

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

POST-HEARING BRIEF OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”) filed with the Commission on or about August 25, 2009 a petition for designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended,¹ for the limited purpose of offering Lifeline service to qualified low-income Utah households. On June 7, 2010, a hearing on TracFone’s ETC petition was held before Administrative Law Judge Ruben Arrendondo.

During that hearing, TracFone demonstrated through testimonial and other evidence that it meets all applicable federal and state requirements for designation as a Lifeline-only ETC and that designation of TracFone as an ETC and allowing TracFone to provide its SafeLink Wireless® Lifeline service to low-income households in Utah would serve the public interest. Also during the hearing, other interested persons, including the Division of Public Utilities (“DPU”), the Office of Consumer Services (“OCS”), the Utah Rural Telecom Association (“URTA”), and the Salt Lake City Community Action Program (“SLCAP”) presented testimony and were afforded an opportunity to raise questions about TracFone’s ETC petition.² As will be described in this brief, TracFone is fully qualified under applicable federal and state law to be designated as an ETC, and it is prepared to address certain concerns which have been raised

¹ 47 U.S.C. § 214(e)(2).

² In addition, Tim Funk of the Crossroads Urban Center presented testimony during the public testimony portion of the hearing.

during this proceeding. Specifically, TracFone heard the criticism of several intervenors that the initially-proposed SafeLink Wireless® offering would not provide sufficient free service to meet the needs of low-income consumers who would rely on that service. Accordingly, as will be described in this brief, TracFone will increase significantly the amount of monthly free wireless airtime to be provided to its Lifeline customers in Utah. With that important and meaningful enhancement to TracFone’s Lifeline proposal, the record can support no conclusion other than that designation of TracFone as an ETC and the introduction of its SafeLink Wireless® service to low-income Utah households will serve the public interest and that TracFone’s ETC petition should be promptly approved by the Commission.

Introduction and Background

TracFone is a provider of Commercial Mobile Radio Services (“CMRS”). TracFone is incorporated under the laws of the State of Delaware and its corporate headquarters are located in Miami, Florida. With more than thirteen million customers throughout the United States, TracFone is the nation’s fifth largest CMRS provider based on number of customers, and is the nation’s leading provider of prepaid CMRS services. TracFone differs from other CMRS providers with whom the Commission may be familiar in two important respects. First, TracFone does not own, operate, control or manage any telecommunications facilities anywhere. It holds no wireless licenses from the Federal Communications Commission (“FCC”), it operates no switches, cell towers or other transmission facilities. It provides service by reselling services that it procures from facilities-based underlying carriers. In short, TracFone is a wireless reseller (wireless resellers sometimes are referred to as “Mobile Virtual Network Operators” or “MVNOs”).

Second, TracFone provides only prepaid services. TracFone offers no post-paid or billed services. TracFone customers do not sign service contracts and do not receive monthly invoices for service. There are no service term or volume commitments, no credit checks, no early termination fees, and no risk of disconnection for non-payment. Consumers purchase as much wireless airtime as they need when they need it. TracFone services can be purchased on a prepaid basis at numerous retail locations throughout Utah (*e.g.*, Wal-Mart, Target, Best Buy, 7-11, others) or from TracFone directly through its website (www.tracfone.com).

Because TracFone's pay-as-you-go service is especially suitable for economically disadvantaged consumers, consumers with poor credit histories, transients, recent immigrants, senior citizens getting by on fixed incomes, younger persons, etc., TracFone has long believed that it could be an effective provider of Lifeline-supported services. In 2004, TracFone commenced its efforts to become a Lifeline provider by petitioning the Federal Communications Commission ("FCC") to exercise its statutory authority to forbear from application or enforcement of those provisions of the Communications Act and the FCC's rules which require ETCs to provide services supported by the federal Universal Service Fund at least in part using their own facilities. In September 2005, the FCC exercised its statutory authority to forbear from those provisions of the Communications Act and the FCC's rules which require ETCs to offer service, at least in part, using their own facilities.³ In 2008, the FCC designated TracFone as a Lifeline-only ETC in eleven jurisdictions for which the FCC, rather than state commissions,

³ 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 Forbearance Order").

retained authority to designate ETCs.⁴ Since that time, TracFone has been designated as an ETC to provide Lifeline service by no fewer than twenty state commissions.⁵

Having been designated as an ETC in thirty-one states, TracFone now is providing SafeLink Wireless® in about 25 states and plans to commence service shortly in the other states where it has been designated as an ETC. SafeLink Wireless® meets all of the requirements for Lifeline service. However, it is very different from “traditional” Lifeline services offered by incumbent local exchange carrier ETCs. SafeLink Wireless® is a free service. Qualified customers receive at no charge E911-compliant wireless handsets. No other ETC operating in Utah provides free telephones -- wireline or wireless -- to its Lifeline customers. TracFone’s Lifeline customers also receive an allotment per month of free minutes of wireless airtime. That airtime may be used for local calls, long distance calls (interstate and intrastate) as well as international calls to more than 60 destinations. Those minutes may also be used for roaming calls as there are no separate roaming charges. SafeLink Wireless® customers may also use their allotments of free wireless airtime to send and receive SMS text messages, with text messages decremented from their account balances at the rate of 0.3 minutes per text. Also included at no additional charge as part of TracFone’s SafeLink Wireless® service are important service features, including voice mail, call waiting and caller ID. SafeLink Wireless® customers

⁴ 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). In addition to New York, the FCC has designated TracFone as an ETC in Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia. Pursuant to Section 214(e)(6) of the Communications Act (47 U.S.C. § 214(e)(6)), the FCC is authorized to designate ETCs in states where state commissions do not have such authority or choose not to exercise such authority.

⁵ The following state commissions have designated TracFone as an ETC: Florida, Georgia, Maine, New Jersey, Maryland, West Virginia, Ohio, Michigan, Wisconsin, Illinois, South Carolina, Texas, Louisiana, Minnesota, Washington, Puerto Rico, Nevada, Missouri, Rhode Island, and Arkansas.

may purchase additional airtime at favorable rates. However, there is no requirement that they do so; nor are overage charges imposed on consumers who exceed their allotment of free airtime.

Most importantly, SafeLink Wireless® is achieving the goals of the federal universal service program. Those statutory goals include making available to consumers in all regions of the United States, including rural and low-income consumers, affordable telecommunications services.⁶ In jurisdictions where SafeLink Wireless® is offered, Lifeline enrollment has increased by more than one hundred percent.⁷ To date, TracFone has enrolled more than three million low-income customers in its Lifeline program and, by doing so, has materially increased participation in Lifeline and made the security, convenience and public safety benefits of wireless telecommunications available to millions of Americans who, for economic reasons, previously had been unable to participate in the “wireless revolution.”

According to FCC data, the Lifeline enrollment rate among low-income Utah households eligible for Lifeline benefits is only 12.7 percent.⁸ In other words, nearly 88 percent of qualified low-income Utah residents are not receiving Lifeline benefits which Congress and the FCC intended for them in enacting the Telecommunications Act of 1996 and the FCC’s implementing regulations. Whatever the reasons for the failure of Utah’s designated ETCs to enroll the vast majority of qualified low-income households in Lifeline, TracFone is confident that it will materially improve Lifeline participation as it has done in other states by offering consumers a free wireless Lifeline option.

⁶ 47 U.S.C. § 254(b)(3).

⁷ Testimony of Jose Fuentes on behalf of TracFone, TracFone Exhibit 1 at p. 12, line 17 to p. 13, line 2.

⁸ Lifeline and Link-Up (*Report and Order and Further Notice of Proposed Rulemaking*), 19 FCC Rcd 8302 (2004), at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002).

I. TracFone Meets All ETC Designation Criteria

Section 214(e)(2) of the Communications Act⁹ provides that State commissions shall designate common carriers that meet the requirements of paragraph (1) as ETCs. Section 214(e)(1) contains two requirements for ETC designation: Section 214(e)(1)(A) requires ETCs to offer the services supported by Federal universal service support mechanisms using their own facilities or a combination of their own facilities and the resale of other carriers' services.¹⁰ Section 214(e)(1)(B) requires ETCs to advertise the availability of such services and the charges therefor using media of general distribution.¹¹

As a result of the FCC Forbearance Order, the facilities-based service requirement no longer is applicable to TracFone. In this proceeding, TracFone provided extensive descriptions and examples of its very aggressive and creative media advertising, and there is no dispute that TracFone's advertising of its Lifeline program will be more than sufficient to meet the advertising requirement codified at Section 214(e)(1)(B). In addition, certain intervenors have requested that TracFone provide a Utah-specific consumer information sheet to potential Lifeline customers which contains certain information about the service. In the days prior to the June 7 hearing, those intervenors and TracFone worked jointly and cooperatively to develop such an information sheet. As stated on the record during the hearing, TracFone and those intervenors have agreed to the language which will be included in that information sheet to be provided to TracFone's Utah Lifeline customers.¹²

⁹ 47 U.S.C. § 214(e)(2).

¹⁰ 47 U.S.C. § 214(e)(1)(A).

¹¹ 47 U.S.C. § 214(e)(1)(B).

¹² Tr. at 154, 211-212.

In addition to the ETC designation requirements codified at Section 214(e)(1)(A) and (B), Section 54.101(a) of the FCC's rules¹³ requires ETCs to provide the following service functionalities as a condition of receiving Universal Service Fund support: 1) voice grade access to the public switched network; 2) local usage; 3) dual-tone multifrequency signaling or its functional equivalent; 4) single-party service or its functional equivalent; 5) access to emergency services; 6) access to operator services; 7) access to interexchange services; 8) access to directory assistance; and 9) toll-limitation for qualifying low-income consumers. In its petition, TracFone demonstrated -- as it has in each of the 30 other jurisdictions where it has been designated as an ETC -- that it will provide each of these functionalities. No parties disputed that each of these functionalities would be available to TracFone Lifeline customers in Utah. Accordingly, the evidentiary record compels a Commission conclusion that TracFone will provide all of the service functionalities required of ETCs by the FCC's rules.

II. TracFone Will Increase the Amount of Free Service to 200 Minutes of Free Wireless Service Per Month

During the hearing, no issue received more testimony and attention than that involving the "value proposition" of TracFone's Lifeline service. Initially, TracFone proposed to provide each qualified Utah Lifeline customer with 67 minutes of free wireless airtime per month. That benefit was developed based on the amount of Universal Service Fund support which TracFone could receive pursuant to Section 54.403 of the FCC's rules,¹⁴ and an additional \$3.50 per

¹³ 47 C.F.R. § 54.101(a).

¹⁴ 47 C.F.R. § 54.403.

customer per month to be provided by TracFone from its own resources, and dividing that total benefit amount by \$0.20 -- TracFone's standard per minute rate.¹⁵

Although TracFone justified the proposed Lifeline benefit based on the amount of support it could receive under the applicable rules, witnesses from SLCAP, OCS, and Mr. Funk of Crossroads Urban Center all testified that 67 minutes per month would not be sufficient to meet the needs of qualifying low-income households, many of whom would be reliant on SafeLink Wireless® as their only source of telecommunications service.

Following the hearing, TracFone continued to consider the concerns raised by those intervenors and concluded that many low-income households would benefit from a wireless Lifeline service which would afford them greater quantities of usage. For that reason, TracFone has decided to offer Utah Lifeline customers at least 200 minutes per month of free wireless airtime. While details of this revised offering are still under development, TracFone is committed to provide to Utah low-income households who enroll in SafeLink Wireless® a monthly Lifeline benefit of not less than 200 minutes per month. Those minutes will be usable for local, long distance and international calling, as well as roaming calls. Those minutes would also be available for text messaging at the 0.3 minute per text rate described above. This significant increase in TracFone's monthly Lifeline benefit further supports the inescapable conclusion that a Lifeline program consisting of free handsets and not less than 200 minutes of wireless airtime per month, with no overage charges, no bills, no extra charges for vertical

¹⁵ The free E911-compliant handset to be provided to each Lifeline customer will be funded entirely by TracFone, with no support from the federal Universal Service Fund or any other source.

features, and no risk of service loss for non-payment, will be of value of thousands of Utah low-income households and will serve the public interest.¹⁶

III. TracFone's ETC Designation Should Not be Held Hostage to Legal Disputes over Utah's State USF Laws

Several parties have argued that TracFone should be required to contribute to the Utah Public Telecommunications Service Support Fund ("State USF") in order to be designated as an ETC. However, as currently written, Utah's statutes and regulations governing the State USF do not impose contribution obligations on service providers like TracFone which do not derive any intrastate revenues from customer billings. At the outset, it should be noted that TracFone's petition for designation as an ETC is for the purpose of receiving support from the **federal** USF to provide Lifeline service. TracFone has not requested any support from the State USF and it has no plans to do so. Therefore, any attempt to link a TracFone obligation to contribute to the State USF based on receipt of federal USF support would be inappropriate and unlawful. Whatever obligation TracFone might have to contribute to the State USF must be based solely upon applicable Utah law governing the State USF.

The regulations governing the State USF are set forth at Utah Administrative Code Rule R746-360 (Universal Public Telecommunications Service Support Fund). The Commission's attention specifically is directed to R746-360.4 (Application of Fund Surcharges to Customer Billings). Subsection B of that section states as follows: "Surcharge Based on a Uniform

¹⁶ Another issue raised by several parties involves TracFone's practice of decrementing minutes of airtime from customer prepaid account balances for calls to customer service. TracFone understands that concern as well and is in the process of developing systems which will enable it to avoid decrementing minutes for customer service calls when consumers utilize the 611 customer service dialing code. TracFone anticipates that those systems will be in place by fourth quarter 2010. Until such time as those systems are implemented, TracFone will provide advance notification to consumers that their accounts will be charged for calls to customer service and that consumers should use wireline phones to contact customer service if possible.

Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and **billed and collected** by all retail providers.” (emphasis added). The highlighted wording “billed and collected” is a critical component of the State USF contribution obligation. Pursuant to the regulation, only billed charges are subject to State USF contribution. Prepaid services, including those provided by TracFone, are not billed charges, indeed, they are not “billed and collected.” Moreover, Utah Code § 54-8b-15(10)(a)(iv) confirms that the State USF must be in the form of “end-use surcharges” and R746-360-4 confirms that the surcharge is to be a percentage of “billed intrastate retail rates.” As a prepaid provider, TracFone has no “billed intrastate retail rates” upon which to collect and remit State USF surcharges.

The statutes and regulations described in the preceding paragraph memorialize in Utah law a key aspect of the State USF requirement -- surcharge amounts are to be paid by consumers through their retail billings. Service providers are the collection agents for the State USF and the mandatory mechanism for collection is the physical billing process. By imposing a surcharge on billed amounts, consumers are informed that the charge is not a carrier-imposed charge; it is a state-imposed charge collected on behalf of the state by the carrier. Prepaid service providers do not have that collection method available and are in no position to collect on behalf of the state State USF contributions.

The inability of telecommunications service providers to collect contributions to the State USF from consumers of non-billed services is not limited to TracFone or the State of Utah. There is no means for providers of prepaid services to determine, assess or collect State USF surcharges under applicable Utah law. Nor is there any basis upon which the Commission could conclude that only TracFone among providers of prepaid/non-billed services is not collecting and

remitting the surcharges to the State USF on such services. This point was candidly acknowledged by several witnesses who had suggested that TracFone should be required to contribute to the State USF as a condition of ETC designation without regard to the applicable legal requirements. For example, DPU witness Casey Coleman opined that all telecommunications companies with retail rates are required to collect and remit surcharges to the State USF.¹⁷ However, on cross-examination, Mr. Coleman admitted that he did not know whether such major providers as AT&T and Verizon Wireless actually remitted to the State USF on the prepaid portions of their businesses.¹⁸ Similarly, OSC witness Cheryl Murray, acknowledged that other wireless carriers may not be contributing to the State USF.¹⁹

In light of the language of the Utah statutes and regulations governing the State USF, there is simply no requirement for a provider of prepaid services which receives no billed revenues from consumers to collect or remit the State USF surcharge. Neither is there any record evidence that other providers of prepaid wireless services are collecting and remitting contributions to the State USF on the prepaid (non-billed) portions of their businesses. The Commission and perhaps the Legislature might in the future conclude that providers of non-billed services should be required to collect USF contributions from their consumers. However, that would necessitate significant changes to current laws and regulations. In other states, TracFone has worked cooperatively with state commissions and other stakeholders to develop

¹⁷ Division of Public Utilities Exhibit 1 at 18 lines 24-25.

¹⁸ Tr. at 107-108.

¹⁹ Tr. at 136 line 24 to 137 line 3.

methods for collection of state fund contributions from consumers of prepaid services which are effective, non-discriminatory and competitively neutral.²⁰ It is prepared to do in Utah.

IV. There is No Evidence to Support Imposition of a \$3.00 Per Transaction Verification Fee on TracFone

In implicit recognition of the fact that State USF laws and regulations are not currently applicable to non-billed services such as prepaid wireless service, DPU suggested that TracFone should be required to contribute to the State USF in a different way -- by paying a fee of \$3.00 for every Lifeline applicant whose enrollment application is processed by the Department of Community and Culture (“DCC”). According to DPU, DCC operates and maintains a data base which is used by certain ETCs in Utah to verify that applicants for Lifeline enrollment participate in certain low-income benefit programs and are qualified for Lifeline support through their enrollment in those programs. DPU further asserts that development and maintenance of the DCC data base is funded by the State USF, and that TracFone, since it does not contribute to the State USF and is not required to do so, should be assessed fees to cover the costs which TracFone would impose on DCC.

TracFone does not disagree that it should be required to pay a reasonable per transaction fee to utilize the DCC eligibility verification data base, assuming that such verification by DCC

²⁰ For example, to date, no fewer than thirteen other states have enacted legislation which mandates that state-imposed fees on prepaid wireless services be collected from consumers of those services at the point of retail sale. Similar point-of-sale fee collection legislation is pending in other states.

is required.²¹ As explained by TracFone witness, Jose Fuentes, TracFone currently utilizes the services of a third party vendor to verify Lifeline applicants' eligibility in other states. Mr. Fuentes testified that TracFone's current Lifeline eligibility verification costs using its third party vendor is \$0.07 per transaction.²² That vendor provides TracFone with all the information it needs to confirm a Lifeline applicant's eligibility and the accuracy of the information contained in a prospective Lifeline customer's enrollment application except whether the applicant is enrolled in a qualifying low-income benefits program.

DPU asserted that the additional costs to DCC to verify TracFone applications would be \$3.00 per transaction - nearly 43 times the per transaction amount TracFone pays its current third party verification vendor, Lexis-Nexis! While it is possible (although not demonstrated) that the cost of verifying whether an applicant is enrolled in a qualifying low-income benefits program may exceed \$0.07, the assertion that it exceeds it forty-three-fold is unsupported and insupportable. DPU and other proponents of the proposed \$3.00 per transaction fee failed to introduce a single shred of admissible evidence to document or cost justify that inherently suspect amount. In the absence of any evidentiary support for a proposed per transaction fee which is so far above what TracFone is required to pay to obtain suitable eligibility verification in any other state, the proposed \$3.00 per application verification fee is wholly unwarranted.

²¹ Utah Administrative Code Section R746-341-3 (Eligibility Requirements) states, in relevant part, as follows: "A. *Program-Based Criteria -- The ETCs shall provide lifeline telephone service to any applicant **who self-certifies, under penalty of perjury**, his household is eligible for public assistance under one of the following or its successor programs: . . .*" (emphasis added). Pursuant to this regulation, Utah follows the federal rule -- program-based Lifeline eligibility is determined based on applicant self-certification under penalty of perjury. Nothing in the program-based eligibility regulation either requires or even contemplates operation and maintenance of a certification eligibility data base by DCC or by anyone else, nor does the regulation require any ETC to access such a data base in addition to obtaining from a Lifeline applicant the requisite self-certification under penalty of perjury.

²² Tr. at 36-37.

Indeed, Mr. Fuentes testified that TracFone utilizes state-managed data bases to verify customer eligibility in several other states, including, *e.g.*, Texas, Maryland, and Florida, and no state imposes or has ever sought to impose any per transaction charge on such data base access or eligibility certification or verification.²³

The lack of any admissible evidence as to DCC's actual costs of verifying Lifeline enrollment eligibility, DPU's \$3.00 per inquiry proposal should be recognized for what it is -- a wholly non-cost-based back door attempt to extract State USF contributions from TracFone despite the fact that, pursuant to the current laws and regulations, TracFone is not required to collect and remit contributions to the State USF.

If the Commission believes that providers of non-billed telecommunications services should be required to collect and remit payments into the State USF, then the correct "front door" means to achieve that objective would be to enact legislation and to promulgate implementing regulations which memorialize that requirement and which contain collection mechanisms which are equitable, non-discriminatory and competitively neutral. It is improper to attempt to extract such contributions implementing regulations through the guise of creating per transaction verification fees which bear no relation to actual demonstrated costs of access and which are burdensome, discriminatory and which are not competitively neutral.

V. TracFone is Not Required to Collect and Remit 911 Charges; Moreover, Questions Regarding 911 Funding are not Relevant to ETC Designation Proceedings

In its testimony, TracFone, through its witness, Jose Fuentes, explained that it does not currently collect and remit payments to state or local 911 funds in Utah and that, pursuant to

²³ Tr. at 70.

applicable Utah law, it is not obligated to do so.²⁴ Several parties, including DPU and URTA, disagree with that conclusion and have asserted both that TracFone is required to collect and remit 911 fund contributions and that approval of its ETC petition should be conditioned upon such contributions.²⁵

TracFone is not subject to the 911 collection and payment requirements of the Utah Emergency Telephone Service Law codified at Title 69 Utah Code, Chapter 2. Section 69-2-5(3)(ii) authorizes counties, cities, and towns to levy emergency services telecommunications charges on “each revenue producing radio communications access line **with a billing address** within the boundaries of the county, city or town.” (emphasis added). The underscored words, “with a billing address” are critical to that statutory requirement. As noted above, TracFone’s services are provided on a prepaid basis only; it does not render bills to customers; and therefore, its customers do not have billing addresses. More importantly, without the billing mechanism, TracFone, like other providers of prepaid wireless services, has no means to collect 911 fees from its prepaid customers and to remit 911 fees to the appropriate authorities.²⁶

By definition, a “billing address” is an address where customer bills are sent. While there is no Utah case law which construes the term “billing address” within the context of the Emergency Telephone Service Law, other state appellate courts have so interpreted that meaning of “billing address” as used in similar laws. See, e.g., TracFone Wireless, Inc v. Department of Treasury and Emergency Telephone Service Committee, 2008 WL 2468462 (Michigan Court of

²⁴ Rebuttal Testimony of Jose Fuentes, TracFone Exhibit 2 at p. 3 line 10 through p. 5 line 13.

²⁵ Testimony of Casey Coleman, DPU Exhibit 1 at p. 18, lines 422-423, p. 19, line 444; Rebuttal Testimony of Douglas Duncan Meredith, URTA Exhibit 1 at p. 6, line 132 through p. 7, line 137.

²⁶ Charges for E911, Poison Control and TTD are similarly inapplicable to non-billed prepaid wireless services. Such charges are imposed only on services to which the 911 charge applies, or to billed services of wireline local exchange carriers. Utah Code §§ 69-2-5.67, 69-2-5.5(1), 54-8b-10(4).

Appeals 2008).²⁷ There, the Michigan Court of Appeals explained the meaning of “billing address” as follows: “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 that plaintiff has a ‘billing address’ for those customers. **In other words, there can be no billing address if there is no billing.**” (emphasis added).

In that case, the Michigan appeals court applied the law as enacted by the legislature, even though it produced a result not to the liking of the state agencies responsible for emergency telephone service fees. The Commission should do the same thing in this matter. Since the Utah Emergency Telephone Services Law in its current form bases the obligation to collect and remit 911 fees on the existence of billing addresses, the law imposes no such obligation where there are no billing addresses, as is the case with unbilled (*i.e.*, prepaid) services, such as those provided by TracFone and others.

URTA’s witness, Mr. Meredith, suggests that TracFone should be a “good corporate citizen” and voluntarily pay fees without any legal obligation to do so.²⁸ The suggestion that, as a condition to being designated as an ETC, TracFone should voluntarily remit fees which current law make inapplicable to it and which it has no means or opportunity to collect from its customers is unsupported and insupportable. No corporation should be required to remit fees or taxes not applicable to it under state law as a condition of being designated as an ETC. The appropriate means for collecting fees from customers of non-billed wireless services is to revise and implement such laws and regulations as necessary to do so. Pleas for non-required, voluntary payments have no place in an ETC designation proceeding. The Communications Act,

²⁷ The court’s opinion is attached to Mr. Fuentes’ Rebuttal Testimony (TracFone Exhibit 2) at Exhibit 7.

²⁸ Tr. at 177, line 25 through 178, line 21.

the FCC's rules, and the laws of the State of Utah specify the requirements which are to govern ETC designations pursuant to Section 214(e)(2) of the Communications Act. Payment of inapplicable fees and taxes is not among those requirements.

Moreover, the Emergency Telephone Services Law and the 911 fees mandated by that law are subject to the enforcement authority of the Utah State Tax Commission, not to the Public Service Commission. As noted in Mr. Fuentes' testimony, neither the State Tax Commission nor any other state government department, commission or court has asserted or concluded that TracFone is in violation of the Emergency Telephone Services Law or even commenced an inquiry into TracFone's compliance with that law.²⁹

During the proceeding, TracFone explained that the inability of providers of prepaid wireless services to collect and remit 911 fees and other fees (such as Utah's Poison Control Center fee) from prepaid (non-billed) customers is not a problem unique to TracFone. For example, TracFone provided evidence that several other major providers of prepaid wireless services, including Sprint Nextel, Verizon Wireless, and T-Mobile do not collect 911 fees from their prepaid customers in any state, and that Verizon Wireless has stated on the record in a proceeding before the California Public Utilities Commission that it does not collect that state's public purpose program fees from its prepaid customers.³⁰

In short, the 911 fee collection provision of the Emergency Telephone Service Law is not applicable to prepaid services such as those provided by TracFone. Even if the 911 fee collection and remittance obligation was deemed to be arguably applicable, compliance with such a requirement by providers of non-billed services would be impracticable for all such providers.

²⁹ Rebuttal Testimony of Jose Fuentes, TracFone Exhibit 2 at p. 5, lines 9-18.

³⁰ *Id.*, at p. 6, line 20 to p. 7, line 14.

For the reasons described in the preceding paragraphs, TracFone respectfully submits that the 911 fee provisions of the Emergency Telephone Services Law are not applicable to its prepaid services. Other parties to this proceeding, specifically, OCS and URTA, have expressed their disagreement with that conclusion. If the Commission has questions as to whether the law is applicable, then the Commission may seek legal advice and guidance on that question from the State Tax Commission -- the state agency responsible for interpretation and enforcement of that law. Alternatively, the Commission could commence a generic proceeding to address i) whether the 911 fees are applicable to prepaid services; and, if they are applicable, ii) what collection and remittance methods should be used by providers of prepaid services in the absence of customer billing addresses and in the absence of billing mechanisms for collection of such fees.³¹

Conclusion

As has been demonstrated in this proceeding and as described in this brief, TracFone meets all applicable requirements for designation as an ETC to provide Lifeline services in the State of Utah. Its SafeLink Wireless® service will make available to low-income Utah households wireless telecommunications services -- service which until now has not been available to thousands of low-income Utah residents. Today, consumers in more than 25 states are benefitting from the availability of this service; so too should qualified low-income Utah households. By increasing the monthly allotment of free airtime minutes of use from 67 to 200 as described in this brief, TracFone is showing its commitment to provide a meaningful wireless Lifeline option to Utah and is showing that it listened to and that it understands the concerns raised by DCS, SLCAP and others about the importance of providing sufficient usage to Lifeline

³¹ OCS witness Murray similarly testified that issues regarding applicability to prepaid wireless services of certain fees, including 911 fees, should be resolved elsewhere, and on a time table different from that of the ETC designation process. Tr. at 150

customers. By committing to participate constructively and cooperatively in legislative, regulatory and other appropriate forums to address questions regarding the applicability of State USF surcharges, 911 and other fees from customers of non-billed prepaid services -- as it has done in other states, TracFone has demonstrated its commitment and good faith desire to comply with all applicable Utah laws and regulations and to serve the public interest of the citizens of Utah.

For all of these reasons, TracFone is qualified to be designated as an ETC in Utah and designation of TracFone as an ETC so as to enable it to provide its SafeLink Wireless® service to low-income Utah households will serve the public interest. Accordingly, TracFone respectfully asks the Commission to designate it as an ETC at the earliest practicable time so that it may promptly commence providing affordable wireless telecommunications service to Lifeline-qualified, low-income Utah households.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have duly served TracFone Wireless, Inc. 's Post-Hearing Brief on the following, this 15th day of July, 2010, by electronic mail addressed as follows:

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