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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of	)	Docket No. 09-2511-01
	)	
Petition of TracFone Wireless, Inc. for	)	TRACFONE'S REQUEST FOR
Designation as an Eligible Telecommunications	)	LIMITED RECONSIDERATION OR
Carrier in the State of Utah for the Limited	)	REHEARING
Purpose of Offering Lifeline Service to Qualified	)	
Households.)	)	

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Pursuant to Utah Code Ann. §§ 54-7-15(2)(a) and 63G-4-301 and Rule R746-110-11F of the Utah Administrative Code, TracFone Wireless, Inc. (“TracFone”) hereby requests limited reconsideration or rehearing solely as to that portion of the Commission’s Report and Order in this Docket dated September 13, 2010 that conditioned granting of TracFone’s Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Utah for the Limited Purpose of Offering Lifeline Service to Qualified Households on a final determination of “the reasonable per transaction fee to utilize the DCC eligibility verification database.”

In support of this petition, TracFone represents as follows:

Nearly fourteen months ago, on August 27, 2009, TracFone filed its Petition (“Petition”) in this docket for designation as an ETC in the State of Utah for the limited purpose of offering lifeline service to qualified households. As described in the Petition and as TracFone has demonstrated in this proceeding, TracFone’s Lifeline service will be funded entirely by support from the federal

Universal Service Fund and by TracFone's own resources. TracFone has not sought authority to obtain support for its Lifeline program from the Utah Public Telecommunications Service Support Fund.

On September 13, 2010, this Commission entered its Report and Order in this docket ("September 13 Order"), finding that "TracFone's Petition should be granted," but ordering that the effectiveness of such grant must await a "final determination of 'the reasonable per transaction fee to utilize the DCC eligibility verification database.'" September 13 Order, at 15. The Commission opened Docket No. 10-2528-01 ("Cost Determination Docket") in order to make that determination.

At the outset, TracFone commends the Commission for its thorough examination of the record in this proceeding and its recognition that TracFone's SafeLink Wireless® Lifeline program will provide important benefits to many of Utah's neediest households. For the first time, low-income Utahans will have available to them a wireless Lifeline option which will enable qualified low-income households to receive free wireless handsets and 250 minutes of wireless airtime per month so long as they remain enrolled in TracFone's Lifeline program. Those minutes will be usable for local and long distance calling, as well as for roaming calls. TracFone already has been designated as an ETC in thirty-two other states and is providing SafeLink Wireless® service in most of those states. Approximately 3 million customers are receiving Lifeline-supported service from TracFone and it is anxious to soon provide Lifeline service to consumers in Utah.

**I. The Commission Should Address Verification Procedures and Costs in an Orderly Manner without Further Delaying TracFone’s Designation as an ETC and without Further Delaying Availability of SafeLink Wireless® Service to Low-Income Utah Households**

TracFone understands the Commission’s concern regarding the procedures for verification of Lifeline subscriber eligibility and for recovering whatever necessary costs are incurred to verify customer eligibility. However, those matters can -- and should -- be addressed in an orderly manner without further delaying availability of SafeLink Wireless® service to those qualifying low-income Utah households who may benefit from the service. There is no need, nor any public interest reason, to resolve questions of Lifeline verification prior to allowing TracFone to offer Lifeline service in Utah.

**A. Commission Rules contemplate a very limited role for the Commission or DCC in connection with the initial determination of Lifeline eligibility**

The DCC is not required, under applicable Utah Statutes or Rules, to verify eligibility of TracFone’s lifeline applicants for at least a year. Utah Code § 54-8B-15, which created the Universal Public Telecommunications Service Support Fund, contemplated development of a commission-approved Lifeline program. The statute does not specify any particular requirements for determining or verifying eligibility for participation in a Lifeline offering.<sup>1</sup>

The Commission’s Rules establish procedures for determining the eligibility of applicants for Lifeline-supported services. Those rules require each ETC to provide Lifeline service to any applicant who self-certifies his or her eligibility under penalty of perjury. That Commission Rule contains no requirement for certification of verification or involvement of the DCC in this initial

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<sup>1</sup> As noted above, TracFone has not sought to utilize any funding from the Utah Public Telecommunications Service Support Fund to support its Lifeline program.

self-certification of eligibility/Lifeline enrollment process. Moreover, the applicable federal rule, like the Utah rule, provides for initial self-certification under penalty of perjury.<sup>2</sup>

Applicable parts of Rule R746-341-3 provide as follows (emphasis added):

A. Program-Based Criteria -- The *ETCs shall provide lifeline telephone service to any applicant who self-certifies, under the penalty of perjury, his household is eligible* for public assistance under one of the following or its successor programs:

1. Temporary Assistance to Needy Families (TANF);
2. Work Toward Employment;
3. Food Stamps;
4. General Assistance;
5. Home Energy Assistance Target Programs/Help Program;
6. Medicaid;
7. Refugee Assistance;
8. Supplemental Security Income.
9. Federal Public Housing Assistance, including Section 8 Housing;
10. National School Lunch Free Lunch Program; or
11. Head Start Program (income qualifying standard only).

B. Income-Based Criteria -- The *ETCs shall provide lifeline telephone service to any applicant who certifies via supporting documentation, under the penalty of perjury, his household income to be at or below 135 percent of the then applicable Federal Poverty Guidelines.*

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<sup>2</sup> 47 C.F.R. § 54.409(d). As noted, TracFone's Lifeline service will be funded only by the federal USF.

1. Income-based eligibility is based on family size and actual income, therefore, the Lifeline customers must certify, under the penalty of perjury, the number of individuals residing in their household.

2. A Lifeline customer must certify, under the penalty of perjury, that the documentation presented accurately represents the applicant's annual household income. The following documents, or any combination of these documents, are acceptable for Lifeline certification:

- a. Prior year's state, federal, or tribal tax return;
- b. Current year-to-date earnings statement from an employer or three consecutive months of paycheck stubs;
- c. Social Security statement of benefits;
- d. Veterans Administration statement of benefits;
- e. Retirement/pension statement of benefits;
- f. Unemployment/Worker's Compensation statement of benefits;
- g. Federal or tribal notice letter of participation in Bureau of Indian Affairs General Assistance; or
- h. Divorce decree, or child support wage assignment statement.

This approach, based on the federal self-certification model, relies solely upon self-certification of eligibility under penalty of perjury and *requires* an ETC to provide lifeline service to anyone who provides the ETC with the required self-certification (and, in the case of income-based qualification, documentation).

The Commission's Rules do not require outside verification of a customer's initial eligibility in order for an applicant to begin receiving Lifeline services. The *only role* contemplated by Commission Rules for the Responsible Agency (in this case, the DCC, via contract) in the initial self-certification process is providing applications and retaining documentation:

C. Certification -- *The application form for participation will be supplied by the ETC or the responsible agency* and contain the following:

1. applicant's name, program participating telephone number, if available, identification of the ETC which the applicant anticipates will provide service, and social security number;
2. a request for lifeline service, and where applicable, a request for Link-up America Plan participation;<sup>3</sup>
3. an affirmative statement that the applicant qualifies for lifeline service.
4. a statement, under the penalty of perjury, as to whether the person is participating in one of the programs listed in Subsection R746-341-3.A or other federal eligibility criteria; or a statement, under the penalty of perjury, as to whether the person's household income is at or below 135 percent of the Federal Poverty Guidelines.
  - a. If qualified by income-based criteria, a statement, under penalty of perjury, that identifies the number of individuals residing in the household and affirms that the documentation

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<sup>3</sup> TracFone has not requested ETC designation for the purposes of providing Link-Up benefits.

presented to support eligibility accurately represents the applicant's household income.

5. a statement that if the applicant is later shown to have submitted a false self-certification for the Lifeline program, the applicant will be responsible to pay the difference between the lifeline service rate and the otherwise applicable service rate;

6. a statement whether this is a new connection or a reconnection; and

7. the applicant's signature.

D. Documentation Retention -- *The responsible agency will retain income and program eligibility certification for as long as agreed with the Commission.*

Contrary to the assumption implicit in the September 13 Order, the Rules contemplate an extremely limited role by the Commission, and thus by the DCC, in initially determining eligibility for new Lifeline customers. As explained below, the Rules do not require any significant DCC involvement until the annual “Continuing Eligibility” process is performed, *i.e.*, that already-enrolled Lifeline customers remain eligible for Lifeline support on an annual basis commencing at the end of the first year of enrollment. With respect to new Lifeline customers to be enrolled by TracFone following its commencement of Lifeline service in Utah, no public interest benefit will be served by delaying the effectiveness of TracFone’s ETC designation and, more importantly, the availability of SafeLink Wireless® Lifeline service to thousands of low-income Utah households, while procedures and cost recovery requirements are established which will not become applicable until one year following commencement of service.

**B. Commission Rules require a much greater Commission/DCC role in connection with annual verifications of continuing eligibility for Lifeline service**

In contrast to the extremely limited role contemplated by Commission Rule in connection with the initial determination of eligibility, the Rule requires DCC, as the “responsible agency” (by contract) to play a more significant role in the annual verification of continuing eligibility. Rule R746-341-4, “Continuing Eligibility,” provides as follows (emphasis added):

A. Annual Verification -- The *continuing eligibility of customers on the Lifeline service rate shall be verified annually.*

B. Verification Responsibilities -- *At least annually, the responsible agency shall provide the ETCs with information identifying customers who are eligible* for Lifeline service or Link-up America Plan participation.

C. Verification Methods -- *The responsible agency will verify the continued eligibility of Lifeline customers* under the program-based and income-based eligibility criteria.

1. The responsible agency shall identify a method by which income eligibility will be verified on an annual basis including, but not limited to, annual self-certification, random beneficiary audits, a periodic submission of income documents, or the continued eligibility of a statistically valid sample of Lifeline customers.

2. Should the ETC have a reasonable basis to believe that a Lifeline telephone service customer no longer qualifies for Lifeline service in accordance with this rule, the ETC shall inform the responsible agency. If a Lifeline customer does not appear as a participant in a program on the state



computer system or the responsible agency otherwise has a basis to believe that the customer no longer qualifies for Lifeline service, the responsible agency will send a notice to the Lifeline customer requesting;

a. proof of participation in any of the programs listed in R746-341-3.A or other federal eligibility criteria; or

b. documentation of eligibility under the income-based criteria set forth in R746-341-3.B.

c. The notice must allow the customer at least 40 days to demonstrate continued eligibility consistent with this rule.<sup>4</sup>

(emphasis added).

TracFone acknowledges that Lifeline customers enrolled by it after it receives ETC designation will cause additional work and expense in connection with the annual verification of continuing eligibility. So too will the presence of other new ETCs entering the Utah market following designation as ETCs.<sup>5</sup> However, because that additional work and expense will not be required for at least a year following commencement of TracFone's Lifeline service, there is ample time to complete the Commission's investigation in Docket 10-2528-01 to determine a fair,

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<sup>4</sup> The currently-effective Memorandum of Agreement among the Commission, the DPU and the DCC (attached as an Exhibit to the Office of Consumer Services' September 30, 2010 "Response" to the Commission's Scheduling Order in Docket 10-2528-01) follows the same format as the Rule. Attachment B to that Agreement, captioned "Components of the Utah Lifeline Telephone Assistance Program," repeats the eligibility verification requirements of the Rule. Similarly, Attachment C, captioned "Lifeline Scope of Work," requires DCC only to "receive and retain" initial eligibility certifications. Also consistent with the Rule, the DCC's scope of work in connection with the annual "continued eligibility" verification is more extensive.

competitively neutral manner for TracFone and every other Lifeline provider to be responsible for the reasonable share of such expenses that it causes.

TracFone is uncertain whether DCC's current practice in connection with verifying eligibility of new Lifeline applicants to existing ETCs is consistent with the Commission Rule. If DCC currently verifies the initial eligibility of new Lifeline Applicants who provide the required self-certification under penalty of perjury, and, when necessary, documentation of income-based eligibility, any such initial verification by DCC is not required or contemplated by either the Rule or the existing DCC Agreement. There is thus no public interest reason or other principled basis for denying immediate effectiveness of TracFone's ETC designation.

It should also be noted that, whatever initial verification procedures may be used or desired with respect to existing ETCs, TracFone will be the *first* ETC to provide Utah customers with a wireless Lifeline program that relies *solely upon federal USF funds*. Thus, there may be a rational basis, if the Commission wishes to do so, to require a different verification procedure for an ETC that applies for cost reimbursement from state USF funds. With respect to TracFone, there is no reasonable basis for requiring a different verification procedure than the one required by the federal government itself for participation in federally-funded Lifeline programs, or the process set forth in the Commission's rules governing initial certification of program-based eligibility for Lifeline benefits.

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<sup>5</sup> Several other wireless providers, including Virgin Mobile USA, also have sought ETC designation from the Commission for the purpose of offering Lifeline service. It is probable that other providers may seek similar designations. Whatever requirements are promulgated by the Commission governing Lifeline eligibility verification and recovery of the costs of verification must be applicable to all similarly-situated ETCs, not only TracFone.

**II. The Asserted Need for Establishment of Verification Procedures and Cost Recovery Mechanisms before Allowing TracFone to Provide Lifeline Service Is Contradicted by the Fact that Other Wireless ETCs Are Already Providing Lifeline Service in Utah without Such Verification Procedures or Cost Recovery Requirements in Place**

Currently, at least one other wireless provider is offering Lifeline service in Utah as an ETC. The Commission's attention is directed to the response of the Utah Office of Consumer Services ("OCS") in this proceeding.<sup>6</sup> There, OCS candidly notes that another wireless ETC -- Sprint Nextel -- is actively promoting its Lifeline service. Moreover, OCS expresses its belief that Sprint determines Lifeline eligibility "based upon an interpretation of the requirements that may be inconsistent with the TracFone Report and Order and the order that may come from this proceeding."<sup>7</sup>

TracFone has no knowledge as to what procedures, if any, are being followed by Sprint in verifying its Lifeline customers' eligibility, or those of any other ETCs which may be offering wireless Lifeline services in Utah. However, TracFone concurs with OCS that issues regarding Lifeline eligibility verification, particularly by non-incumbent local exchange carrier ETCs, is not a "TracFone-only" matter. It would be the antithesis of competitive neutrality to further delay TracFone's entry into Utah's Lifeline service market as an ETC while allowing at least one other such ETC -- perhaps more -- to provide Lifeline service today using verification procedures which may be inconsistent with whatever verification and verification cost recovery requirements may be established in this proceeding.

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<sup>6</sup> Docket No. 10-2528-01, Utah Office of Consumer Services' Response to the September 21, 2010 Amended Notice of Scheduling Conference, filed September 30, 2010.

<sup>7</sup> *Id.* at 7.

Furthermore, it would be unfair to TracFone – the first prepaid wireless provider to file in Utah for ETC designation for a wireless Lifeline offering – to further delay the effectiveness of its ETC designation in relation to other ETC applications currently in process or yet to come. To date, TracFone has spent more than a year – and considerable expense – navigating the regulatory process and addressing difficult practical and legal questions and challenges raised by the intervenors in the TracFone ETC proceeding. Pending and future ETC applications will benefit greatly from TracFone’s pioneering work. To further delay TracFone’s ETC designation will deprive TracFone of the advantages of being the first to offer this new and innovative Lifeline service in Utah, and will unfairly reward applicants riding TracFone’s coattails.

**III. Questions of Lifeline Eligibility Certification and Verification Are Being Addressed at a National Level and the Commission Should Remain Mindful of that Federal Proceeding**

Questions regarding Lifeline eligibility verification are not unique to Utah. Indeed, the Federal Communications Commission has referred to the Federal-State Joint Board on Universal Service a series of issues involving Lifeline -- eligibility, certification, verification, and outreach.<sup>8</sup> In that ongoing proceeding, the Joint Board and the FCC are considering important issues regarding the Lifeline enrollment process, including questions of initial certification of eligibility as well as questions of verification of continuing eligibility. Among the questions referred to the Joint Board by the FCC is whether the Lifeline verification procedures and requirements should be nationally uniform.

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<sup>8</sup> Public Notice - Federal-State Joint Board Seeks Comment on Lifeline and Link-Up Eligibility, Verification and Outreach Issues Referred to Joint Board, FCC 102-J, released June 15, 2010.

TracFone has submitted comments in that proceeding as have other stakeholders, including several state commissions. The FCC has directed the Joint Board to provide its recommendations within six months. Those recommendations are expected in early November 2010. Following receipt of the Joint Board recommendations, the FCC will study them and will establish any national requirements it deems warranted. It is likely that the Joint Board/FCC proceeding will be completed prior to the one year anniversary of TracFone's ETC designation in Utah, even if the Commission finalizes TracFone's ETC designation in the near future as requested herein. TracFone respectfully urges the Commission to remain mindful of the FCC/Joint Board proceeding and to promulgate regulations which would be consistent with those established by the FCC.

WHEREFORE, TracFone respectfully asks the Commission to amend its September 13 Order and to enter a final order making TracFone's ETC designation effective immediately, with a requirement that TracFone will be responsible for paying expenses determined in Docket 10-2528-01 (or any successor or other applicable docket) in connection with annual verification of continued Lifeline eligibility.

DATED this \_\_\_\_ day of October, 2010.

HATCH, JAMES & DODGE

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Limited Reconsideration or Rehearing was served by email this 13th day of October, 2010, on the following:

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