Several state legislators and the Alliance for Generational Equity have filed letters
7 urging the Commission to designate TracFone as an ETC. The letters from Utah
8 Senators and Representatives state that it is “imperative that the SafeLink program is
9 approved as quickly as possible to allow these at-risk families in Utah to have access to
10 this valuable program.” The Alliance for Generational Equity notes that “Utah’s low-
11 income households [need] immediate access to the SafeLink program to empower these
12 low-income families and seniors to increase their earning potential, protect their personal
13 safety and have access to emergency services.”

14 **Q: IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD TO YOUR**
15 **TESTIMONY?**

16 A: Based on my testimony above, I would like to reiterate that TracFone meets all legal
17 requirements for designation as an ETC and that designation of TracFone as an ETC for
18 the limited purpose of providing Lifeline service to low-income Utah households will
19 serve the public interest. Accordingly, the Public Service Commission of Utah should
20 unconditionally and promptly grant TracFone’s petition for designation as an eligible
21 telecommunications carrier so that TracFone may commence providing its SafeLink
22 Wireless® service to low income Utah households at the earliest possible time. TracFone
23 looks forward to soon bringing this important Congressionally-mandated

1 telecommunications benefit to low-income Utah households as it already has done in 27
2 other jurisdictions.

AFFIRMATION

I, JOSE FUENTES, do hereby swear under penalty of perjury the following:

That I am the person identified in the attached TracFone Wireless, Inc.'s Rebuttal Testimony and Exhibits and that such testimony was prepared by me or under my direct supervision; that the answers and information set forth therein are true to the best of my knowledge and belief; and that if asked questions set forth therein, my answers thereto would, under oath, be the same.

Jose Fuentes

STATE OF FLORIDA)
) ss.
COUNTY MIAMI-DADE)

SUBSCRIBED AND SWORN TO before me this ____ day of April, 2010, by Jose Fuentes.

WITNESS my hand and official seal.

Notary Public

[SEAL]

My commission expires: _____

Exhibit 7

Not Reported in N.W.2d, 2008 WL 2468462 (Mich.App.)
(Cite as: 2008 WL 2468462 (Mich.App.))

HOOnly the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.
TRACFONE WIRELESS, INC., Plaintiff/Counter-
Defendant-Appellee/Cross-Appellant,
v.
DEPARTMENT OF TREASURY and Emergency
Telephone Service Committee, Defendants/Cross-
Plaintiffs-Appellants/Cross-Appellees.
Docket Nos. 275065, 275942.

June 19, 2008.

Background: Provider of prepaid wireless cellular telephones brought action against Department of Treasury to recover 9-1-1 fees paid under the Emergency Telephone Service Enabling Act (ETSEA). The Court of Claims entered judgment for provider in part, and provider and Department both appealed.

Holdings: The Court of Appeals held that:

- (1) provider had standing to bring action;
- (2) ETSEA did not require provider to pay fees due to lack of billing addresses; and
- (3) payments were voluntary such that provider could not obtain refund.

Affirmed in part and reversed in part.

West Headnotes

jlj **Telecommunications 372 01061**

372 Telecommunications
372IV Wireless and Mobile Communications
372k1056 Civil Liabilities and Actions
372k1061 k. Actions. Most Cited Cases
Provider of prepaid wireless cellular telephone had standing to bring action for refund of 9-1-1 fees paid under the Emergency Telephone Service Enabling Act (ETSEA), although statute required provider to collect the applicable fees from its customers rather than pay the fees itself, where provider alleged that it

paid the fees out of its own funds by accident and submitted an interrogatory response stating that it did not collect the funds from its customers, and there was no evidence to the contrary. MCL 484.1408.

Telecommunications 372 €1052

372 Telecommunications
372IV Wireless and Mobile Communications
372k1052 k. Emergency Calls; 911. Most Cited Cases

Emergency Telephone Service Enabling Act (ETSEA) 9-1-1 charge for each commercial mobile radio services (CMRS) "connection that has a billing address in this state" did not apply to provider of prepaid wireless cellular telephone services, as provider did not bill its customers and thus CMRS connections did not have "billing addresses." MCL 484.1102, 484.1408(1).

Telecommunications 372 €1052

372 Telecommunications
372IV Wireless and Mobile Communications
372k1052 k. Emergency Calls; 911. Most Cited Cases

Provider of prepaid wireless cellular telephones knowingly remitted 9-1-1 fees under the Emergency Telephone Service Enabling Act (ETSEA) and had full knowledge of the nature of its services at the time it made those payments such that payments were voluntary and provider was not entitled to a refund of the fees, even though ETSEA did not require provider to pay the fees due the lack of billing addresses for its customers. MCL 484.1102, 484.1408(1).

Court of Claims; LC No. 06-000028-MZ.

Before: DAVIS, P.J., and MURRAY and BECKERING, JJ.

PER CURIAM.

*1 This appeal arises out of the trial court's orders holding that the provisions of the Emergency Tele-

Not Reported in N.W.2d, 2008 WL 2468462 (Mich.App.)
(Cite as: 2008 WL 2468462 (Mich.App.))

phone Service Enabling Act (ETSEA), MCL 484.1101 et seq. do not apply to providers of prepaid wireless cellular telephone services like plaintiff, but also holding that a portion of the fees plaintiff erroneously remitted pursuant to the ETSEA was not recoverable because it was outside the applicable limitations period, and awarding judgment in plaintiffs favor in the amount of \$231,432.76.^m We affirm in part and reverse in part.

FN 1. The trial court also granted summary disposition in plaintiffs favor on defendants' counterclaim, and defendants have not appealed that order.

Plaintiff is a provider of "commercial mobile radio services" (CMRS) in the form of prepaid, "pay as you go," wireless cellular telephones that are purchased "off the shelf" by consumers at various retail establishments. Plaintiff therefore does not invoice its customers or enter into monthly service contracts with them. In relevant part, the ETSEA requires CMRS providers and retailer to collect a monthly fee from their customers for "each CMRS connection that has a billing address in this state." MCL 484.1408(1). In the years 2000, 2001, 2002, and 2003, plaintiff remitted to defendants a total of \$541,574.33 pursuant to that requirement. However, plaintiff contends that it paid its own funds and did so by accident. Plaintiff argues that because it does not have billing addresses or monthly bills for its customers, the 9-1-1 fee does not apply, so it was not required to collect or remit the fees. When plaintiff discovered the mistake, it informed defendants that it wished the monies refunded. Plaintiff was ultimately informed that it could only obtain a refund by filing the instant suit in the Court of Claims, which plaintiff then did.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. Maiden v. Rozwood, 461 Mich. 109, 118, 597 N.W.2d 817 (1999). A motion brought under MCR 2.116(C)(8) should be granted only where the complaint is so legally deficient that recovery would be impossible even if all well-pleaded facts were true and construed in the light most favorable to the non-moving party. Id., 119, 597 N.W.2d 817. Only the pleadings may be considered when deciding a motion under MCR 2.116(C)(8). Id., 119-120, 597 N.W.2d

817. Likewise, under MCR 2.116(C)(9), all of the defendant's well-pleaded allegations are accepted as true, and summary disposition is appropriate only "when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiffs right to recovery." Slater v. Ann Arbor Public Schools Bd. of Ed., 250 Mich.App. 419, 425-426, 648 N.W.2d 205 (2002). Under MCR 2.116(C)(10), we consider all evidence submitted by the parties in the light most favorable to the non-moving party and grant summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. Maiden, supra at 120, 597 N.W.2d 817.

*2 This Court also reviews de novo questions of statutory construction, with the fundamental goal of giving effect to the intent of the Legislature. Weakland v. Toledo Engineering Co., Inc., 467 Mich. 344, 347, 656 N.W.2d 175, amended on other grounds 468 Mich. 1216, 656 N.W.2d 175 (2003). The goal of statutory interpretation is to determine and give effect to the intent of the Legislature, with the presumption that unambiguous language should be enforced as written. Glaa5,ch v. New Family Homes, Inc., 468 Mich. 594, 597, 664 N.W.2d 705 (2003). If the language is unambiguous, "the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case." Veenstra v. Washtenaw Country Club, 466 Mich. 155, 159-160, 645 N.W.2d 643 (2002). Equitable determinations are also reviewed de novo, although the factual findings underlying those determinations are reviewed for clear error. Blackhawk Development Corp. v. Village of Dexter, 473 Mich. 33, 40, 700 N.W.2d 364 (2005).

f 11 We first address defendants' contention that plaintiff lacks standing. "Whether a party has standing is a question of law that we review de novo." Nat'l Wildlife Federation v. Cleveland Cliffs Iron Co., 471 Mich. 608, 612, 684 N.W.2d 800 (2004). In the absence of a particularized injury, no genuine case or controversy can exist between the parties, and therefore the courts lack any power to exercise over those parties. Id. Plaintiff must allege and prove that it did or will suffer some kind of actual harm as a consequence of defendants' conduct. Id., 629-631, 684 N.W.2d 800.

Defendants contend that plaintiff has

failed to show

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actual harm because the plain language of the statute requires plaintiff to collect the applicable fees from its customers, not pay the fees itself. However, plaintiff has alleged that it paid the fees out of its own funds by accident, and it has submitted an interrogatory response stating that it did not collect the funds from its customers. The evidence in the record fails to show any indication to the contrary. Plaintiffs injury in fact is the loss of certain monies that plaintiff alleges it was not required to remit. Plaintiff has provided allegations and evidence tending to prove this injury, and defendant has not cast any doubt thereon. We therefore find that plaintiff has standing.

121 The primary issue in this case is whether, as a pure matter of law, the requirements of MCL 484.1408 apply to prepaid cellular telephone services. At the times relevant to this action,¹⁻¹² the pertinent provisions of that statute provided as follows:

FN2. The supplied statutory language is the language as enacted in 1999 PA 78, which was the Public Act that added this section to the Emergency Telephone Service Enabling Act by 1999 PA 78. Subsection (I) underwent some minor changes, such as in wording, date references, and amount of money to be charged, but it has remained the same in substance. Subsection (6) was eventually renumbered, and a specific target date inserted, but again substantially unmodified. It is clear that none of the changes are material to the outcome of this appeal, and neither party suggests otherwise.

(1) Until 2 years after the effective date of this section, a CMRS supplier or a reseller shall include a service charge of 55 cents per month for each CMRS connection that has a billing address in this state. Beginning 2 years after the effective date of this section, a CMRS supplier or a reseller shall include a service charge of 52 cents per month for each CMRS connection that has a billing address in this state. The CMRS supplier or reseller shall list the service charge as a separate line item on each bill. The service charge shall be listed on the bill as the "emergency 9-1-1 charge".

* * *

*3 (6) A CMRS supplier or reseller shall imple-

ment the billing provisions of this section not later than 120 days after the effective date of this section.

The ETSEA further provides the following relevant definitions in MCL 484.1102:

(c) "Commercial mobile radio service" or "CMRS" means commercial mobile radio service regulated under section 3 of title I and section 332 of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 USC 153 and 332, and the rules of the federal communications commission or provided under the wireless emergency service order. Commercial mobile radio service or CMRS includes [among other things, cellular telephone service].

* * *

(h) "CMRS connection" means each number assigned to a CMRS customer.

* * *

(x) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

* * *

(gg) "Service supplier" means a person providing a communication service to a service user in this state.

(hh) "Service user" means a person receiving a communication service.

Plaintiff asserts that it is not a "reseller," but by its own concession it is a "provider," so it is a "supplier" and potentially obligated to collect and remit the fees under MCL 484.1408(1). Significantly, the ETSEA does not define what constitutes a "billing address."

We find it irrelevant that plaintiff does not have a monthly billing cycle. The plain language of the statute requires the fees to be computed on a monthly basis, but not necessarily collected on a monthly basis. There is no inherent restriction on having only one bill, or having a billing cycle of either longer or

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shorter than one month. The plain language of the statute does mandate at least one "bill," but most importantly, it requires a "billing address."

The term "billing address" is not defined by the ETSEA, but a definition does exist in the Michigan Business Tax Act, MCL 208.1101 et seq. According to MCL 208.1261(a), "[b]illing address" means the location indicated in the books and records of the financial institution on the first day of the tax year or on a later date in the tax year when the customer relationship began as the address where any notice, statement, or bill relating to a customer's account is mailed." This is consistent with the dictionary definition of "bill," which in relevant part means either "a statement of money owed for goods or services supplied" or "to send a list of charges to." Random House Webster's College Dictionary, 2001 ed. Given that *billing* is either a present participle or a gerund, "*billing* address" must refer to the *verb* form of "bill." We are persuaded that a "billing address" must in some way pertain to ongoing contact information for a customer. In particular, a "billing address" requires a *physical* location to which some kind of *written* information regarding an "account" could be delivered, and thereby relied on to be received, by a customer with some kind of ongoing relationship with the supplier.

*4 Defendants contend that discovery would reveal that plaintiffs billing practices entail collection of extensive information from its customers, including customers' billing addresses. However, defendants admit that plaintiff "does not enter into monthly service contracts with its customers or invoice its customers." Because the meaning of "billing address" entails actually sending bills on an account to a customer, the fact that plaintiff might know where its customers live does not necessarily mean plaintiff has a "billing address" for those customers. In other words, there can be no billing address if there is no billing. Irrespective of what data plaintiff collects from its CMRS connection customers, if the CMRS connections do not have designated physical addresses for the purpose of receiving information about ongoing accounts, those CMRS connections do not have "billing addresses" within the meaning of MCL 484.1408. Because the CMRS connections in this case do not have "billing addresses," the 9-1-1 service charge need not be collected on them, as the trial court correctly found.

[3] Nevertheless, the parties do not dispute that as a general matter, no Michigan governmental entity is authorized to refund taxes unless expressly permitted to do so by enactment of the Legislature, see F.M. Sibley Lumber Co. v. Dep't of Revenue, 311 Mich. 654, 661, 19 N.W.2d 132 (1945), and the ETSEA does not expressly provide for a refund of plaintiffs tax payments here. However, plaintiffs refund claim is based on equity. "It is a well settled rule that "money got through imposition" may be recovered back; and, as this court has said on several occasions, "the obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation." Blanchard v. Detroit, 253 Mich. 491, 495, 235 N.W. 230 (1931), quoting Ward v. Love Co., 253 U.S. 17, 24, 40 S.Ct. 419, 64 L.Ed. 751 (1920) and cases cited therein.

In Spoon-Shacket v. Oakland Co., 356 Mich. 151, 168, 97 N.W.2d 25 (1959), our Supreme Court upheld "the right of taxpayers to equitable relief from the unconscionable effect of crass mistakes of public officials in the field of taxation; mistakes gross enough to constitute fraud." More than sixty years previously, "[t]he right of a party, from whom has been exacted payment of rates of carriage in excess of those fixed by charter or statute, to recover the overcharge, [was] no longer open to serious question." Pingree v. Mut. Gas Co., 107 Mich. 156, 158, 65 N.W.2d 6 (1895). However, the parties do not actually dispute that plaintiff would be entitled to a refund of any taxes or fees paid due to fraud or coercion by defendants. Rather, defendants contend that plaintiffs payments are not recoverable because they were voluntarily made, with full actual or constructive knowledge of the facts and applicable law.

*5 Some of Michigan's earliest published cases regarded it as a settled, even presumptive, issue that voluntarily-paid monies were simply not recoverable. See First Nat'l Bank v. Watkins, 21 Mich. 483, 488-490 (1870); see also, generally, Thompson v. Detroit, 114 Mich. 502, 72 N.W. 320 (1897). At common law, actual duress was necessary for a payment to be considered involuntary. General Discount Corp. v. Detroit, 306 Mich. 458, 465, 11 N.W.2d 203 (1943). But the rule evolved to permit recovery of unnecessary payments in the absence of duress and even

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without protest, if the payor made those payments "by reason of a mistake or ignorance of a material fact;" ignorance of a fact is equivalent to a mistake of fact, and either will make the payment effectively involuntary. Pingree, supra at 159-160, 65 N.W. 6. The same may be true even if the payor was negligent in failing to ascertain the true facts, "subject to the qualification that the payment cannot be recalled when the situation of the party receiving the money has changed in consequence of the payment, and it would be inequitable to allow a recovery." Id. 160, 65 N.W. 6; Walker v. Conat, 65 Mich. 194, 197-198, 31 N.W. 786 (1887).

Nevertheless, a party with "full knowledge of the facts," or even merely on notice of the facts and therefore "chargeable with the knowledge," cannot recover voluntarily-paid money by claiming a mistake. Montgomery Ward & Co. v. Williams, 330 Mich. 275, 284-285, 47 N.W.2d 607 (1951); see also Farm Bureau Mut. Ins. Co. of Michigan v. Buckallew, 471 Mich. 940, 940-941, 690 N.W.2d 93 (2004) ("[p]laintiff had access to all the necessary information, and its error is not excused by its own carelessness or lack of due diligence."). Where a party is not ignorant of the law, the party's rights under the law, and the facts of the party's situation; and where the recipient of the monies has not infringed on the payor's free will by action, inaction, or mere possession of exclusive knowledge; payment will not be considered to have been made under duress. Beachlawn Corp. v. St. Clair Shores, 370 Mich. 128, 131-133, 121 N.W.2d 427 (1963).

There is no contention or evidence that the payments plaintiff remitted were because of any "artifice, fraud, or deception on the part of the payee, or duress of the person or goods of the person making the payment." Pingree, supra at 157, 65 N.W. 6. Plaintiff repeatedly emphasizes that the payments were made solely because its tax administration firm made a unilateral mistake, not because of any conduct by defendants. Furthermore, neither party had exclusive knowledge of the applicable law, nor did defendants know anything about plaintiff's factual situation that plaintiff did not also know. Most importantly, it is apparent that the tax administration firm was plaintiff's agent. See St. Clair Intermediate School Dist. v. Intermediate Ed. Ass'n/Michigan Ed. Ass'n, 458 Mich. 540, 557-558, 581 N.W.2d 707 (1998). "A party is responsible for any action or inaction by the party or

the party's agent." Alken-Ziegler, Inc. v. Waterbury Headers Corp., 461 Mich. 219, 224, 600 N.W.2d 638 (1999). As a consequence, the payments made by plaintiff's tax administration firm are attributable to plaintiff.

*6 We find that plaintiff-through its agent-therefore knowingly remitted the 9-1-1 fees. Moreover, plaintiff did so under "the mistaken factual premise that [plaintiff] was a monthly billing wireless provider instead of a provider that sold prepaid wireless telephones and minutes to customers through retail outlets." In other words, plaintiff asserts that it was under a mistake of fact about *the nature of itself*. But plaintiff must have had full knowledge of the nature of its services at the time it made those payments, and as a consequence, we conclude that its payments were voluntary. See Farm Bureau Mut Ins Co of Michigan v. Buckallew, supra at 940-941, 690 N.W.2d 93. This is not analogous to the case of a person inadvertently putting the decimal point in the wrong place on a check, where that person might indeed pay under a misapprehension of fact as to how much he or she was paying. Plaintiff was aware of all of the material facts-the amount and fact of payment, and the nature of itself-at the time it paid. We therefore agree with defendants that, because plaintiff remitted them voluntarily, plaintiff cannot recover the fees.

We affirm the trial court's holding that providers of prepaid wireless telecommunications services like plaintiff are not required to collect or remit the 9-1-1 fees under the ETSEA. However, we reverse the trial court's award of \$231,432.76 in plaintiff's favor. In light of our determinations of those issues, we need not address the issues pertaining to the trial court's award of fees, the statute of limitations, or the notice provisions of the Court of Claims Act.

Mich.App.,2008.
Tracfone Wireless, Inc. v. Department of Treasury
Not Reported in N.W.2d, 2008 WL 2468462
(Mich.App.)

END OF DOCUMENT

Exhibit 8

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2009-263

February 9, 2010

TRACFONE WIRELESS, INC.
Request for Designation as an Eligible
Telecommunications Carrier

ORDER GRANTING ETC
STATUS AND OPENING
SEPARATE INVESTIGATION

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners

I. SUMMARY

In this Order we grant the Petition for Waiver of TracFone Wireless, Inc. (TracFone) and designate TracFone as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 (TelAct), 47 U.S.C. § 214(e)(2), and 47 C.F.R. § 54.201 of the Federal Communications Commission's (FCC) Rules for the limited purpose of providing Lifeline service in the state of Maine. Furthermore, we open an investigation pursuant to 35-A § 1303(2) into TracFone's obligation to pay fees into the Maine Universal Service Fund (MUSF) and the Maine Telecommunications Education Access Fund (MTEAF), and whether TracFone is in compliance with its obligations to pay other applicable regulatory fees.

II. BACKGROUND

On August 5, 2009, TracFone filed an Application for designation as an ETC for the limited purpose of providing Lifeline service in Maine.¹ *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Maine for the Limited Purpose of Offering Lifeline Service to Qualified Households (Aug. 5, 2009) (Application). TracFone submitted a revised application on October 8, 2009 that specifically addressed the requirements of Chapter 206 of the Commission's Rules. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, First Amendment to Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier (Oct. 8, 2009) (Amended Application). TracFone is a reseller of commercial mobile radio service (CMRS) and has been operating in Maine for more than ten years. TracFone does not own or operate any facilities in Maine or elsewhere; rather it operates a "virtual network" that relies on obtaining service from other licensed operators of wireless networks. In Maine, TracFone provides service throughout the state wherever wireless service is available through its arrangements with various service providers.²

¹ TracFone operates its Lifeline service under the trade name SafeLink Wireless.

² TracFone initially plans to offer Lifeline service only in areas served by AT&T Mobility and T-Mobile.

On September 18, 2009 the Presiding Officer issued a Procedural Order requiring that any preliminary comments on TracFone's Revised Application be filed no later than October 13, 2009.³ *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Procedural Order (Sept. 18, 2009). The September 18, 2009 Procedural Order also scheduled a technical conference for October 16, 2009.

On October 8, 2009, along with its Amended Application, TracFone filed a petition for a waiver of certain requirements of Chapters 206 and 294 of the Commission's Rules. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Petition for Waiver (Oct. 8, 2009). In its Petition for Waiver, TracFone requested that the Commission waive (1) the requirement in Chapter 206, § 3(C) for submission of a substantive plan of the investments to be made with federal support and a description of how those expenditures will benefit consumers; (2) the requirement in Chapter 206, § 3(E) that wireless applicants provide a map showing existing and planned locations of cell sites; (3) the requirement in Chapter 206, § 3(F) that it provide information demonstrating that it has the ability to remain functional in emergency situations; and (4) the requirement in Chapter 206, § 3(G) that it comply with Chapter 294 of the Commission's Rules insofar as relates to the requirement in Chapter 294 § 6 that TracFone inform its Lifeline customers of program information and guidelines by mail.

On October 16, 2009 a technical conference was held in this matter. The technical conference was attended by representatives of TracFone, the OPA, TAM, Kennebec Valley Community Action Program (KVCAP), and Maine Community Action Association (MCA).⁴ At the technical conference, the Presiding Officer made the following Oral Data Requests of TracFone: (1) Explain the basis for TracFone's decision to set the number of free minutes provided to its Lifeline customers in Maine at 66; (2) explain how TracFone will, if at all, collect E-911 fees from Lifeline customers; and (3) explain how Lifeline customers would be charged for calls that originate from a cell site located in Canada.

On October 26, 2009, Commission Staff instructed TracFone to respond to a series of written data requests relating to TracFone's policies regarding payment of fees to the Maine Universal Service Fund (MUSF), the Maine Telecommunications Education Access Fund (MTEAF), the federal Universal Service Fund (USF), and to report its Maine intrastate revenue for the period from the 4th quarter of 2007 through the 3rd quarter of 2009.⁵ *TracFone Wireless, Inc., Request*
_____ *for Designation as an*

³ The Commission received preliminary comments from the Office of the Public Advocate (OPA) and the Telephone Association of Maine (TAM).

⁴ The OPA, KVCAP, and MCA each requested, and were granted, intervenor status in this matter.

⁵ There were a total of five questions in Examiner's Data Request No. 1, each with several sub-parts.

Eligible Telecommunications Carrier, Docket No. 2009-263, Examiner's Data Request No. 1 (Oct. 26, 2009). TracFone was required to respond to Examiner's Data Request No. 1 by November 9, 2009.

On October 28, 2009 TracFone responded by letter to the oral data requests made at the October 16, 2009 technical conference. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Response to 3 Questions (Oct. 28, 2009). In response to Question 1, while not providing details about how it arrived at the number of minutes to be provided to its Lifeline customers, TracFone stated that it had revisited the number of free minutes to be provided to Lifeline customers and increased the number to 68 from 66, and that those minutes would roll over from month to month provided that customers remained enrolled in the program. In response to Question 2 TracFone stated that, based on its interpretation of Maine law, it would not be required to remit E-911 fees from its Lifeline customers because, as Lifeline is a free service, there are no charges from which to collect such fees. In response to Question 3, TracFone stated that it would not permit Lifeline customers to originate calls from a Canadian cell site.

On November 9, 2009 TracFone responded to Questions 1, 2, 4, and 5 of Examiner's Data Request No. 1 and filed a motion for a protective order regarding its answer to Question 3. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Response (Nov. 9, 2009). In response to Questions 1 and 2, TracFone stated that under its interpretation of the Commission's Rules, it was not required to pay into MUSF and MTEAF, respectively, because as a pre-paid reseller it does not have any "billed" revenue. In response to Question 3, TracFone stated that it regarded its Maine intrastate revenue figures as competitively sensitive information, and refused to disclose the information in the absence of a protective order.⁶ In response to Question 4, TracFone stated that it does pay federal USF and, accordingly, has a means of distinguishing between interstate and intrastate revenues. TracFone refused to answer Question 5 regarding whether it pays USF or similar fees to any authorities in other states on the ground that the question was irrelevant to whether TracFone should be designated as an ETC in Maine.

On January 11, 2010, the Presiding Officer issued a Procedural Order asking for comment on TracFone's responses to Questions 1 and 2 of Examiner's Data Request No. 1 and whether and to what extent TracFone's failure to pay into MUSF and MTEAF should factor into determining whether the Commission should grant TracFone's request for ETC status. *TracFone Wireless, Inc., Request for Designation as an Eligible*

⁶ On November 25, 2009 the Presiding Officer granted TracFone's motion, *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Protective Order (Nov. 25, 2009), and on December 4, 2009 TracFone filed its confidential answer to Question 3. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Confidential Response to Examiner's Data Request No 1 (Dec. 4, 2009).

Telecommunications Carrier, Docket No. 2009-263, Procedural Order (Jan. 11, 2010). Intervenor and Interested Persons were given until February 1, 2010 to respond.

By February 1, 2010 the Commission had received comments from Maine Governor John Baldacci, the Emmanuel Homeless Shelter, the OPA, Maine State Representative Kenneth Fletcher, the AARP, Maine State Senator Barry Hobbins, the Maine Association of Retirees, Maine State Representative Stacey Allen Fitts, Maine State Representative Richard Blanchard, Maine Senate Majority Leader Philip Bartlett, Maine House Majority Leader John Piotti, MCA, Maine State Senator John Nutting, State Representative Jon Hinck, and KVCAP. The commenters were unanimous in their belief that the Commission should treat TracFone's failure to pay MUSF and MTEAF fees and its application for ETC status as two separate issues. All commenters urged the Commission to approve TracFone's application as expeditiously as possible.

■ LEGAL STANDARDS

The TelAct provides for the continuing support of universal service goals by making federal USF available to carriers which are designated as ETCs. Section 214(e)(2) of the TelAct gives state commissions the primary responsibility for designating carriers as ETCs. *See also Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Rulemaking, 15 FCC Rcd 12208, 12255, 93 (2000) (Twelfth Report and Order). To be designated as an ETC, a carrier must offer all nine of the services supported by the universal service fund to all customers within the ETC's service area and advertise the availability of those services throughout the service area.⁷

In furtherance of its role in designating ETCs, Chapter 206, Section 3 of the Commission's Rules require that ETC applicants provide the following information: (1) a description of the services for which ETC designation is sought and a statement that the provider will offer the services for which support is sought throughout that service area; (2) a statement that the provider will provide service on a timely basis to customers within the service area; (3) a plan of the investments to be made with federal support and how those investments will benefit customers; (4) a statement that the provider will advertise, throughout its service area, the availability of the services for which support is sought; (5) maps depicting the existing and planned locations of cell sites; (6)

The FCC has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched telephone network (PSTN); (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

information demonstrating the provider's ability to remain functional in an emergency; (7) a certification that the provider will comply with Chapters 290 and 294 of the Commission's Rules; (8) that the provider offers a local usage plan comparable to the one offered by the ILEC in the proposes service area; (9) a statement that the provider will provide equal access to long distance carriers; and (10) any additional information that the Commission may require.

The Commission will approve an application for designation as an ETC if the petition meets the requirements of Chapter 206, the carrier's designation as an ETC advances some or all of the purposes of universal service in 47 U.S.C. § 254, and the ETC designation is in the public interest. After ETC status is granted, the carrier must file an annual report in accordance with Chapter 206, § 6 of the Commission's Rules.

■ DISCUSSION

A. INITIAL APPLICATION

In its Application, TracFone describes in detail how it meets the federal requirements for designation as an ETC in Maine. As an initial matter, TracFone recognizes that federal law requires ETCs to offer services, at least in part, over their own facilities, and that the FCC's Rules prohibit state commissions from designating as an ETC a carrier that offers exclusively resale services. However, TracFone states that in 2005 the FCC granted TracFone "forbearance from the facilities requirement for ETC designation for Lifeline support only." See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, 20 FCC Rcd 15095 (Sept. 8, 2005) (TracFone Forbearance Order) at 1; *Application* at 4-5. Based on this order of forbearance, TracFone asserts that this Commission has jurisdiction to designate TracFone as an ETC under 47 U.S.C. § 214(e)(2).

Next, TracFone's Application describes in detail how TracFone provides, or will provide, all of the functionalities required by FCC Rules.

1. TracFone states that it will provide "voice grade" access to the PSTN, meaning that Lifeline customers will have the ability to make and receive telephone calls at frequencies between 500 and 4,000 hertz.
2. TracFone states that Lifeline customers will have the ability to make and receive local calls wherever TracFone provides service, and that local usage is included in its proposed calling plan.
3. TracFone states that all telephone handsets that it provides to its Lifeline customers are DTMF capable.

4. TracFone states that it provides all Lifeline customers with single-party access for the duration of every call; indeed, TracFone does not provide "party line" service to any of its customers.
5. TracFone states that it will fully comply with FCC requirement regarding E-911, and "has implemented and will continue to implement [E-911] services . . . when such services are made available by the carriers from whom TracFone purchases services."
6. TracFone states that Lifeline customers will have access to operator services.
7. TracFone states that Lifeline customers will have access to interexchange services to complete toll calls, and that there is no additional charge for Lifeline customers for long distance calling.
8. TracFone states that Lifeline customers will have access to directory assistance provided by its vendors.
9. TracFone states that there is no need for it to offer toll-limitation to Lifeline customers because, as TracFone's service is entirely pre-paid, it is not possible for a Lifeline customer to incur extra charges (or any charges for that matter) for toll calling.

Further, TracFone's Application states that TracFone will comply with all other federal requirements including providing service to Lifeline customers in its service area within a reasonable period of time, compliance with the service quality standards set by the Wireless Association Consumer Code for Wireless, advertising the availability of its Lifeline service within its service area, and compliance with federal certification of eligibility and verification of continued eligibility requirements.

Additionally, TracFone contends that certification of TracFone as an ETC in Maine would serve the public interest. TracFone points to what it believes are important benefits of its service to low-income Mainers. Among those benefits is the advantage of having a mobile phone as opposed to a landline phone with regard to persons seeking employment. TracFone argues that a mobile phone will allow prospective employees to respond immediately to potential employers and, once hires, allow people to stay in contact with their employers better manage their schedules. Perhaps most importantly, TracFone emphasizes that fact that its Lifeline service will be completely free to low-income customers. TracFone will provide Maine Lifeline customers with a free handset and 68 minutes of airtime each month.⁸

⁸ Should Lifeline customers desire to purchase additional minutes beyond the allotment of free minutes, they may do so at \$0.20 per minute.

B AMENDED APPLICATION

As described in Part II above, under the Commission's Rules, ETC Applicants are required to provide the Commission with certain information regarding their plans for providing Lifeline service. TracFone, in its Amended Application, and in accordance with the Commission's Rules, states the following:

1. That its service area will initially consist of all areas in Maine served by AT&T Mobility and T-Mobile. Additionally, TracFone plans to expand its service area to include areas served by Verizon Wireless.⁹
2. That it is not required to comply with the requirement in Section 3(A)(2) of Chapter 206 that it provide services, at least in part, over its own facilities.¹⁰
3. That it will provide Lifeline service to all qualified customers on a timely basis, with the only anticipated delay after ETC designation being the time needed to implement procedures and internal systems to offer the Lifeline program.¹¹
4. That it should be exempt from the requirements in Section 3(C) that it file a plan of investments to be made with initial federal support because it contends that this requirement is intended to apply only "to carriers that seek high-cost support to fund investments to their network," and, as a pure reseller, TracFone does not own any networks or facilities.¹²
5. That it will "aggressively advertise" its Lifeline service in a manner targeted to reach qualified customers, including print and broadcast media.¹³

⁹ TracFone states that it anticipates expanding Lifeline service to Verizon Wireless' service area in the second quarter of 2010.

¹⁰ TracFone relies on the *TracFone Forbearance Order* and 47 U.S.C. § 160(e) as justification for its contention that it does not have to comply with Section 3(A)(2). Title 47 U.S.C. § 160(e) states, in relevant part, that "a state commission may not continue to apply or enforce any provision of [47 U.S.C. §§ 151-615b] that the [FCC] has determined to forbear from applying."

¹¹ TracFone states that Section 3(B)(2) is not applicable because, as a pure reseller, TracFone does not have the ability to make modifications to the facilities of its underlying carriers.

¹² TracFone also states that, with regard to the Lifeline support it will receive, "one hundred percent of the support will be flowed through to Lifeline customers in the form of free usage."

¹³ TracFone also states that it will not be providing service supported by high-cost universal support mechanisms nor will it be providing Link-Up service, and, accordingly, will not be advertising such offerings.

6. That it has requested, but not been granted access to the comprehensive coverage maps of its underlying carriers as would comply with Section 3(E) of Chapter 206. Accordingly, TracFone has asked the Commission to waive this requirement.
7. That, because TracFone is a pure reseller, and does not operate any facilities, the requirement in Section 3(F) of Chapter 206 that it provide information regarding its ability to remain operational in an emergency does not apply.¹⁴
8. That it will comply with Chapter 290 and the applicable portions of Chapter 294 of the Commission's Rules.¹⁵ Further, TracFone certifies that it will comply with the consumer standards set forth in CITA — The Wireless Association (CITA) Consumer Code for Wireless Service and in the Commission's Rules to the extent those standards apply to resellers of prepaid services.
9. That it will provide a local usage plan to all Lifeline customers that it believes is comparable with that of Incumbent Local Exchange Carriers (ILEC).¹⁶
10. That it certifies that it may be required to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

¹⁴ TracFone states that it relies on the "state-of-the-art network reliability standards" of its underlying carriers.

¹⁵ Section 3(G)(1) requires that applicants comply with Chapters 290 and 294 of the Commission's Rules. Section 6 of Chapter 294 requires Lifeline carriers to provide written notification the Lifeline program and the program's guidelines to each of their customers at least once per year by mail. TracFone has applied for a waiver of this requirement based on the fact that, as a pre-paid wireless reseller, TracFone does not send bills to its customers nor does it communicate with them by mail.

¹⁶ TracFone states that under relevant FCC orders, local calling plans do not have to be identical to those of an ILEC, as long as it is comparable. *See Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6385, ¶ 33 (2005); *In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, 23 FCC Rcd 6206 (2008) (TracFone ETC Order).

IV. DECISION

A. PETITION FOR WAIVER

TracFone states that we should waive the provisions of Chapter 206, §§ 3(C), (E), and (F) and Chapter 294, § 6 of the Commission's Rules because these provisions pertain only to facilities-based wireless carriers, and it is unable to comply based on its inability to comply with the rules as a result of its status as a non facilities-based reseller of wireless services.

We agree that the basic purpose of Chapter 206 (i.e., ensuring that Maine consumers are provided with access to services funded through federal USF support) would not be significantly advanced by applying requirements to a non facilities-based carrier like TracFone which seeks ETC designation solely for the purpose of offering resold services for Lifeline customers, as opposed to one that seeks USF funds to accomplish infrastructure buildout goals. Indeed, in this instance, denying TracFone's application for ETC status based on its inability to comply with the specific rules at issue here would not be in the best interest of Maine's consumers. Further when we balance the interests involved in considering such a waiver, we find that the value of the service that TracFone desires to provide, combined with the limited nature of the waiver TracFone seeks, outweighs the Commission's otherwise significant interest in fully enforcing not just the letter, but also the spirit and intent of its Rules.

Accordingly, we grant TracFone's Petition for Waiver, and waive the provisions of Chapter 206, §§ 3(C), (E), and (F) and Chapter 294, § 6 of the Commission's Rules as described in its Petition, for the limited purpose of granting TracFone ETC status to enable it to provide Lifeline service in Maine.

B. ETC DESIGNATION

Although we are troubled by TracFone's apparent failure to pay fees for MUSE and MTEAF, we agree with the unanimous sentiment of the commenters to this proceeding that the issue of whether TracFone should have ETC status for the purpose of providing Lifeline service to Maine's consumers should be separate from the issue of TracFone's failure to pay into MUSF and MTEAF.

Accordingly, we find that TracFone's application for designation as an ETC for the limited purpose of providing Lifeline service meets the requirements of Chapter 206 of the Commission's Rules, will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and the designation is in the public interest. Accordingly, we grant TracFone's application.

C. INVESTIGATION INTO COMPLIANCE WITH REGULATORY FEE OBLIGATIONS

The designation of TracFone as an ETC for the purpose of providing Lifeline service does not absolve TracFone of any obligations it may have to abide by the Commission's Rules regarding contributions to MUSF, MTEAF and payment of other regulatory fees. Accordingly, we open an investigation in a separate docket into whether TracFone is required to contribute to MUSF and MTEAF, and whether TracFone is in compliance with its obligations to pay other applicable regulatory fees.

V. **CONCLUSION**

We grant TracFone's Petition for Waiver designate it as an ETC for the limited purpose of providing Lifeline service in the state of Maine. Additionally, we open an investigation into whether TracFone is required to contribute to MUSF and MTEAF, and whether TracFone is in compliance with its obligations to pay other applicable regulatory fees.

In light of the foregoing it is,

ORDERED

1. that the Petition for Waiver submitted on October 8, 2009 by TracFone Wireless, Inc. requesting waiver of Chapter 206, §§ 3(C), (E) and (F) and Chapter 294, § 6 of the Commission's Rules is **GRANTED** for the limited purpose of TracFone's designation as an ETC to provide Lifeline service in Maine;
2. that the Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Maine for the Limited Purpose of Offering Lifeline Service to Qualified Households submitted on August 5, 2009 as amended by the First Amendment to Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier submitted on October 8, 2009 by TracFone Wireless, Inc. is **APPROVED**;
3. that TracFone Wireless, Inc is **DESIGNATED** as an Eligible Telecommunications Carrier pursuant to 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201, and 65-407 CMR 206 for the limited purpose of providing Lifeline service in the state of Maine;
4. that, pursuant to 35-A M.R.S.A. § 1303(2), an **INVESTIGATION** be opened, in Docket No. 2010-47, into whether TracFone is required to contribute to the Maine Universal Service Fund and the Maine Telecommunications Education Access Fund, and whether TracFone is in compliance with its obligations to pay other applicable regulatory fees.

Dated at Hallowell, Maine, this 9th day of February, 2010.

BY ORDER
OF THE

COMMISSION

Karen Geraghty
Administrative Director

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

Exhibit 9

February 11, 2010

TRACFONE WIRELESS CORPORATION
Notice of Investigation for failure to Make
Required Payments to the Maine Universal
Service and the Maine
Telecommunications Education Access
Funds

NOTICE OF INVESTIGATION;
OPPORTUNITY TO
PARTICIPATE; OPPORTUNITY
FOR COMMENT

I. SUMMARY

This Notice of Investigation provides notice of the investigation opened by the Commission in its Order in Docket No. 2009-263 into whether TracFone Wireless, Inc. (TracFone) is required under Commission Rules to contribute to the Maine Universal Service Fund (MUSF) and the Maine Telecommunications Education Access Fund (MTEAF). This investigation will take place in the above-captioned docket.

II. BACKGROUND

In the course of processing TracFone's request to be designated as an Eligible Telecommunications Carrier (ETC), the Commission became aware that TracFone has not filed reports with, or made payment to, the MUSF and MTEAF. *See TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263 (ETC Proceeding); Order Granting ETC Status and Opening Separate Investigation (Feb. 9, 2010) (ETC Order).

Pursuant to 35-A M.R.S.A. § 7104, the Commission may require "providers of intrastate telecommunications services to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996." 35-A M.R.S.A. § 7104(3). Section 7104(3) defines "providers of intrastate telecommunications services" to "include providers of radio paging service and *mobile telecommunications services*" (emphasis added). *Id.* The statute requires the Commission to adopt rules to implement "this section."

The MUSF is governed by Chapter 288 of the Commission's Rules. The purpose of the MUSF is to ensure that telecommunications services are available to consumers throughout Maine at affordable rates that are comparable to those available in urban areas, by providing support for high cost rural service. Chapter 288 states that 1411 interexchange carriers, Local Exchange Carriers (LECs), *mobile telecommunications carriers* and radio paging providers that provide intrastate telecommunications in Maine must contribute to the Maine Universal Service Fund if the carrier had revenues of \$12,500 or more during the most recently completed quarter" (emphasis added). It further states that "[a] carrier that must contribute to the Fund shall report the amount of

its billed revenue and its uncollectible factor quarterly on forms provided by the Fund Administrator."

On January 11, 2010, the Presiding Officer in the ETC Proceeding issued a Procedural Order asking for comment on TracFone's above responses, and whether the

The MTEAF is governed by 35-A M.R.S.A. § 7104-B(2) and Chapter 285 of the Commission's Rules. MTEAF funds are used to provide discounts to qualifying schools and libraries to assist them in paying the costs of acquiring and using advanced telecommunications technologies. The statute states that the Commission shall "require *all telecommunications carriers offering telecommunications services in the State ... to contribute to the fund*" (emphasis added). The Rule defines a "Contributing Telecommunications Carrier" as "*any telecommunications carrier that had intrastate retail revenues for telecommunications services in Maine of \$12,500 or more during the most recently completed quarter, including all interexchange carriers (IXCs), local exchange carriers (LECs), [and] mobile telecommunications carriers*" (emphasis added). Such carriers are also required to make quarterly reports to MTEAF containing the amount of intrastate revenue generated in Maine. Chapter 285, §§ 1(A), 2(A).

According to the records of the MUSF and MTEAF Administrator and of this Commission, TracFone has never made any payments to the MUSF or the MTEAF and has not filed any quarterly reports, despite repeated delinquency notices from the MUSF-MTEAF Administrator advising TracFone of its obligations.

Pursuant to TracFone's request, the Commission recently designated TracFone an ETC for the limited purpose of providing Lifeline service in the State of Maine, an endeavor it will accomplish through subsidization obtained from the federal universal service fund. See *ETC Order*. On October 26, 2009, in the ETC proceeding, the Presiding Officer issued a Data Request that asked TracFone why it had failed to make any payments or filings pursuant to Chapters 285 and 288. Docket No. 2009-263, Examiner's Data Request No. 1 (Oct. 26, 2009) at 2. On November 9, 2009, TracFone responded:

TracFone, as a prepaid wireless carrier, does not bill its customers for services. Therefore, TracFone is not required by Chapter 288 to contribute to the MUSE. Section 4(C) further provides that "[a] carrier that must contribute to the Fund shall report the amount of its *billed* revenue and its uncollectible factor quarterly on forms provided by the Fund Administrator. . . . TracFone is not required to contribute to the MUSF, and as such, is not subject to the MUSF reporting requirements.

Docket No. 2009-263, Response to Examiner's Data Request No. 1 (Nov. 9, 2009) at 12 (emphasis added by TracFone).

TracFone provided essentially the same response about its failure to make payments or reports to the MTEAF.

Commission should consider TracFone's failure to pay regulatory fees as a factor in its decision regarding the granting of ETC status. The Commission received several comments from advocacy groups, state legislators, and the Governor of Maine. The commenters were unanimous in their view that the issues of ETC status and regulatory fee compliance should be treated separately.

While the issues outlined above may not be connected to the question of whether TracFone should be allowed to provide Lifeline service in Maine, they do nonetheless raise important questions regarding fundamental fairness between TracFone and its competitors and TracFone's willingness to comply with Maine's regulatory framework.

III. NOTICE OF INVESTIGATION

In the Order dated February 9, 2010 in Docket No. 2009-263, the Commission initiated an investigation pursuant to 35-A M.R.S.A. § 1303(2) into the following issues:

1. Whether TracFone is required under Commission Rules to contribute to MUSF;
2. Whether TracFone is required under Commission Rules to contribute to MTEAF; and
3. Whether TracFone is currently in compliance with its obligations to pay other regulatory fees and contribute to other regulatory funds.

This Notice of Investigation opens the above captioned docket for the purpose of conducting that investigation.

IV. OPPORTUNITY TO PARTICIPATE¹

As the entity most directly affected by this Investigation, TracFone is hereby made a party to this proceeding. Any other person or entity who wishes to participate in this proceeding as a party must file a **Petition to Intervene** with the Commission's Administrative Director, Maine Public Utilities Commission, State House Station 18, Augusta, Maine 04333 by **Friday, February 26, 2010**. Copies of the petition should also be sent to:

Mitchell F. Brecher
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
brecher@gtlaw.com

Debra McGuire Mercer
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
mercerdm@gtlaw.com

¹ This Notice of Investigation was sent to the

members of the service lists for Docket Nos. 2009-40 and 2009-263, as well as representatives of FairPoint and U.S. Cellular.

On January 11, 2010, the Presiding Officer in the ETC Proceeding issued a Procedural Order asking for comment on TracFone's above responses, and whether the

Petitions to Intervene must be in writing and must state the name and the docket number of this proceeding and the manner in which you are affected by the proceeding. Please include the name of the Intervenor, the address, phone and fax numbers, and an e-mail address. **All Petitions to Intervene must also include a short and plain statement of nature and extent of the participation sought and a statement of the nature of the evidence and argument that is intended to be presented.** Pursuant to Commission Rules, the Hearing Examiner may require consolidation of intervenors for purposes of discovery, presentation of evidence, and argument.

Persons interested in only receiving copies of the Commission's orders and notices of public hearings may request to be added to the Commission's mailing list as an **Interested Person**. All such requests should be directed to the Commission's Administrative Director, Maine Public Utilities Commission, State House Station 18, Augusta, Maine 04333. Please include the name and address of the Interested Person as well as an e-mail address, if available.

V. OPPORTUNITY TO COMMENT

The Commission provides an opportunity for parties that have filed Petitions to Intervene in this matter to file comments in response to TracFone's argument that it is not required to pay MUSF and MTEAF fees on any of the services that it resells in Maine or file reports regarding the same, notwithstanding the language (quoted above) of Chapter 288, § 4(C) and Chapter 285, § 1(A). TracFone may also file comments in support of its position.

All comments must be filed with the Commission, in Docket No. 2010-47, no later than **Wednesday, March 10, 2010**.

Dated at Hallowell, Maine, this 11th day of February 2010

Jordan McColman
Hearing Examiner

Exhibit 10

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
TracFone Wireless, Inc.)
)
Petition for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Pennsylvania)
)

**REPLY COMMENTS OF TRACFONE
WIRELESS, INC.**

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby submits its reply to the comments which were filed on February 8, 2008 with regard to TracFone's above-captioned petition for designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the limited purpose of offering a prepaid wireless Lifeline service to low-income households in Pennsylvania. Comments on the petition were filed by the National Association of State Utility Consumer Advocates (NASUCA) and joint comments were submitted by the Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association, Keystone Chapter (PAOCA/NENA).

In its comments, NASUCA states that its concerns about TracFone's proposed Lifeline programs have been satisfied. TracFone is gratified that it has been able to alleviate NASUCA's concerns and that NASUCA has no objections to TracFone's petition for designation as an ETC in Pennsylvania.

PAOCA/NENA's comments contain no allegations that TracFone is not qualified to be designated as an ETC or that TracFone has not satisfied any ETC requirement either codified in the Communications Act or promulgated by the Commission. Rather, PAOCA/NENA alleges that TracFone is not in compliance with Pennsylvania law regarding collection of E911 fees and that grant of TracFone's ETC petition should be conditioned upon a commitment by TracFone to comply with the Pennsylvania Public Safety Act (35 P.S. § 7011 *et seq.*).¹ As will be described in these reply comments, PAOCA/NENA has provided no legal basis either for denying TracFone's Pennsylvania ETC petition or for conditioning approval of the application. Accordingly, the petition should be granted without delay. However, PAOCA/NENA's comments raise an important public interest issue regarding state laws governing collection of E911 fees and whether those laws, as enacted and as applied by certain states, undermine the nation's telecommunications policies as reflected in the Communications Act. TracFone encourages the Commission to address these important issues in a holistic manner in an appropriate proceeding, not on a piecemeal, state-specific basis in the context of one ETC petitioner's designation proceeding.

I. THE COMMISSION HAS ARTICULATED THE PUBLIC INTEREST FACTORS TO BE CONSIDERED IN ETC DESIGNATIONS AND TRACFONE HAS DEMONSTRATED COMPLIANCE WITH EACH OF THOSE FACTORS

In Federal-State Joint Board on Universal Service (*Report and Order*), 20 FCC Red 6371 (2005) ("ETC Order"), the Commission established the guidelines and criteria it would apply in considering applications for designation as ETCs. In that order, the Commission held that ETC applicants must demonstrate the following: 1) a commitment and ability to provide services, including service to all customers within their proposed service areas; 2) how they will remain

¹ PAOCA/NENA Comments at 7.

functional in emergency situations; 3) that they will satisfy consumer protection and service quality standards; 4) that they will offer local usage comparable to that offered by the incumbent local exchange carriers; 5) that they understand that they may be required to provide equal access if all other ETCs in the designated service areas relinquish their designations pursuant to Section 214(e)(4) of the Communications Act.² In its ETC petition, TracFone demonstrated that it would conform with each of the criteria. Indeed, nothing in PAOCAJNENA's comments even alleges that TracFone has not made all the applicable showings required by the Commission.

It must be borne in mind that the Lifeline program established by the Commission is an essential component of the national universal service policy codified at Section 254 of the Act. In this regard, the Commission's (and PAOCA/NENA's) attention is directed to Section 254(b) which states, in relevant part, as follows:

(b) UNIVERSAL SERVICE PRINCIPLES. - The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(³) ACCESS IN RURAL AND HIGH COST AREAS. Consumers in all regions of the Nation, including low income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
(emphasis added)

The Commission's establishment of the Lifeline program and TracFone's proposal to offer free prepaid wireless service to Lifeline-eligible low income consumers are in furtherance of the express statutory goal of making affordable telecommunications service available to low

² ETC Order at 20.

income consumers. TracFone has demonstrated that it will conform with every applicable Commission requirement imposed upon ETCs and that its Lifeline offerings will make available affordable service to low income Pennsylvania households. In fact, TracFone's Lifeline plans would go beyond offering affordable service. Qualified Lifeline customers would receive specified quantities of free wireless service each month.

Indeed the Pennsylvania Consumer Advocate, whose office has expressed misgivings about TracFone's ETC proposal, has actively supported Lifeline and has noted with justifiable concern that the Lifeline program is not benefiting the Commonwealth of Pennsylvania. For example, in July 2003, Consumer Advocate Sonny Popowsky, testified at a hearing in support of telecommunications legislation, and stated as follows:

In the year 2001, Pennsylvania consumers paid approximately \$24 million into the federal universal service fund for Lifeline, but Pennsylvania consumers received only \$6 million in assistance from that fund. That is because of the very low participation rate of Pennsylvania consumers in the Lifeline program. While Pennsylvania's Lifeline participation rate improved in 2002, it is still woefully inadequate, and we are literally leaving millions of dollars in federal universal service Lifeline funds on the table.³

If designated as an ETC to provide Lifeline service in Pennsylvania, TracFone believes that it will be able to extend Lifeline service to some portion of the nearly eighty-four percent of low income Lifeline-eligible households not currently participating in the program.

³ Testimony of Sonny Popowsky, Consumer Advocate, Before the Pennsylvania House Consumer Affairs Committee, Regarding House Bill 1669, Telecommunications Legislation. State College, PA, July 11, 2003. Mr. Popowsky's concerns about Pennsylvania's low Lifeline participation rate are, unfortunately, well-founded. According to Commission data, Pennsylvania's Lifeline participation rate for 2002 was only 16.2 percent. Lifeline and Link-Up (*Report and Order*), 19 FCC Rcd 8302 (2004), at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline subscription information (Year 2002).

Accordingly, there is no reason not to grant TracFone's petition for designation as an ETC in the Commonwealth of Pennsylvania.⁴

II. THE COMMISSION SHOULD CONSIDER IMPORTANT ISSUES REGARDING STATE FUNDING OF E911 IN AN APPROPRIATE PROCEEDING

Although not relevant to whether TracFone has satisfied each of the Commission's requirements for ETC designation in Pennsylvania, PAOCA/NENA allege that TracFone has not fulfilled its obligations under Pennsylvania law to collect wireless E911 fees.⁵ In fact, PAOCA/NENA goes so far as to assert that TracFone is the only telecommunications company which does not comply with Pennsylvania law regarding collection of 911 fees.⁶ Although E911 fee collection is an important issue, PAOCA/NANA is wrong in its assertions on that point. First, TracFone denies that it is in violation of the Pennsylvania Public Safety Emergency Telephone Act or any other provision of Pennsylvania law. Moreover, PAOCA/NENA has provided no factual basis for its assertion that every telecommunications provider except TracFone complies with that law, and there is no such factual basis as the assertion is indeed incorrect. TracFone is aware of filings made by other providers of prepaid wireless services in

⁴ In the Commission's 2005 order granting TracFone's petition for forbearance, the Commission imposed a series of conditions on its grant of that forbearance petition. In the Matter of Federal- State Joint Board on Universal Service and Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005). TracFone has committed to conforming with those conditions as set forth in the Compliance Plan filed with the Commission in October 2005.

⁵ PAOCA/NENA Comments at 2.

⁶ *Id.* at 5 (" . . . all wireline local exchange carriers, competitive local exchange carriers and resellers, as well as wireless services providers, comply with the Pennsylvania Act and collect 911 fees - except TracFone.").

public forums which admit that such providers cannot and do not collect from customers E911 surcharges in Pennsylvania.⁷

What is required by that Pennsylvania statute, how it is construed, applied and enforced are, of course, questions of state law.⁸ They are not matters for the Federal Communications Commission to adjudicate, nor are they matters which are in any way relevant to universal service, ETC designation and the federal Lifeline program.⁹

While not relevant to the instant ETC designation proceeding, PAOCA/NENA's comments raise an issue of importance which warrants the

attention of the Commission in an

⁷ For example, in Connecticut Department of Public Utility Control Docket No. 06-12-09, in March 2007, Sprint Nextel, Verizon Wireless, Alltel, and T-Mobile submitted responses to data requests in which those carriers indicated that they do not collect E911 surcharges from their prepaid customers in any states, including Pennsylvania.

⁸

As written, the provision of the Pennsylvania statute imposing the E911 surcharge on prepaid wireless services is not applicable to certain providers, including TracFone. 35 P.S. § 7021.4(b)(4) states as follows:

In the case of prepaid wireless telephone service, the monthly wireless 911 surcharge imposed by this section shall be remitted based upon each prepaid wireless account in any manner consistent with the provider's existing operating or technological abilities, such as customer address, location associated with the MTN [mobile telephone number], or reasonable allocation method based upon comparable relevant data and associated with Pennsylvania, for each wireless customer with an active prepaid wireless account and has a sufficient positive balance as of the last day of each month, if such information is available.

Some providers, including TracFone, do not have available to them information as to whether any customer has a sufficient positive balance on the last day of each month. Thus, the statutory requirement as written is not applicable to such providers.

⁹ Subsequent to receipt of the PAOCA/NENA comments, representatives of TracFone held a telephonic meeting with a member of the Consumer Advocate's office and one of the NENA (Keystone Chapter) members. During that meeting, it was explained that many providers of prepaid wireless service (not just TracFone) are unable to collect E911 surcharges from customers as a result of the collection methods contemplated by the statute. There was agreement to work cooperatively to develop collection methods which would enable E911 surcharges to be collected from all customers without unfairly burdening or competitively

disadvantaging any provider.

appropriate proceeding. Many states, including Pennsylvania, have enacted laws to provide funding for 911 and E911 services. Ubiquitous provision of E911 service is an essential public safety matter and TracFone fully supports efforts to provide adequate funding for E911 service in every state. State laws governing E911 funding must be consistent with the requirements of the Communications Act. Section 253(b) of the Act authorizes states to impose requirements necessary to "protect the public safety and welfare."¹⁰ However, that grant of authority is not unlimited. Such requirements necessary to protect the public safety and welfare must be imposed "on a competitively neutral basis."

Most state 911 collection laws, including Pennsylvania's, impose the payment obligation on customers. Implementation of these statutory requirements for post-paid services (wireline or wireless) is relatively simple: carriers include in their periodic invoices the required surcharge or fee; collect the billed fee from customers; and remit the collected amounts to the state department or agency which administers E911. That model simply is not workable for prepaid services since there is no billing mechanism to collect the E911 surcharges and fees from customers. TracFone and others have addressed this problem in numerous states, including Pennsylvania.¹² Based on those experiences, there is only one E911 fee collection method which would result in payment by all prepaid wireless customers of state 911 fees. That method is to collect the fee from the customer at the time and place of sale of the service.

¹⁰ 47 U.S.C. § 253(b).

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¹² TracFone has been communicating with the Pennsylvania officials, specifically with the Commonwealth of Pennsylvania Emergency Management Agency, since 2004 regarding its concerns that the Pennsylvania Public Safety Emergency Telephone Act does not provide a workable collection mechanism for non-billed, prepaid services. Indeed, on multiple occasions, TracFone has offered to work with state officials in Pennsylvania, and in other states, to develop E911 collection and remission methods which are workable with prepaid services.

The inability of providers of prepaid wireless services to collect from customers E911 fees on purchases of service made through retail vendors is not a problem unique to TracFone. Collection of E911 fees on sales has been a problem throughout the wireless industry. In recognition of the inherent difficulties of attempting to impose E911 fee collection mechanisms designed for the post-paid portion of the industry on the prepaid industry segment, CTIA - the Wireless AssociationTM recently articulated a series of Wireless Principles for 9-1-1 Fees and Surcharges. A copy of those principles is attached hereto. The Commission's attention is directed to Principle No. 5. That principle states as follows:

Fees Should be Imposed on End-User

Wireless E911 fees were established to be imposed on the end user (the beneficiary of being able to access the 911 system) and should not be imposed on or set up in a manner that results in the fee being imposed on the communications service provider. As in the case of all other wireless services, the E911 fee on prepaid wireless service should be collected on the purchase of the service. However, unlike other wireless service, prepaid wireless services are not billed on a monthly basis and are often sold through retail channels that are not exclusive to wireless carriers. Therefore, in order to help ensure ongoing end user support of E911 funding by wireless prepaid customers, **the wireless industry maintains that it will be necessary to collect the E911 fee on all retail sales of wireless prepaid airtime whether sold by retail merchants or wireless service providers.** This could be done in an efficient and transparent method by having all retailers collect the E911 fee as percentage based equivalent of the fee on each prepaid wireless transaction. (emphasis added)

The CTIA principle stated above represents a broad recognition within the wireless telecommunications industry that E911 collection mechanisms designed specifically for billed post-paid services are not appropriate for the prepaid segment of the industry, and that state efforts to impose the fee payment obligation directly on service providers places an economic burden on those providers which is inconsistent with the concept of competitive neutrality embodied in the communications Act.

CERTIFICATE OF SERVICE

I, Michelle D. Guynn, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that on February 25, 2008 a true and correct copy of the foregoing Reply Comments of TracFone Wireless, Inc., was mailed to the following:

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Michelle D. Guynn

Exhibit 11

Wireless Principles for 9-1-1 Fees and Surcharges

The goal of the wireless industry is to work with state policymakers and public safety officials to ensure that E911 service is a coordinated and collaborative operation between the private and public sector to provide quality E911 service at a reasonable cost. Wireless consumers provide significant capital to support public safety, through their payment of taxes, fees and surcharges. This funding is extremely critical to our nation's public safety systems, making it possible to obtain the necessary infrastructure to receive and act on wireless calls to emergency responders. These wireless calls help to save lives, locate missing children and prevent numerous crimes.

Wireless carriers annually collect nearly \$2 billion dollars of dedicated taxes, fees and surcharges from wireless consumers for the purpose of supporting and upgrading the technical capabilities of the 6,174 Public Safety Answering Points (PSAPs) that exist across the country. In addition to the nearly \$2 billion dollars annually collected from consumers and remitted to state and local governments, wireless service providers have also expended billions to modify their networks to enable them to identify and locate wireless 911 callers.

The taxes and fees collected from wireless consumers at the state and local level under the auspices of E911 deployment were collected to advance these stated public policy goals and must be solely dedicated to the advancement of E911. To that end, the wireless industry endorses the following principles concerning revenue collection and disbursement relative to E911 statutes in the states:

- 1. Funds Should be Spent on E911 Systems**
- 2. Need for Accountability and Audits**
- 3. Justify Costs or Reduce Imposition**
- 4. Funds Should Not be Raided or Diverted**
- 5. Fees Should be Imposed on End-User**
- 6. Collection at the State Level, Not Locality by Locality**
- 7. Funding Should Ultimately be from General Revenue**

Funds Should be Spent on E911 systems

The intent of E911 fees is to specifically support the costs to establish and maintain the emergency communications systems so that PSAPs have the ability to call back wireless 911 callers and pinpoint their location within FCC prescribed guidelines. Unfortunately, many policymakers incorrectly believe that E911 fees should be used for all sorts of basic public safety services. An emerging trend in multiple states is to ignore the intended purpose of E911 fees and instead use government imposed 911 fees to support general government services. These services that benefit all constituents are important. However, government services that are not directly related to establishing and maintaining emergency communications systems should be funded through general revenue funds that are raised by broad-based taxes and not through E911 fees imposed on users of communications services.

Need for Accountability and Audits

E911 operations and expenditures should not only be efficient, but also transparent and accountable to an oversight board and to the public through annual reports to the legislature and/or Governor. Annual reports should contain information regarding collections and expenditures and progress toward the goal of statewide deployment.

Justify Costs or Reduce Imposition

E911 services must be periodically reviewed and E911 fees shall be adjusted based on actual direct costs of achieving statewide deployment of wireless E911 service. As with any system implementation, funding requirements should decrease as soon as states become Phase I and Phase II compliant. Accordingly, E911 fees should be eliminated or substantially reduced once Phase I and Phase II compliance is achieved. The funding for the recurring costs of operating the system and providing emergency services to the general public should be provided from general revenue funds that are raised by broad-based taxes and not through E911 fees.

Funds Should not be Raided or Diverted

The capital provided in good faith by wireless consumers through 911 fees or surcharges has been and continues to be extremely critical in supporting public safety in a given state. However, the taxes and fees collected from wireless consumers at the state and local level under the auspices of E911 deployment need to be solely dedicated to the advancement of E911 deployment and not used for other revenue purposes.



Fees Should be Imposed on End-user

Wireless E911 fees were established to be imposed on the end user (the beneficiary of being able to access the 911 system) and should not be imposed on or set up in a manner that results in the fee being imposed on the communication service provider. As in the case of all other wireless services, the E911 fee on prepaid wireless service should be collected on the purchase of the service. However, unlike other wireless service, prepaid wireless services are not billed on a monthly basis and are often sold through retail channels that are not exclusive to wireless carriers. Therefore, in order to help ensure ongoing end user support of E911 funding by wireless prepaid customers, the wireless industry maintains that it will be necessary to collect the E911 fee on all retail sales of wireless prepaid airtime whether sold by retail merchants or wireless service providers. This could be done in an efficient and transparent method by having all retailers collect the E911 fee as percentage based equivalent of the fee on each prepaid wireless transaction.

Collection at State level, not Locality by Locality

Wireless E911 fees should be established and collected on a statewide basis, with a single centralized collection agent and a single statewide E911 fee rate. Collection of a single, statewide fee reduces administrative burdens imposed upon communication service providers related to sourcing E911 fees to the proper local jurisdictions. Collecting fees at different rates which can change with little notice, and remitting multiple tax returns to local jurisdictions is onerous and time consuming. The centralized collection agent would then be properly positioned to determine a fair and equitable distribution to local jurisdictions. In those states where the wireless E911 fee is now locally administered, every effort should be made to transition toward an efficient statewide system as quickly as possible.

Funding Should Ultimately be from General Revenue

Sound tax policy supports the principle that government costs related to providing a common public service, such as E911 service, should be funded from general revenue. E911 services benefit all Americans and in the 21st Century the need for a transparent, fully functioning, fully funded, efficiently run system is critical, the cost of which should be borne by all constituents. However, the industry recognizes that migrating from the fee structure that exists today to full funding for these costs from general revenues will take time and is recognized as a long-term goal of the industry.

CERTIFICATE OF SERVICE

This is to certify that I have duly served TracFone Wireless, Inc.'s Rebuttal Testimony and Exhibits, as indicated, on the following, this 19th day of April, 2010, by electronic mail addressed as follows:

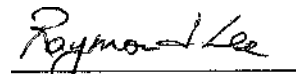
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