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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))	Docket No. 09-2511-01
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TRACFONE WIRELESS, INC.’S PETITION TO AMEND ITS DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER TO RECEIVE UTAH UNIVERSAL SERVICE FUND SUPPORT FOR LIFELINE SERVICE

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby petitions the Public Service Commission of Utah (“Commission”) to Amend Its Designation as an Eligible Telecommunications Carrier (“ETC”) to include authorization to receive Utah Universal Public Telecommunications Service Support Fund (“Utah USF”) support for Lifeline service within the State of Utah. As explained in this Petition, TracFone will enhance its current Lifeline service offering to provide additional wireless telecommunications service in the form of additional airtime minutes to qualifying low-income Utah households based upon its receipt of Utah USF support. The Commission’s grant of TracFone’s Petition will serve the public interest by allowing

qualifying Utah low-income households to receive enhanced Lifeline offerings and benefit from increased competition in the market for wireless Lifeline service.

I. BACKGROUND

TracFone is incorporated under the laws of the State of Delaware and is headquartered at Miami, Florida. Its corporate offices are located at 9700 N.W. 112th Avenue, Miami, Florida, 33178. TracFone is a reseller of commercial mobile radio service (“CMRS”) throughout the United States, including the State of Utah. TracFone is currently the nation’s leading provider of prepaid wireless telecommunications services, and one of the largest wireless carriers overall, with more than 25 million subscribers nationwide. TracFone provides resold wireless telecommunications service consisting of services obtained from licensed operators of wireless networks. TracFone has provided CMRS throughout the State of Utah continuously for more than fifteen years. In Utah, TracFone obtains service from the following underlying carriers: AT&T Wireless, T-Mobile, and Verizon Wireless. TracFone’s arrangements with those providers enable it to offer services wherever any of those providers offer service in Utah.

On December 1, 2010, the Commission issued an Order designating TracFone as an ETC.¹ The Commission stated in the ETC Order that TracFone’s ETC designation was subject to several explicit conditions, including the following: “TracFone shall receive no state USF support. If it desires state USF, it shall submit a new application requesting such support.”² TracFone now

¹ *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 Customers*, Amended Report and Order and Order on Request for Limited Reconsideration, Docket No. 09-2511-01, December 1, 2010 (“ETC Order”), *aff’d on recons.*, Order on Reconsideration, March 9, 2011

² ETC Order, at 21. Based on informal communications with Commission Staff, TracFone understands that it does not need to reapply for designation as an ETC to seek Utah USF support. Therefore, by this Petition, TracFone seeks to amend its current ETC designation so that it may receive Utah USF support.

seeks the Commission’s authorization to obtain Utah USF funds so that it may provide an enhanced Lifeline service to qualifying low-income Utah households. As demonstrated in this Petition, TracFone is eligible for Utah USF.

II. THE COMMISSION SHOULD AMEND TRACFONE’S ETC DESIGNATION TO INCLUDE APPROVAL TO RECEIVE UTAH USF SUPPORT.

By this Petition, TracFone seeks the Commission’s authorization to obtain Utah USF funds so that it may provide an enhanced Lifeline service to qualifying low-income Utah households. As described below, TracFone meets Utah’s statutory and regulatory requirements for receipt of Utah USF support.

A. TracFone Meets Applicable Utah Law Requirements for Receipt of Utah USF Support.

The Utah State Legislature recently enacted S.B. 130, which amends statutory provisions related to the Utah USF. The amended statute, codified at Utah Code § 54-8b-15, has an effective date of July 1, 2017. Given that the amended statute will become effective while this Petition is pending, TracFone addresses the Utah USF requirements as set forth in Section 54-8b-15, as amended.

The amendments to Section 54-8b-15 relate to several aspects of the Utah USF, including funding, calculation of a contribution charge, and permitted uses of support. In addition, the amendments provide the following:

A facilities-based **or nonfacilities-based** wireless telecommunications provider is eligible for distributions from the Universal Telecommunications Service Support Fund under the lifeline program described in Subsection 3(b) for providing lifeline service that is consistent with the Federal Communications Commission’s lifeline program for low-income consumers.³

³ Utah Code § 54-8b-15(15)(a) (2017) (emphasis added). Subsection 3(b) provides that the Commission shall use funds in the Utah USF to “fund a lifeline program that covers the reasonable cost to an eligible telecommunications carrier, as determined by the commission, to offer lifeline

The statute further provides that the Commission “may impose reasonable conditions for providing a distribution to a wireless telecommunications provider under the lifeline program.”⁴ However, the Commission “may not require a wireless telecommunications to offer unlimited local calling as a condition of receiving a distribution under the lifeline program described in Subsection 3(b).”⁵ Thus, TracFone, as a nonfacilities-based wireless telecommunications provider is eligible for distributions from the Utah USF to support its Lifeline service.

Section 54-8b-15(2)(c) directs the Commission to develop by rulemaking “policies and procedures to govern the administration of the fund.” Regarding wireless telecommunications providers’ eligibility for Utah USF support, the Legislature stated that the Commission “may” impose reasonable conditions for distributing Utah USF funds to wireless carriers providing Lifeline service. Thus, the Commission has the right, but not the obligation, to impose conditions on wireless carriers’ receipt of funds from the Utah USF.

On March 27, 2017, the Commission initiated a rulemaking proceeding by requesting comments regarding how Utah Admin. Code R746-360-5 should be amended to comply with Section 54-8b-15, as amended. Specifically, the Commission asked for comments on “the amount of the surcharge and the method through which it will be applied.”⁶ On May 17, 2017, the Commission issued a proposed rule amendment that would require providers of access lines to

service consistent with the Federal Communications Commission’s lifeline program for low-income consumers.” Utah Code § 54-8b-15(3)(b).

⁴ *Id.* § 54-8b-15(15)(b).

⁵ *Id.* § 54-8b-15(15)(c).

⁶ *See In the Matter of the Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Request for Comments, Docket No. 17-R360-01, March 27, 2017.

collect from their end-user customers a monthly surcharge of \$0.36 per access line.⁷ In the associated notice, the Commission stated the following regarding Utah USF support for wireless providers:

Finally, S.B. 130 provides for Lifeline support to wireless providers and requires a new evaluation of potential additional uses of UUSF support. At a future stage of rulemaking, when we will establish rules to address other provisions of S.B. 130, we will implement rules related to wireless Lifeline support and other types of UUSF support.⁸

While it appears that the Commission intends to establish rules regarding wireless Lifeline support in the future, nothing in Section 54-8b-15 prohibits the Commission from approving a wireless carrier to receive Utah USF support now. Therefore, TracFone urges the Commission to consider this Petition expeditiously based on Section 54-8b-15, as recently amended, and the Commission's rules regarding Utah USF support to the extent those rules have not been voided as contradictory to Section 54-8b-15.⁹

TracFone will comply with the Commission's current rules governing State ETCs (defined as "an ETC that participates in both the federal and state Lifeline programs"¹⁰) as far as they are consistent with the amended provisions in Section 54-8b-15. In particular, TracFone will fulfill the duties of a State ETC as detailed in R746-341-5. Those duties include: sending changes in the status of Lifeline participants (*i.e.*, address change, carrier change, or termination of service) to the program administrator on a monthly basis; providing information to potential applicants regarding how to receive an application from the program administrator (including on TracFone's website); updating the

⁷ *See id.*, Notice of Rulemaking and Response to Comments, May 17, 2017.

⁸ *Id.* at 6.

⁹ Commission Rules that are effectively voided include Utah Admin. Code R746-360-6(D), which excludes resale providers from receiving support from the Utah USF. As noted above, Utah Code § 54-8b-15(a) specifically states that nonfacilities-based wireless telecommunications providers are eligible for Utah USF support.

¹⁰ Utah Admin. Code R746-341-2(L).

National Lifeline Accountability Database in accordance with Federal Communications Commission (“FCC”) rules; and cooperating with the Division of Public Utilities to resolve Lifeline service complaints.¹¹ TracFone will also comply with State ETC reporting requirements.¹²

B. TracFone Will Use Utah USF Support to Offer an Enhanced Lifeline Plan to Utah Low-Income Households Eligible for Lifeline Service.

The Utah USF provides ETCs with up to an additional \$3.50 per month per Lifeline customer beyond the \$9.25 monthly Lifeline benefit provided under the federal Lifeline program.¹³ TracFone, as a recipient of Utah USF support, will offer its current Utah Lifeline customers who enrolled on or before December 1, 2016 the option of choosing between the following two plans: (1) 750 airtime minutes and unlimited text messaging each month using their existing handset; or (2) 600 airtime minutes, unlimited text messaging and 500 MB of mobile broadband Internet access service (“BIAS”) each month using a smartphone provided by the customer.¹⁴ Lifeline customers who enrolled prior to December 2, 2016 and who choose to upgrade from a voice-only plan to a bundled mobile broadband data and voice plan will need to provide their own smartphone and will receive an additional 500 MB of data, for a total of 1 GB of data, for the first three months

¹¹ See Utah Admin. Code R746-341-5(A).

¹² See Utah Admin. Code R746-341-8 (semi-annual report on the forgone revenue resulting from the Lifeline discounts, if any; amount of administrative expenses; interest accrual amounts on Lifeline funds, if any; number of Lifeline participants by exchange area per month; and detailed report of outreach efforts).

¹³ See Utah Admin. Code R746-341-6(A).

¹⁴ The FCC’s Lifeline Modernization Order, with an effective date of December 2, 2016, revised the federal Lifeline rules and contemplated bundled voice and broadband Lifeline services. See *In the Matter of Lifeline and Linkup Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (“Lifeline Modernization Order”). In order to qualify for federal Lifeline support, a Lifeline provider’s bundled plan must meet either the monthly federal minimum standard for voice service (500 minutes) or the minimum standard for broadband data (500 MB). See *id.* ¶ 64; 47 C.F.R. § 54.408(b)(2) and (3).

for which they are Lifeline bundled data and voice customers. Those Lifeline customers will then receive 500 MB of data starting with the fourth month of service. TracFone's voice-only Lifeline service offering and the voice portion of bundled mobile broadband data and voice plan include unlimited texting, voicemail, caller ID, national long distance calling without toll charges, and no charges for roaming. Under each of these plans, TracFone's Utah Lifeline consumers will receive an additional 250 minutes per month in wireless airtime above that provided with only federal USF support.¹⁵

New Lifeline customers in Utah and current Utah Lifeline customers who enrolled on or after December 2, 2016 will receive 600 airtime minutes (with all the associated voice features described above), unlimited text messaging and 500 MB data. New Lifeline customers in Utah have the option of receiving a free Android smartphone from TracFone that is Wi-Fi-capable and capable of being used as a Wi-Fi hotspot or using their own smartphone. Those new Lifeline customers who choose to use their own smartphone, receive an additional 500 MB of broadband data, for a total of 1 GB of data, for the first three months for which they are TracFone Lifeline customers. Commencing with the fourth month of service, new Lifeline customers who bring their own smartphone receive 500 MB of data. Under this bundled data and voice plan, TracFone's new Lifeline consumers in Utah will receive an additional 250 minutes per month above that provided with only federal USF support.¹⁶

¹⁵ TracFone's standard bundled data and voice Lifeline service includes 350 voice minutes and 500 MB of data each month in all states where TracFone does not receive state USF support. TracFone's standard voice-only offering (which is only available to current voice-only Lifeline subscribers who enrolled prior to December 2, 2016) includes 500 voice minutes in all states where TracFone does not receive state USF support.

¹⁶ TracFone currently does not offer Lifeline service to residents of Tribal lands in Utah. However, if the Commission authorizes TracFone to receive Utah USF support, then TracFone commits to using that support to enhance any future Lifeline offerings on Tribal lands. Prior to offering Lifeline service on any Tribal lands in Utah, TracFone will provide notice to and confer with

C. Amendment of TracFone’s ETC Designation to Include Utah USF Support Will Serve the Public Interest.

Expansion of TracFone’s designation as an ETC to include Utah USF support will enable it to provide enhanced Lifeline benefits to Utah Lifeline customers. Those enhanced Lifeline benefits will provide a valuable alternative to the existing Lifeline services available to low-income Utah households. Specifically, TracFone’s receipt of Utah USF support will benefit consumers by increasing the number of Lifeline providers able to use the additional USF support to offer enhanced Lifeline service. No other provider of wireless Lifeline services operating in Utah either provides or has proposed to provide as much no charge wireless airtime as TracFone is proposing in this Petition. These additional minutes will better enable Lifeline customers to obtain calling capacity sufficient to meet all their telecommunications requirements. Utah Lifeline consumers will have more minutes to contact (or be contacted by) current and prospective employers, health care providers, government services, and most importantly, to remain in contact with family members and friends.

Utah Lifeline households overwhelmingly choose wireless Lifeline service over wireline Lifeline service. As of December 2016, 40.7 percent of all ETCs receiving federal USF support in Utah and serving non-Tribal lands are wireless carriers. However, those wireless carriers received 80.7 percent of the federal USF support distributed to Utah carriers serving non-Tribal lands in 2016.¹⁷ Those data demonstrate the large and growing demand by low-income Utah households residing on non-Tribal lands for wireless Lifeline services. Low-income Utah residents would benefit from increased competition within the Lifeline service market. Increased

appropriate Tribal governments and Tribal regulatory authorities located in Utah in conformance with applicable FCC and Commission requirements.

¹⁷ See LI05 Annual Low Income Support Claimed by State and Company January 2014 through March 2017.xlsx, available at <http://www.usac.org/about/tools/fcc/filings/2017/q3.aspx>.

competition leads to additional consumer choices and delivery of greater value to consumers. If the Commission authorizes TracFone to receive Utah USF support, then TracFone will be able to deliver enhanced service choices and greater value to qualifying Utah households as described in this Petition.

CONCLUSION

Based on the foregoing, TracFone requests that the Utah Public Service Commission promptly grant its Petition to amend TracFone's designation as an ETC to include approval to receive Utah USF support for Lifeline service provided to its Utah Lifeline customers.

Respectfully submitted this 23rd day of June 2017.



/s/

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DECLARATION

Javier Rosado states as follows:

1. I am employed by TracFone Wireless, Inc. ("TracFone") as Senior Officer Business Development and Government Services. My business address is 9700 N.W. 112th Avenue, Miami, Florida 33178. I have personal knowledge of the facts set forth below.

2. I am providing this declaration in support of TracFone Wireless, Inc.'s Petition to Amend Its Designation as an Eligible Telecommunications Carrier to Receive Utah Universal Service Fund Support for Lifeline Service ("Petition"). In my capacity as Senior Officer Business Development and Government Services, I am an authorized officer of TracFone and am responsible for Lifeline service provided by TracFone.

3. I have read TracFone's Petition. I confirm that all factual information contained in the Petition is true and accurate to the best of my knowledge.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 2017



Javier Rosado

UPSC Docket # 09-2511-01
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 23rd day of June 2017 on the following:

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/s/ _____