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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of)	Docket No. 10-2528-01
)	
Consideration of The Costs to the Department of)	COMMENTS OF TRACFONE
Community and Culture for Determining)	WIRELESS, INC.
Eligibility for Lifeline Applicants)	
)	

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its comments in response to the Interim Scheduling Order dated October 13, 2010 issued in this proceeding by Administrative Law Judge Ruben H. Arredondo. That order invited parties to submit comments regarding the scope of this proceeding as well as addressing the Response of the Utah Office of Consumer Services (“OSC”) submitted on September 30, 2010.

By order issued by the Commission September 13, 2010 in Docket No. 09-2511-01 (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), the Commission designated TracFone as a Lifeline-only Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (47 U.S.C. § 214(e)(2)). Although the Commission concluded that TracFone met all applicable statutory and regulatory requirements for designation

as an ETC and that provision of TracFone's SafeLink Wireless® Lifeline service to low-income Utah households would serve the public interest, the Commission stayed TracFone's ETC designation pending completion of the instant proceeding to determine "the reasonable per transaction fee to utilize the DCC [Department of Community and Culture] eligibility verification database."

This proceeding is the result of an issue which arose -- but which was not resolved -- during the June 7, 2010 hearing on TracFone's ETC petition. That issue involved the appropriate fees to be paid by TracFone for verification of its Lifeline customers' enrollment eligibility. As noted in the Commission's September 13 order, neither TracFone nor the Division of Public Utilities provided information satisfactory to the Commission as to those costs.

The threshold issue which should be addressed in this proceeding is whether the verification of TracFone's Lifeline applicants' eligibility for Lifeline service is the responsibility of the Commission or the DCC under applicable Utah statutes and regulations or the Memorandum of Agreement between the Commission and DCC. Although testimony provided during the hearing and the Commission's order may assume such applicability, the Commission/DCC verification process contemplated by Utah statutes and regulations is not applicable to TracFone.

Unlike other telecommunications carriers which have been designated as ETCs in Utah, TracFone has not sought authority from the Commission to receive any funding from the Utah Universal Public Telecommunications Service Support Fund ("Utah Fund") to support its Lifeline program, and it has no plans to use Utah Fund sources to provide Lifeline service. TracFone's SafeLink Wireless® Lifeline service will be supported only by the federal Universal Service Fund ("Federal Fund") and by TracFone itself.

Utah Code Annotated Section 54-8b-15(1)(b) defines “Fund” as used throughout that statute as the “Universal Public Telecommunications Service Support Fund established in this section” *i.e.*, the Utah Fund. Subsection 3(a) directs the Commission to establish rules governing the “administration of the fund.” In short, the rules contemplated by the statute and promulgated by the Commission, including those governing verification of Lifeline eligibility, are expressly intended to be applicable only to “administration of the fund” (as “fund” is defined at Section 54-8b-15). Since TracFone will not be utilizing Utah Fund resources to provide Lifeline service, the Commission’s Lifeline eligibility verification rules are not applicable to TracFone’s Lifeline program.

If the Commission concludes that its verification rules are applicable to TracFone, notwithstanding the fact that those rules were promulgated pursuant to a legislative grant of authority specifically limited to administration of the Utah Fund, the next question to be addressed is what obligations those rules impose on the Commission or DCC and when those obligations are to be performed. The Commission’s September 13 order concludes that TracFone should be required to pay a reasonable per transaction fee to utilize the DCC eligibility verification database -- a premise which TracFone itself did not dispute. Implicit in the Commission’s order, however, is the premise that DCC is required to verify each Lifeline applicant’s **initial** eligibility for Lifeline service, and that those verification costs are to be incurred at the outset of each applicant’s request for Lifeline service. However, as pointed out by TracFone in its Request for Limited Reconsideration or Rehearing filed in Docket 09-2511-01 on October 13, 2010, careful review of the applicable regulations, specifically, Rule R746-341 (Lifeline/Link-Up Rule) indicates that is not a correct premise.

R746-341-3(A) mandates that, with respect to Lifeline applicants qualifying under the Commission’s program-based criteria, “[t]he ETC shall provide lifeline telephone service to any applicant **who self-certifies under the penalty of perjury**, his household is eligible for public assistance” (emphasis added). Similarly, R746-341-3(B) provides that with respect to Lifeline applicants seeking to qualify on income-based criteria, that “[t]he ETCs shall provide lifeline telephone service to any applicant **who certifies via supporting documentation, under penalty of perjury**, his household income to be at or below 135 percent of the then applicable Federal Poverty Guidelines.” (emphasis added).

In short, the Commission’s rules regarding initial eligibility for Lifeline using both program-based eligibility criteria and income-based eligibility criteria require ETCs to obtain from applicants self-certifications under penalty of perjury. Importantly, the Commission’s rules prescribe no role for DCC or for any other agency or department in the initial Lifeline enrollment process.¹

Pursuant to the Commission’s own rules, the verification process contemplates a role for responsible agency verification only with respect to already-enrolled Lifeline customers’ **continuing** eligibility to receive Lifeline benefits. R746.341-4 (Continuing Eligibility) provides at subsection (A) that “[t]he continuing eligibility of customers on the Lifeline service rate shall be verified annually.” Subsection (C) provides that “[t]he responsible agency will verify the

¹ The Commission’s rules governing initial certification of Lifeline enrollment eligibility are consistent with the federal rules promulgated by the Federal Communications Commission for Lifeline programs supported only by the Federal Fund and federal default states. The FCC rules also provide for self-certification under penalty of perjury. See 47 C.F.R. § § 54.409(d), 54.410(b).

continued eligibility of Lifeline customers under program-based and income-based eligibility criteria.”²

The Commission’s own Lifeline regulations state clearly and unequivocally that enrolled Lifeline customers’ continued eligibility to receive Lifeline benefits must be verified annually, *i.e.*, at the end of the first year of enrollment in Lifeline and every year thereafter. Thus, there is no Commission regulation requiring that any Lifeline applicant’s initial eligibility for Lifeline enrollment be subject to certification or verification by the Commission, by DCC, or by any other state department or agency.

Another set of issues that needs to be addressed in this proceeding is how Lifeline customers’ continued eligibility should be verified, who should perform that continuing eligibility verification, and how the costs of such verification process should be recovered. OSC’s Response states that it is aware of TracFone’s communications with the Utah Department of Workforce Services (“DWS”) regarding alternative methods for determining Lifeline eligibility. TracFone has had discussions with DWS regarding ways in which DWS might be able to perform the required Lifeline verifications. TracFone plans to share that information in this proceeding. Perhaps other parties may have their own ideas for improving the efficiency of the annual verification process. TracFone encourages the Administrative Law Judge and the Commission to approach this proceeding with open minds and a willingness to consider all

² There appears to be some confusion regarding who is the “responsible agency.” The September 13 order and the wording of the Regulations suggests that DCC is the responsible agency. However, OSC asserts that the Commission, together with the Division of Public Utilities, is the responsible agency. OSC Comments at 4. It makes no difference. Whether DCC is the responsible agency or whether DCC’s role is only as a contractor to the Commission, the critical point remains the same -- the regulatory requirement that Lifeline customers’ eligibility be verified is only applicable to customers’ continuing eligibility on an annual basis following their initial enrollment in Lifeline. Pursuant to Commission rule, the process for Lifeline applicants’ initial demonstration of Lifeline eligibility is self-certification under penalty of perjury.

potential methods for conducting the requisite annual verification of continuing Lifeline eligibility in the most efficient manner for all ETCs. Whether the most appropriate and efficient means for conducting annual verifications involve DCC, DWS, or other entities, all options should be considered.

Importantly, the scope of this proceeding should cover the annual verification process for all Utah ETCs and all Utah Lifeline customers. Contrary to the implications in OSC's Response, this is not uniquely a prepaid wireless issue. Wireless ETCs like TracFone and others,³ may offer Lifeline services which differ from the offerings of traditional ETCs. Nonetheless, they are subject to the same statutory obligations and the same regulatory requirements. Indeed, OSC itself has stated correctly that the Commission's rules governing certification and verification of Lifeline eligibility are the same for any ETC -- prepaid wireless, other wireless or wireline.⁴

The presence of additional ETCs in the marketplace for Lifeline services in Utah is likely to increase the number of Utah's low-income households which enroll in Lifeline. However, those carriers who offer prepaid wireless services and which have sought ETC designation do not present any significant unique problems or costs. There is no evidence that wireless Lifeline customers are any more likely to defraud the Lifeline program than are customers of other ETCs' Lifeline programs. Rules governing verification and recovery of

³ As the Commission notes in the September 13 order, two other wireless carriers have petitioned the Commission for ETC designation -- Virgin Mobile USA, L.P., and i-Wireless, LLC. September 13 order at n. 11. There may be others in the future.

⁴ Response of OSC at 7.

annual verification costs should be applicable to all ETCs, and should not be targeted to specific companies based on their technologies or business models.⁵

For the reasons described herein, TracFone respectfully suggests that the Commission address each of the issues described in these comments.

Respectfully submitted,

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⁵ TracFone notes with concern and disappointment the gratuitous and unsupported claim of OSC that some ETCs do not pay their full share to the Utah Fund (OSC Response at 8). If OSC is suggesting that TracFone does not pay its “full share” to the Utah Fund, its accusation is improper and should be stricken. The question of whether TracFone is subject to a Utah Fund contribution obligation was addressed and resolved by the Commission in its September 13 order. Based upon an evidentiary record and legal briefing, the Commission disagreed with OCS and held that Utah Fund contribution requirements are not applicable to TracFone. In that order, the Commission concluded that “our laws and rules governing ETC designation, as currently written, do not obligate TracFone to collect and remit state USF surcharges (September 13 Order at 5). Any assertion that TracFone or any other similarly-situated ETC is somehow not paying its full share into the Utah Fund is inappropriate in view of the Commission’s conclusion that there is no obligation that it do so.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 20th day of October, 2010, on the following:

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