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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Limited Purpose of Offering Lifeline Service to Qualified Households	<p style="text-align: center;"><u>Docket No. 09-2511-01</u></p> <p>Responsive Post-Hearing Brief of the Utah Rural Telecom Association and Association Members</p>
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In accordance with the June 14, 2010 Supplemental Scheduling Order issued by the Public Service Commission (“Commission”) in this proceeding, the Utah Rural Telecom Association (“URTA”), submits the following responsive post-hearing brief:

I. URTA Concurs that TracFone’s Application is not in the Public Interest

URTA concurs with the Division of Public Utilities (“Division”) and the Office of Consumer Services (“Office”) that TracFone Wireless, Inc.’s (“TracFone”) application seeking designation as an eligible telecommunications carrier (“ETC”) fails to meet the public interest test required by Section 214(e)(2) of the Communications Act. Failing to support 911 emergency services,¹ poison control, the state universal service fund (“USF”), and the relay service required of all telecommunications service providers serving customers in Utah is not in

¹ URTA disagrees with the Division to the extent that the Division takes the position that payment of the 911 surcharge cannot be resolved in this docket or that the Commission can grant ETC status before this issue is resolved. Division Initial Brief at 4. This problem must be addressed now, before the Commission grants TracFone ETC status. To do otherwise is contrary to the public interest and there will be no assurance that the problem will be resolved. Granting ETC status before resolution does ensure that the Commission will not resolve the issue and will shift jurisdiction to the legislature and TracFone.

the public interest. These programs were deemed by the state legislature to be public interest programs. Granting ETC status to a service provider whose services undermine and jeopardize these programs by draining revenues from them cannot be in the public interest.

TracFone's argument that as a prepaid service provider it is exempt from supporting the public interest programs because no prepaid service providers support these programs is not persuasive.² The "everybody's doing it" rationale has never been compelling or acceptable under the law. In addition, TracFone is distinguishable from the rest of the prepaid industry because none of the rest of the industry has sought ETC status. While the industry's failure to support these programs is not in the public interest, there is an affirmative statutory mandate to find the designation of an ETC to be in the public interest which makes TracFone different. URTA supports TracFone's position that there should be an industry-wide solution to the problem of prepaid providers jeopardizing the public interest programs, but granting TracFone ETC status before the problem is resolved is not the answer. In fact, it is contrary to the Section 214(e)(2) of the Communications Act.

In its initial brief in this proceeding, the Office describes TracFone's obligation under Utah Code Ann. § 69-2-5(3)(f) to bill and collect the 911 surcharge.³ There is no exemption from collecting this surcharge for prepaid service providers. Nor is there any requirement that a provider send a bill to its customers to collect the surcharge or any no exception for those that do not. It is possible for TracFone to collect the surcharge from its customers. That no other prepaid service providers are collecting this or the other public interest surcharges is a misinterpretation of state law.

² TracFone Initial Brief at 10.

³ Office Initial Brief at 14.

In addition, TracFone is wrong when it argues that it is not required to collect the state USF surcharge under the law.⁴ With respect to funding the state USF, Utah Code Ann. § 54-8b-15(10) applies to “each telecommunications corporation that provides intrastate public telecommunication service...” including “[a] telecommunications corporation that provides mobile telecommunications service...” like TracFone is providing. Just like the 911 surcharge, there is no exception for prepaid service providers or providers that do not send bills to their customers.⁵

URTA concurs with the Division that granting ETC status to a service provider that does not pay surcharges for the public interest programs will leave providers that do pay them competitively disadvantaged.⁶ TracFone will receive the benefit of all of the programs without paying for them and will be able to earn a greater return from the service it offers at a reduced price. That is unfair and contrary to the public interest and the law.

II. Conclusion and Relief Sought

As it stands, granting TracFone’s application is not in the public interest. Not supporting the public interest programs deemed to be so by the legislature in state law fails the public interest test imposed by Section 214(e)(2) of the Communications Act. There is no exception for prepaid service providers from collecting these surcharges.

Additionally, allowing TracFone to operate without collecting the surcharges gives TracFone a competitive advantage that is not in the public interest. It is discriminatory and contrary to the public interest and the law.

⁴ TracFone Initial Brief at 11.

⁵ Though not likely, all service providers could escape paying the surcharges for these public interest programs under TracFone’s theory simply by converting to prepayment or another non-billed method.

⁶ Division Initial Brief at 8.

URTA requests that the Commission deny TracFone's application. If the Commission decides to designate TracFone an ETC, URTA requests that Commission approval be conditioned on TracFone billing and collecting the surcharges for all of the public interest programs. The Federal Communications Commission contemplated that states would impose conditions on TracFone and similar lifeline service providers before granting them ETC status.⁷ Granting TracFone's application without this condition is not in the public interest.

Respectfully submitted this 28th day of July, 2009.

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⁷ See the FCC's order appended to URTA's initial post-hearing brief in this proceeding.

Certificate of Service

I hereby certify that on July 28, 2010 I caused a true and correct copy of the Responsive Post-hearing Brief of the Utah Rural Telecom Association and Association Members filed in Docket No. 09-2511-01 to be emailed to the following:

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