

EXHIBIT B

**STATE OF MINNESOTA
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

David Boyd	Chair
Phyllis Reha	Commissioner
Thomas Pugh	Commissioner
Betsy Wergin	Commissioner
J. Dennis O'Brien	Commissioner

**In the Matter of a Petition for TracFone
Wireless, Inc. for Designation as an
Eligible Telecommunications Carrier
(ETC) for the Limited Purpose of Offering
Lifeline Service to Qualified Households**

Docket No. P-6823/M-09-802

**In the Matter of an Investigation into
TracFone's Compliance with Remittance
Responsibilities under Minn. Stat. §§ 403.11
And 237.52**

Docket No. P-6823/CI-10-519

TRACFONE, INC.'S MOTION FOR REHEARING OR RECONSIDERATION

TracFone Wireless, Inc. ("TracFone") submits this motion for rehearing or reconsideration of the Commission's Order Granting a One-Year Conditional ETC Designation and Opening Investigation ("Order") issued June 9, 2010.

TracFone's Modified Proposal

TracFone's primary basis for its request for rehearing or reconsideration is a substantial modification that it has recently made to its proposed SafeLink Wireless® program for Minnesota. TracFone is pleased to report that, as a result of the discussion at the Commission meeting on April 22, 2010, as well as the input of the advocates that have provided comments and testimony both before and after the Commission's meeting, TracFone has modified its proposed SafeLink Wireless® offering to include a 200 free minute per month option for low-income Minnesotans. In addition, TracFone's Minnesota Lifeline customers will be able to

purchase additional minutes at the per minute rate of \$0.10 – the lowest rate offered anywhere. This enhanced offering commitment exceeds the condition set forth in the Order. There, the Commission conditioned TracFone’s ETC designation on TracFone’s providing to Minnesota Lifeline customers the “highest-value local usage plan it offers in any other jurisdiction.”¹ To date, the highest number of free minutes included in any TracFone Lifeline program is 83 minutes in Massachusetts. Thus, its modified offering not only complies with the condition set forth by the Commission, it exceeds that condition by a substantial amount.

With these changes, TracFone has addressed the heart of the concerns raised by the various groups and agencies that participated in the meeting as advocates for low income and homeless people – the concern that the original offer of 67 free minutes per month would not provide sufficient local usage for people to conduct their day-to-day business.

Request for Rehearing or Reconsideration

TracFone is in agreement with the majority of the provisions in the Commission’s Order, but seeks rehearing or reconsideration with respect to three conditions. First, TracFone respectfully asks the Commission to reconsider its decision to limit TracFone’s ETC designation to a one-year designation with the opportunity to reapply for an extended designation. Second, TracFone seeks a modification of the Commission’s requirement with respect to Telecommunications Access Minnesota (“TAM”) and E911 fee collection and remittance. Finally, TracFone requests that the Commission delete the provision opening an investigation into TracFone’s compliance with the TAM and E911 fee collection statutes. The bases for these modifications are set forth below.

¹ Order at Condition No. 10.

I. TracFone meets the Requirements for ETC Designation Established by the FCC and the Commission.

As an initial matter, TracFone meets all the statutory and regulatory requirements for designation as an ETC. Section 214(e)(2) of the Communications Act of 1934 states in relevant part:

A State Commission shall, upon its own motion or upon request, designate a common carrier *that meets the requirements of paragraph (1)* as an eligible telecommunications carrier.²

Paragraph (1) requires that a designated ETC shall:

(A) offer services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.³

In its ETC application, TracFone demonstrated that it meets each of the requirements contained in paragraph 1.⁴ Indeed, the Commission's order does not question that TracFone has met each of those statutory and regulatory ETC requirements.

² 47 U.S.C. § 214(e)(2) (emphasis added).

³ 47 U.S.C. § 214(e)(1).

⁴ With respect to the facilities-based service requirement of Section 214(e)(1)(A), in September 2005, the Federal Communications Commission ("FCC") exercised its statutory authority to forbear from application or enforcement of that requirement specifically for ETC services proposed by TracFone. 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 Red 15095 (2005). Moreover, pursuant to Section 10(e) of the Communications Act. "[a] State commission may not continue to apply or enforce any provision of this Act that the [Federal Communications] Commission has determined to forbear from applying under subsection (a)." 47 U.S.C. § 160(e) §10(e).

The FCC adopted five specific requirements, separate from the public interest standard discussed below, for carriers seeking federal ETC designation.⁵ The FCC encouraged states to adopt these same requirements, stating “[w]e believe that application of these additional requirements by the Commission and state commissions will allow for a more predictable ETC designation process.”⁶ The FCC further suggested “that [states that] impose requirements on an ETC [should] do so only to the extent necessary to further universal service goals.”⁷ Minnesota adopted ETC designation criteria very similar to the FCC’s five criteria.⁸ At this point, TracFone’s ability to meet four of the five requirements is not at issue. There was considerable discussion, however, as to whether TracFone’s service offering met the requirement that its local usage plan be comparable to those offered by the incumbent LECs in areas for which ETC designation is sought. That issue is addressed in section II of this Motion.

Where ETC designation would result in the presence of more than one ETC in a given service area, a “public interest” test must also be met under the federal statute:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall in the case of all other areas, designate more than one common carrier as an [ETC] for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional [ETC] for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.⁹

⁵ Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371 (2005); 47 C.F.R. § 54.202(a), promulgated May 25, 2005, amended Sept. 24, 2007.

⁶ 70 Fed. Reg. 29961, Par. 1.

⁷ 70 Fed. Reg. 29964, Par. 21.

⁸ In the Matter of a Commission Investigation to Consider Adopting the Federal Communications Commission’s Standards for Designating Eligible Telecommunications Carriers, Docket No. P-999/M-05-1169, Order, (Minn. Pub. Util. Comm’n 2005).

⁹ 47 U.S.C. § 214(e)(1).

The FCC identified three factors to analyze when evaluating whether an ETC designation is in the public interest.¹⁰ The Commission “adopted these public interest standards without variation.”¹¹ Those standards state,

Prior to designating an [ETC] pursuant to section 214(e)(6), the [FCC] determines that such designation is in the public interest. In doing so, the [FCC] shall consider [1] the benefits of increased consumer choice, and [2] the unique advantages and disadvantages of the applicant’s service offering.¹²

TracFone has sought ETC designation from the Commission solely to offer Lifeline service to low-income households in the state. In all other states where TracFone has attained ETC designation for this purpose, it has materially increased the number of low-income households enrolling the federal Lifeline program.¹³ Nationwide, only about thirty percent of low-income households qualifying for the Lifeline program actually participate.¹⁴ In Minnesota, participation is even lower – only 17.1 percent of low-income Minnesota households who qualify for Lifeline benefits are enrolled in the program.¹⁵ In those states where TracFone has offered Lifeline service, participation has increased by more than 100%.¹⁶

During this proceeding, advocates for low-income consumers have been unanimous in their view that wireless service provides important benefits to low-income households including

¹⁰ 47 C.F.R. § 54.202 (c).

¹¹ Order at 3.

¹² 47 C.F.R. § 54.202 (c). The third consideration adopted by the FCC -- that, in certain circumstances, an ETC applicant conduct a cream skinning analysis -- is not applicable in this case. TracFone does not seek high cost support and since it is not a facilities-based provider, it will not be building out network facilities to compete with rural LECs in any portion of the rural LEC service areas.

¹³ Transcript at 52.

¹⁴ Id. See 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).

¹⁵ Transcript at 53.

¹⁶ Id.

homeless persons. “Cell phones, especially for those experiencing homelessness, serve as a uniquely valuable life-line by which to maintain relationships, pursue services and remain in contact with others as circumstances and prevailing attitudes push one to the margins of society.”¹⁷ “We are keenly aware of the importance of telephones to them, particularly those workers who are maintaining multiple jobs to try and make ends meet. Such consumers are rarely at their place of residence and are often unable to take advantage of even the limited benefits of fixed residential Lifeline phone service. With . . . Lifeline-enabled wireless devices on their person, low-income consumers could . . . remain in contact with essential government services, current and potential employers, and family and social support networks.”¹⁸ “[O]ur family farmers and rural neighbors are hurting in this economy, and could benefit from increased access to reduced cost, Lifeline telephone service . . . through a wireless Lifeline option.”¹⁹

TracFone listened to those comments and hereby commits to accommodate the concerns raised by these low-income advocates, and by the Commission, by increasing from 67 to 200 the free minutes of service to be provided per month, not charging for calls to customer service using the 611 dialing code, reducing the price for additional minutes to \$0.10, and assigning local telephone exchange numbers to Lifeline customers so that calls to and from persons who reside nearby will always be local calls. Withholding from low-income Minnesota households the first – and to date only, wireless Lifeline option available in Minnesota, as well as the only Lifeline plan which will provide qualifying low-income households with free wireless telephones and free usage – a service which will provide significant benefits of Lifeline wireless

¹⁷ Comments of Voice for Change concerning TracFone Lifeline Petition, Minn. PUC Docket No. P6823/M-09-802, dated March 15, 2010.

¹⁸ Comments of National Consumers League concerning TracFone Lifeline Petition, Minn. PUC Docket No. P6823/M-09-802, dated June 8, 2010.

¹⁹ Comments of National Grange and Minnesota Grange concerning TracFone Lifeline Petition, Minn. PUC Docket No. P6823/M-09-802, dated May 3, 2010.

telecommunications to low-income households, due to the disagreement over the applicability of certain fee laws, would disserve the public interest.

II. The One-Year Approval Term is Unnecessary and Inappropriate in Light of TracFone's Modification to its Proposal

As noted above, various interest groups, and the Commission, raised the concern that TracFone's original proposal might not "meet the basic telecommunications needs of Lifeline households as effectively as the unlimited fixed-location local usage offered by the incumbent LECs."²⁰ The Commission attempted to address this issue through the inclusion of two conditions. The first requires that TracFone's Minnesota Lifeline service offering "shall include the highest number of free minutes of usage offered in any jurisdiction and supplementary minutes priced at the ten-cent level offered in other jurisdictions."²¹ TracFone's modified proposal greatly exceeds that standard by offering 200 free minutes of use to low-income Minnesotans that enroll in TracFone's SafeLink Wireless® proposal and by providing additional minutes at the rate of \$0.10 per minute – TracFone's lowest rate anywhere.

The Commission also addressed this concern by limiting its approval of TracFone's ETC Petition to a one-year period with a right to reapply in order to assess "whether TracFone's local usage plan is sufficiently comparable to those of the local LECs to merit permanent approval."²² Because TracFone has modified its proposal to meet the concerns of the majority of the advocates and Commissioners that expressed concern with the number of minutes available as part of TracFone's original proposal, the main rationale supporting the one-year approval is no longer relevant and should be removed on reconsideration.

²⁰ Order at 7.

²¹ Order at ¶10, p. 13.

²² Order at 9; see also Order at ¶¶ 1-2, pp. 11-12.

Moreover, the Commission lacks authority to limit TracFone to a one-year conditional designation. Nothing in Section 214(e) of the Communications Act, the FCC's rules, or any Minnesota statute or regulation allows the Commission to impose time limits or duration conditions on ETC designations. The limited one-year conditional ETC designation is inconsistent with finding TracFone to be qualified under the requirements for ETC designation codified in the Communications Act and set forth in greater detail by the FCC and adopted by the Commission. Indeed, no other ETC designated by the Commission to operate as an ETC in Minnesota ever has been subjected to a short-term designation.

To date, TracFone has been designated by the FCC as an ETC in ten states and the District of Columbia. It also has received ETC designations from nineteen state commissions, including this Commission.²³ Not one such ETC designation, other than the Ohio and Washington designations, has been for a temporary, limited or interim period. The Public Utilities Commission of Ohio ("Ohio PUC") is currently reviewing TracFone's ETC designation one year after granting an interim ETC designation. While the Ohio PUC is conducting its review, TracFone will continue to provide its Lifeline service without interruption, subject to verification of compliance, until the Commission orders otherwise. On June 24, 2010, the Washington Utilities and Transportation Commission ("Washington UTC") approved a one year interim ETC designation as part of a settlement agreement.²⁴ Unlike the interim designation ordered by this Commission, neither the Ohio nor the Washington ETC designations are subject

²³ Those jurisdictions include Arkansas, Florida, Georgia, Illinois, Louisiana, Maine, Maryland, Michigan, Missouri, Nevada, New Jersey, Ohio, Puerto Rico, South Carolina, Texas, Washington, West Virginia, and Wisconsin.

²⁴ In the Matter of the Petition of TracFone Wireless, Inc. For Exemption from WAC 480-123-030(1)(d),(f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund, Docket UT-093012, Order at 3 (Washington Utils. and Transp. Comm'n: June 24, 2010).

to immediate termination after one year. It is also significant that TracFone's proposed SafeLink Wireless® offering in Minnesota will provide substantially more free wireless service than its current Ohio and Washington offerings. Moreover, TracFone's ETC designations in 27 other jurisdictions are not subject to a one-year interim designation.

Not only is imposition of a one-year limitation on an ETC designation a violation of Section 214(e)(2), inconsistent with all other ETC designations issued by the FCC, inconsistent with all other ETC designations awarded by the Commission, and inconsistent with all but two of nineteen designations by state commissions, it materially impedes TracFone from committing the resources to offer Lifeline service as an ETC. TracFone is prepared to invest millions of dollars to implement and grow its SafeLink Wireless® program in Minnesota. Once TracFone commences operations as an ETC, it will aggressively advertise and market SafeLink Wireless® and promote awareness of the program throughout the state. In addition, TracFone will provide at its own expense, with no support from the universal service fund, an E911-compliant wireless handset to every qualified Lifeline customer who enrolls in the SafeLink Wireless® program. It would be financially irresponsible for TracFone or any other company to commit such substantial resources to a Lifeline program with no assurances that the Commission will allow the program to continue after one year no matter how successful it is, and no matter how many Minnesota households are benefitting from the program. Requiring TracFone to assume the risk of losing its ETC designation after one year would subject TracFone to the very risk of stranded investment that has long been anathema to public utilities, common carriers, and their regulators.

Of even greater importance than the economic risk that a one-year ETC designation would impose on TracFone is the hardship potentially borne by Lifeline subscribers. Based on TracFone's experience in other states, thousands of low-income Minnesota residents will enroll

in SafeLink Wireless® when the service becomes available. Based on participation in the SafeLink Wireless® program in other states, it is likely that these subscribers will include unemployed people, people with little disposable income, recent immigrants, economically-disadvantaged minority people, people with disabilities, people who have lost their homes to foreclosure, people who have seen their savings erode due to current economic conditions, and homeless persons. For these people to learn after one year that the SafeLink Wireless® service that has been available to them under the federal Lifeline program and which they have relied upon for essential telecommunications services will no longer be available will create additional and unnecessary hardship to those Minnesota residents who do not deserve and can ill afford such hardship.

Neither TracFone nor its SafeLink Wireless® Lifeline customers should be required to bear the risk of loss of ETC designation after one year, especially in the absence of any articulated due process rights and specific standards for considering extension. In light of the significant enhancement to its Lifeline program described herein and for the reasons articulated above, TracFone respectfully requests that the Commission remove the one-year limitation on TracFone's ETC designation.

III. In Light of TracFone's Modification to Its Proposal and in Recognition of TracFone's Demonstrated Inability to Collect E911 and TAM Fees from Customers where the Customers do not Purchase Directly from TracFone, and Because Payment of the State Fees by TracFone is not Required for ETC Designation, the Commission Should Modify its Condition Pertaining to Collection and Remittance of the E911 and TAM Fees.

As described above, TracFone has modified its offering and will provide 200 free minutes per month to Minnesota Lifeline customers who subscribe to SafeLink Wireless®. TracFone respectfully requests that in light of this change, the Commission grant rehearing or reconsideration and allow issues regarding collection and remittance of E911 and TAM fees from customers of prepaid wireless service to be addressed by the Commission, other government departments, and TracFone outside of the ETC designation process.

During the April 22 hearing, there was substantial discussion of TracFone's past and current collection and remittance of E911 and TAM fees. There was also a recognition that Minnesota's statutes requiring fee collection and remittance were drafted well before prepaid wireless came into common usage.²⁵ There was also recognition by TracFone and the Department of Commerce (DoC) that current Minnesota law does not provide for third-party retailers to collect fees on prepaid wireless services at the point of retail sale, notwithstanding the uncontroverted and incontrovertible fact that point-of-sale fee collection is the most efficient, equitable and competitively neutral mechanism for collection such fees from consumers of prepaid (non-billed) services.²⁶ Finally, there is no evidence in the record to contradict TracFone's evidence that it has no practicable means to ascertain the amount of prepaid minutes remaining in any customer's account at any particular time.²⁷

²⁵ Transcript at p. 59 (statement by Ms. Wells of DoC).

²⁶ Transcript at pp. 34-35, 60-61.

²⁷ Transcript at p. 33.

Now that TracFone has amended its proposal in response to the positions articulated by members of the Commission and by advocates for low-income consumers, it requests that the Commission on reconsideration eliminate the condition regarding 911 and TAM fees as set forth in the Order. TracFone is prepared to work with the Commission, the Department of Public Safety (DPS), DoC, and other stakeholders to develop appropriate legislative solutions to ensure that all consumers of wireless telecommunications services, including those consumers who purchase prepaid services, contribute to 911 and TAM. TracFone will also continue to collect and remit said surcharges and fees from those customers from whom it can collect. Such cooperative efforts have worked well in other states as evidenced by the large and growing number of states which have amended their less-than-clear and unworkable fee collection laws in light of service offerings which did not exist when the prior laws were enacted.

Reconsideration of this provision of the Commission's Order is also warranted because the E911 and TAM fee statutes are separate from the ETC designation scheme and have their own means of enforcement. Minn. Stat. § 403.11 authorizes the DPS to impose a monthly fee equally on "each *customer* of a wireless or wire-line switched or packet-based telecommunications service provider" to support 911 service, among other things, and this fee must be approved by the Commissioner of Management and Budget.²⁸ Under this same statute, this fee "must be collected by each wireless or wire-line telecommunications service provider subject to the fee."²⁹

²⁸ Minn. Stat. § 403.11 (a), (c) (emphasis added).

²⁹ Id.

Procedures are also specified in the statute to be followed when the Commissioner of the DPS disputes whether the amount submitted is accurate, or if no fee is submitted by a service provider:

Subd. 1a. Fee collection declaration. If the commissioner disputes the accuracy of a fee submission or if no fees are submitted by a wireless, wire-line, or packet-based telecommunications service provider, the wireless, wire-line, or packet-based telecommunications service provider shall submit a sworn declaration signed by an officer of the company certifying, under penalty of perjury, that the information provided with the fee submission is true and correct. The sworn declaration must specifically describe and affirm that the 911 fee computation is complete and accurate. When a wireless, wire-line, or packet-based telecommunications service provider fails to provide a sworn declaration within 90 days of notice by the commissioner that the fee submission is disputed, the commissioner may estimate the amount due from the wireless, wire-line, or packet-based telecommunications service provider and refer that amount for collection under section 16D.04.

Subd. 1b. Examination of fees. If the commissioner determines that an examination is necessary to document the fee submission and sworn declaration in subdivision 1a, the wireless, wire-line, or packet-based telecommunications service provider must contract with an independent certified public accountant to conduct an examination of fees. The examination must be conducted in accordance with attestation audit standards.³⁰

Collection under Minn. Stat. § 16D.04 is in addition to any other procedure or remedy available by law.³¹ In particular, the Attorney General has authority to institute proceedings against any corporation violating state law.³² Of critical importance, enforcement of the 911 fee statute and collection of said fees is subject to the jurisdictional authority of DPS, not the Commission. If DPS believes that the fee law is being violated, it has appropriate mechanisms available to it to seek compliance. Disputes about 911 fees administered by another department of the State government have no place in an ETC designation proceeding.

³⁰ Minn. Stats. §§ 403.11, subds. 1a, 1b.

³¹ Minn. Stat. § 16D.0, subd. 2.

³² Minn. Stat. § 8.03.

Similar to the 911 fee, the TAM Fund – established to support services needed by hearing and sight-impaired individuals – is funded by imposing a monthly surcharge on each telephone service provider customer access line.³³ Like the 911 fee, TAM fee charges are collected from customers by carriers through the billing process and are remitted to the State. The amount of surcharge is proposed by the DoC, the Department of Employment and Economic Development, and the Department of Human Services to the Public Utilities Commission for approval.³⁴ Procedures are specified, based on the 911 fee, for collecting this customer-based surcharge:

Every telephone company or communications carrier that provides service capable of originating a telecommunications relay call, including cellular communications and other nonwire access services, in this state shall collect the charges established by the commission under subdivision 2 and transfer amounts collected to the commissioner of public safety in the same manner as provided in section 403.11, subdivision 1, paragraph (d). The commissioner of public safety must deposit the receipts in the fund established in subdivision 1.³⁵

No explicit procedures are provided in the TAM Fund statute regarding disputes over amounts submitted to the DPS. As with the case of 911 fees, the Attorney General -- not the Commission -- has authority to institute proceedings against any corporation violating state law.³⁶

When the E911 and TAM fee statutes were originally enacted in 1977 and 1987, respectively, all covered telecommunications services were offered on a post-paid, billed basis, and all service providers subject to the fee collection requirement had a direct financial relationship with their customers. In this structure, the service provider simply added the E911 or TAM fees to its monthly bill for services, collected the billed fees, and remitted the collected fees to the custodians of the funds.³⁷

³³ Minn. Stat. § 237.51, subds. 1, 2.

³⁴ Minn. Stat. 237.52, subd. 2.

³⁵ Minn. Stat. §237.52, subd. 3.

³⁶ Minn. Stat. § 8.03.

³⁷ Transcript at p. 70.

TracFone's business, and its relationship with its customers, are different from the models which existed in 1977 and 1987. As a reseller of wireless service, TracFone does not own or operate a wireless network in the state, and it does not have access to any technology that would enable it to track or collect data about the end customer's use of phone service on a real time basis.³⁸ TracFone's prepaid wireless service is available for purchase by consumers from independent retail vendors located throughout the state. There are no monthly bills or any other mechanism by which TracFone could collect 911 or TAM fees on those non-billed purchases. Unless TracFone sells service directly to the customer, (*e.g.* purchases made through its Internet website) it has no practicable means to collect the 911 and TAM fees that the state requires customers to pay.³⁹ Likewise, other companies who provide prepaid services have little or no ability to collect monthly fees from their prepaid service customers.⁴⁰

Since 2007, TracFone has collected and remitted the 911 and TAM fees from those customers who purchase prepaid service directly from TracFone. But without a mechanism to collect the 911 and TAM fees from those customers that purchase TracFone services through third parties, no collection can be made and no remittance is required for customers purchasing services through third party sellers.⁴¹

TracFone's technology does not allow for use of a "sufficient balance" method whereby the provider collects such fees from active customers' accounts at the time the fee is owed for

³⁸ Id. at 32-33.

³⁹ Id.

⁴⁰ Id. at 38.

⁴¹ In its own remittance form for TAM, 911 and TAP charges, DoC provides the following information:

"Is a carrier responsible for submitting fees that are not collected? No." Reply Comments of the Minnesota Independent Coalition concerning TracFone Lifeline Petition, Exhibit 1 at 2, Minn. PUC Docket No. P6823/M-09-802, dated June 8, 2010.

those customers which have prepaid balances equal to or greater than the fees owed. The reason for this, as noted above, is that as a reseller of service with no switch or usage data base of its own, TracFone does not have access to information about the minutes used and balance remaining for any prepaid customer. All information regarding customer usage and remaining prepaid balances are stored in the customers' wireless handsets. The customer can determine on a real time basis how much prepaid airtime remains in its account and whether there is a sufficient balance to cover the fee; TracFone does not have access to the information necessary to make that determination. While TracFone can determine when wireless airtime is added to a customer's account, it cannot determine when those prepaid minutes of airtime are used or how many minutes are left on a particular account, making monthly collection of 911 and TAM fees for active customers impracticable.

In its testimony before the Commission, the DoC candidly acknowledged that the 911 and TAM fee laws requiring customers to pay the fees, but requiring the impossible – that TracFone collect the fees from those customers – “probably originated before prepaid became more prevalent.”⁴² The DoC acknowledged offering to work with TracFone on legislation to correct the problem presented by the current wording of the statute.⁴³ Furthermore, in response to questions from Commissioners as to whether retail vendors could charge fees, DoC suggested that the PUC's jurisdiction, without legislation, would not “extend to telling retailers that they have to collect 50 cents on a card and not tax it.”⁴⁴ There is agreement that TracFone cannot collect from these customers at the point of sale without legislative change. TracFone concurs with DoC's conclusion that legislation is necessary to develop an appropriate and workable fee

⁴² Id. at 59, 62.

⁴³ Id.

⁴⁴ Id. at 61.

collection mechanism for prepaid services and is prepared to work cooperatively with DoC and others to facilitate enactment of such legislation.

Evidence presented by TracFone in this proceeding disproves the DoC's unsupported assertion that TracFone's practice is "inconsistent with the way in which other wireless and wireline ETCs in Minnesota pay into these funds." According to the record, DPS has represented to DoC that other providers of prepaid wireless service pay into these funds on a "per customer basis."⁴⁵ There is no factual basis for that assertion. Indeed, subsequent to the filing of the DoC comments, based on information provided to it by DPS, TracFone provided information to the Commission as to how each of those providers collect and remit those surcharges on their prepaid wireless services.

Verizon Wireless – the largest wireless service provider in the United States, explained how it collects and remits E911 and TAM surcharges from its prepaid customers in Minnesota, as follows:

VZW [Verizon Wireless] uses the Sufficient Balance Method (i.e., we count the number of prepaid customers with a balance equal to or greater than the monthly fee, multiply that number by the fee and remit the calculated amount) in MN.⁴⁶

As described by Verizon Wireless, that company remits the surcharges only on those customers who have on the collection date a positive balance of prepaid service remaining in their accounts equal to or greater than the surcharge amounts. For all other customers (*i.e.*, all customers whose remaining balances on the collection date are less than the surcharge amounts), Verizon Wireless, by its own acknowledgement, remits nothing. Contrary to DoC's statement on the record of this proceeding, Verizon Wireless – another provider of prepaid wireless service in

⁴⁵ DoC Reply Comments, filed March 15, 2010.

⁴⁶ E-mail from Lolita Forbes, VZW, to Richard Salzman, TracFone, Dated April 15, 2010, attached to TracFone's Letter dated April 19, 2010.

Minnesota – does not pay into those funds on a per customer basis. Like TracFone, it pays into the funds for some customers (*i.e.*, those customers from whom it can collect the fee, that is, those customers whose balances equal or exceed the surcharges), but not on all of its customers.⁴⁷

Similarly, AT&T Mobility – another major wireless service provider in Minnesota and throughout the United States – has stated that it only remits surcharges from those customers from whom it is able to collect the surcharges. It too does not remit for every customer (*i.e.*, on a “per customer” basis) as represented to DoC by DPS. On April 19, 2010, AT&T Mobility sent an e-mail to DPS which explained its practice regarding surcharge collection as follows:

For purposes of clarification, in order to collect 911 fees assessed on prepaid wireless customers according to Minnesota law, AT&T Mobility’s practice is to decrement the balance of such prepaid wireless account in the amount of the 911 fee the third calendar day of each month. To the extent a prepaid wireless account balance is less than the 911 fee at the time the decrement for that month occurs, AT&T Mobility decrements the remainder of the account balance. The amounts so decremented are remitted to the Minnesota State 9-1-1 Program.⁴⁸

As indicated by AT&T Mobility’s own description of its fee collection and remittance practice, it only collects and remits 911 surcharges from those of its customers who have on the collection date (the third calendar day of each month) in their prepaid accounts sufficient funds to cover the surcharge. For those customers who have in their accounts funds to cover a portion of the surcharge, only that amount is remitted to the State 911 fund. Like Verizon Wireless and

⁴⁷ There is no record evidence as to what percentage of Verizon Wireless customers have sufficient positive balances on the collection date. Therefore, the Commission’s conclusion the percentage of Verizon Wireless’s or any other provider’s customers for whom a fee payment is not remitted constitutes a “*de minimis* collection shortfall” (Order at Sec. C. 2 (page 11)) is unsupported and insupportable.

⁴⁸ Email from Allen Muse, AT&T, to Jackie Mines (DPS) dated April 19, 2010, attached to April 19, 2010 letter from Mitchell F. Brecher, counsel for TracFone, to Dr. Burl W. Haar, Executive Secretary, MPUC.

like TracFone, AT&T Mobility does not and cannot collect and remit fees “on a per customer basis.”

Yet another leading provider of wireless services, T-Mobile, responded to DPS that it does not collect and remit fees on the prepaid portion of its business. T-Mobile, in response to an inquiry from DPS, also acknowledged:

[i]t is mostly impracticable to collect the 911 fees from the prepaid customers because so many of the sales occur through third party retailers. Other jurisdictions have made the collection of fees applicable at the point of sale and there, it is actually collected from the customer. Minnesota currently has no laws in place that would enable this practice in the third party locations.⁴⁹

As described herein and as first placed on the record of this proceeding by TracFone in filings dated April 19 and April 20, neither Verizon Wireless, AT&T Mobility, T-Mobile, nor TracFone are able to collect and remit fees on portions of their non-billed services. The practices of those other carriers as reflected in their correspondence with TracFone and with DPS demonstrate beyond question that the inability of prepaid wireless providers to collect and remit fees from many of their prepaid customers is not a “TracFone only” problem as alleged without foundation by DoC. Rather it is an industry-wide problem that warrants a comprehensive solution.⁵⁰

Why doesn't TracFone just find a way to estimate the number of customers and submit payment on that basis? Because the plain language of the statutes impose the 911 and TAM fees on *customers*, not on the providers. Indeed, the statutes also require that providers *collect* the

⁴⁹ April 19, 2010 e-mail from David W. Van Ness, Director, Tax Operations, T-Mobile, to Jackie Mines, DPS, attached to letter dated April 20, 2010 from Mitchell F. Brecher, counsel for TracFone to Dr. Burl W. Haar, Executive Secretary, MPUC.

⁵⁰ The fact that other providers of prepaid wireless services do not and cannot collect and remit surcharges on a per customer basis, but rather can only remit the surcharges for those customers from whom they can collect, contradicts the notion set forth in the Order at p. 11 that TracFone would enjoy some kind of cost advantage over other providers.

fees and surcharges. However for TracFone, there is no opportunity to undertake such a collection, except in the circumstance where TracFone is selling directly to the customer.

TracFone recognizes that the disagreement between it and the DPS and the DoC about collection of these fees remains to be resolved. But a legislative solution has been identified,⁵¹ and alternative legal mechanisms exist for the DPS to pursue collections of disputed 911 and TAM fees. Therefore, TracFone's designation as an ETC should not be made conditional on collecting fees from customers that TracFone has no opportunity to collect. As Commissioner O'Brien stated during the hearing, "the problem is that the technology jumped ahead of legislation. So we should have poor people do without phones until we get the technology catching up to the solution? I don't know. It does – that strikes me as excessive."⁵² In this regard, Commissioner O'Brien is correct. The public interest will not be served by denying low-income Minnesota households a long-delayed Lifeline-supported wireless service while the Commission, other governmental departments and the wireless industry develop a workable fee collection method for customers of prepaid services.

If the Commission is concerned about the fee collection and remittance practices of providers of prepaid wireless services, it may wish to address those concerns in an appropriate generic proceeding since, as reflected in the above-described practices of other providers, this is an industry-wide issue, not a TracFone-specific issue. For that reason, it would be inappropriate and not in the public interest for the Commission to link designation of TracFone as a Lifeline provider ETC to resolution of fee issues of general applicability. In addition to depriving thousands of low-income Minnesota households access to an invaluable Lifeline-supported wireless service, it would be inconsistent with prior reasonable and responsible Commission

⁵¹ Transcript at 34.

actions regarding fee matters. In Docket 07-617, the Commission conducted a broad-based proceeding into the applicability of 911 and TAM fees to trunk lines. Similarly, in Docket 09-157, the commission addressed the applicability of such fees to Voice over the Internet Protocol (VoIP) service. Resolution of such fee issues in appropriate proceedings of general applicability is a far preferable approach than using a specific carrier's ETC designation proceeding to address unresolved fee questions of industry-wide applicability.

Conclusion

TracFone listened to what the Commission and Minnesota low-income advocates said about the adequacy of its SafeLink Wireless® proposal. It has now modified that proposal to include 200 free minutes of service – substantially more than that provided in any of the 29 other jurisdictions where TracFone has been designated as an ETC. It also has committed to making available additional wireless airtime to those Lifeline customers who need more usage at the rate of \$0.10 per minute -- the lowest rate provided by TracFone anywhere. There is no question that the service proposed to be provided by TracFone will be extremely valuable to low-income and homeless Minnesotans. In light of this change, and the other reasons set forth above, TracFone respectfully requests that the Commission grant TracFone's Motion for Rehearing or Reconsideration and that it award TracFone permanent ETC designation. Furthermore, TracFone respectfully moves the Commission to reconsider its decision to open an investigation to determine whether TracFone is currently or in the past has violated Minn. Stat §§ 403.11 or 237.50 *et seq.* Questions regarding the applicability of those statutes to prepaid wireless services and whether and how providers of prepaid services can comply with the collection and remittance requirements, if applicable, are appropriate for resolution in a generic proceeding with input from all affected stakeholders.

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