

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

JOINT NARRATIVE
SUPPORTING SETTLEMENT
AGREEMENT

I. INTRODUCTION

1 Pursuant to WAC 480-07-740(2), this Narrative Supporting Settlement Agreement (“Narrative”) summarizes the Settlement Agreement (“Settlement Agreement” or “Agreement”) that is being filed concurrently with this Narrative, and explains why the Settlement Agreement is in the public interest and should be approved by the Commission. It is not intended to modify any terms of the Settlement Agreement.

2 WAC 480-07-740(2) requires that when filing a proposed settlement agreement, “parties must also file supporting documentation sufficient to demonstrate to the Commission that the proposal is consistent with law and the public interest and that it is appropriate for adoption.” Parties may present a narrative, as the Parties are doing here – WAC 480-07-740(2)(a) states that the supporting documentation should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and the public interest; and a summary of legal points that bear on the proposed settlement.

3 The Parties to the Settlement Agreement are TracFone Wireless, Inc. (“TracFone”) and Commission Staff (“Staff”). The Parties agree that the Settlement Agreement is in the public interest. The Parties understand that the Settlement Agreement is subject to Commission approval.

4 This document is the Joint Narrative of TracFone and Staff in support of the full settlement.

II. DISCUSSION

A. Scope of the Underlying Dispute

5 On March 13, 2009, TracFone filed a petition to be designated as an 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)) in order to receive support from the federal Universal Service Fund (“USF”) to provide Lifeline service to qualified low-income Washington households, and for exemption from certain provisions Chapter 480-123 WAC, which are the Commission’s rules governing ETCs. Staff conducted a detailed investigation of TracFone’s application. During the course of this investigation, TracFone provided additional information to Staff about its operations and its planned offering of Lifeline service. Since its initial filing, TracFone has amended its application in order to address concerns raised during the course of the Commission’s review.

6 Once designated as an ETC by the Commission, TracFone will offer and advertise a prepaid wireless service, called SafeLink Wireless®, to consumers who apply and are determined to be eligible for the USF-supported Lifeline benefit. TracFone would seek reimbursement for a portion of the benefits from the Universal Service Administrative Company (“USAC”) -- the administrator of the USF. SafeLink Wireless® is a free service.

Each qualified low-income Washington consumer enrolled in the program will receive at no charge an E911-compliant wireless handset as well as free minutes of wireless airtime each month for so long as they remain enrolled in the program. TracFone will not participate in the high-cost portion of the federal universal service program, the federal Link-up program, or the state's low-income universal service program, the Washington Telephone Assistance Program ("WTAP").¹

7 The disputes between the Parties generally concerned whether additional conditions or requirements, beyond the requirements of applicable federal and state rules, should be imposed on TracFone as part of an order approving the ETC application and the rule exemption. At the Commission's November 25, 2009, open meeting, Staff recommended that the Commission approve the Petition, as amended, subject to specified conditions.² The proposed conditions included consumer protection, eligibility verification, reporting, and emergency service requirements that went beyond those imposed on ETCs by the Federal Communications Commission ("FCC") or by the Commission in its ETC rules (Chapter 480-123 WAC). These additional conditions were seen by Staff as necessary to ensure that granting ETC status to TracFone is in the public interest

8 Although TracFone questioned whether such conditions were necessary, it nonetheless agreed to Staff's proposed conditions and supported Staff's recommendation at the November 25, 2009 open meeting. However, at that meeting the commissioners raised additional concerns about the application. The concerns raised by the commissioners included the adequacy of the included minutes in the SafeLink Wireless® Lifeline plan, the

¹ The Commission has determined that wireless carriers, such as TracFone, are not allowed under Washington law to participate in the Washington Telephone Assistance Program. Fourth Supplemental Order, Docket UT-970345, May 14, 2008.

² Staff Memorandum, Docket UT-093012, November 25, 2009, p. 12.

price of additional minutes, the benefit of the SafeLink Wireless® plan for customers who require a high number of minutes, TracFone's compliance with state E911 tax laws, the adequacy of safeguards to prevent waste of universal service funds, and the Commission's ability to revoke or modify the designation should future circumstances warrant.

9 Based on the guidance provided by commissioners at the November 25, 2009, meeting, TracFone and Staff engaged in further discussions. TracFone provided additional information to the Commission, and it made significant revisions to its proposed Lifeline service. In an amendment to its Petition filed on December 29, 2009, TracFone committed to lower by 50 percent the rate paid by SafeLink Wireless® customers for additional minutes (from \$0.20 to \$0.10 per minute) and to offer a discounted version of its high-volume Straight Talk® plans. Staff and TracFone also developed additional proposed conditions, including a plan to discontinue benefits when customers do not use their Lifeline service and an enhanced annual review process.

10 At the Commission's February 25, 2010, open meeting, Staff presented the additional conditions and recommended that the Commission approve the Petition with those conditions.³ The Commission also received oral comments from the director of Community Voice Mail ("CVM") expressing support for wireless Lifeline service but concern about the quantity of free service proposed to be provided by TracFone.⁴ CVM also objected to TracFone's practice of deducting airtime minutes for calls from a customer's handset to TracFone's Customer Care. The Commission took no action on the Petition at the February 25, 2010, open meeting.

³ Staff Memorandum, Docket UT-093012, February 25, 2010, p. 12.

⁴ The Commission also received written comments from Richard A. Finnigan and the Alliance for Generational Equity.

11 After initially expressing a willingness to offer free airtime for customer service calls, TracFone objected to the imposition of such a requirement.⁵ At the Commission's March 11, 2010 open meeting, following an extensive discussion, the Commission set the matter for hearing.

B. The Scope of the Settlement and Its Principal Aspects

12 The Parties have agreed to a set of conditions to TracFone's ETC designation that address the concerns raised during the review of TracFone's Petition. With these agreed-to conditions, TracFone's Lifeline offering in Washington will preserve and advance the access of low-income consumers to affordable telecommunications service, and it will do so in a way that protects consumers and the financial integrity of the USF.

13 The TracFone Lifeline service plans meet the needs of a wide range of low-income consumers:

- **Free Service for Low-Volume Consumers** – The SafeLink Wireless® plan will provide eligible low-income consumers with 65 minutes per month of free nationwide calling and a free handset. No ETC currently offering Lifeline service in Washington provides free service to Lifeline customers. Low-income customers may obtain landline service through WTAP at a monthly cost of \$8.00, and the minimum monthly cost of service from existing wireless ETCs is approximately \$16.49.
- **Lifeline Benefits for Medium-Volume Consumers** – With an additional minute rate of 10 cents per minute,⁶ the SafeLink Wireless® service also supports customers whose airtime requirements exceed the monthly allotment of 65 free minutes. For example, a low-income consumer selecting SafeLink Wireless® could obtain 200 minutes of airtime per month for \$13.50.⁷ Moreover, SafeLink Wireless® allows customers to retain unused minutes from month to month. Unused SafeLink Wireless® minutes do not expire at the end of the month. The

⁵ Comments of TracFone Wireless, Inc., Docket UT-093012, March 9, 2010.

⁶ Other wireless ETCs in Washington charge from \$.15 to \$.49 per minute for additional airtime.

⁷ By comparison, the Lifeline service offered by Sprint includes 200 minutes per month at a monthly cost of approximately \$17, and Sprint does not provide a free handset. Comments of TracFone Wireless, Inc., Docket UT-093012, February 2, 2010, Attachment 2. Sprint's ETC application was approved by the Commission in Docket UT-031558 and Docket UT-043120.

existing wireless ETC plans available in Washington require that customers pay the full charge each month even if the full usage allowance is not used.

- **Lifeline Benefits for High-Volume Consumers** – TracFone has also agreed to offer Lifeline customers in Washington a discounted version of its Straight Talk® plans, which are designed for customers who need a large quantity of airtime and data capacity. Low-income consumers who choose a Straight Talk® plan can obtain up to 1,000 minutes⁸ for \$20 per month or unlimited airtime for \$35 per month. The 1,000-minute plan costs approximately \$3 more than the plans of existing wireless ETCs that provide 200-300 minutes per month. TracFone has not offered Lifeline versions of its Straight Talk® plans in any other jurisdiction. Low-income Washington households will be the first in the nation to have Lifeline-supported versions of Straight Talk® available. TracFone has agreed to offer these plans within four months of its ETC designation and to make the service available through retail channels within one year of designation.⁹

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The proposed settlement also includes a set of additional safeguards, reporting requirements, and consumer protections that will provide the Commission with continuing oversight of TracFone's performance and will ensure that consumers and the federal USF are protected. These conditions provide protections in addition to those in the Commission's ETC rules, Chapter 480-123 WAC. These enhanced protections include:

- **Interim Designation** – The settlement provides that TracFone will initially be designated for a one-year period.¹⁰ At the end of that interim period, the Commission will review TracFone's operations for compliance with federal and state rules and the conditions imposed through the designation order and could initiate a proceeding to revoke or amend TracFone's designation pursuant to WAC 480-123-050. This process will provide both a strong incentive for TracFone to meet performance requirements and a workable mechanism for the Commission to enforce these requirements.
- **Enhanced Eligibility Review** – The settlement provides for greater eligibility review of TracFone's Lifeline customers, compared to the process followed by other wireless ETCs in Washington. Other wireless ETCs use an eligibility verification process detailed in FCC rules, in which applicants must certify under penalty of perjury that they participate in a qualifying federal or state assistance program. The carrier must audit a statistically-valid random sample of its

⁸ Minutes do not roll over with the Straight Talk plan, unlike SafeLink Wireless plan described above.

⁹ Settlement, Attachment 2, Condition 6.

¹⁰ Settlement, Attachment 2, Condition 1.

Lifeline customers each year and report the audit results to USAC.¹¹ TracFone must comply with these requirements, but the settlement also provides that TracFone will annually submit a complete record of its Lifeline customer list. The Commission Staff will compare this customer list to the eligibility list of the Washington Telephone Assistance Program.¹²

- **Enhanced Reporting** – Under the settlement, TracFone is required to provide quarterly reports to the Commission on the number of customer accounts that are activated and deactivated each month.¹³ The report must include the type of Lifeline service being activated and the basis for each deactivation. TracFone also will submit to the Commission the annual verification audit results that it files with the federal universal service administrator¹⁴ and the number of complaints made by Lifeline customers.¹⁵
- **Cessation of Business** – In the Settlement Agreement, TracFone agrees to provide notices and consumer protections should it cease to operate in the state of Washington.¹⁶ These requirements match WAC 480-120-083, which otherwise does not apply to wireless ETCs.
- **Deactivation for Non-use** – The Settlement Agreement includes a requirement that TracFone deactivate the SafeLink Wireless® service of customers who do not use the service for 60 days. This provision addresses a concern expressed by commissioners that universal service funds might be wasted if customers of the free service do not actually make or receive calls.¹⁷
- **Free 611 Calls to Customer Care** – In the Settlement Agreement, TracFone agrees to provide its Lifeline customers with free airtime for calls placed to Customer Care.¹⁸ Customers dial 611 from their handset for this access. TracFone’s standard business practice is to deduct airtime for calls, including calls to Customer Care.¹⁹ TracFone provides toll-free access to Customer Care and encourages customers to call this number from another phone. Doing so both reduces the cost of providing service to customers and facilitates the resolution of customer issues that are related to the handset. By adding the

¹¹ 47 U.S.C. §§ 54.409, 54.410. If an applicant seeks to qualify based on income rather than participation in another assistance program, he or she must provide written documentation of income.

¹² Settlement, Attachment 2, Condition 12. The settlement also provides for an effort in which Staff and TracFone would work with the Department of Social and Health Services to verify Lifeline eligibility more directly, rather than using the *ex post* process described above

¹³ Settlement, Attachment 2, Condition 8.

¹⁴ Settlement, Attachment 2, Condition 13.

¹⁵ Settlement, Attachment 2, Condition 14.

¹⁶ Settlement, Attachment 2, Condition 18.

¹⁷ Settlement, Attachment 2, Condition 7.

¹⁸ Settlement, Attachment 2, Condition 11.

¹⁹ TracFone never deducts airtime minutes for 911 calls. Also 911 access is available from TracFone handsets without regard to whether the customer has remaining minutes on his/her account and without regard to whether the account is active.

provision for free 611 calls to Customer Care, TracFone is addressing a concern that Lifeline customers do not have ready access to an alternative phone line.

15 The Settlement also provides for TracFone to receive exemptions from three requirements of the Commission's ETC rules, specifically WAC 480-123-030 (1) (d), (f), and (g). These provisions require an ETC applicant to submit a substantive investment plan, an electronic map of service areas, and information on specific emergency capabilities in its network. These requirements all contemplate an ETC that operates its own network facilities. Given the FCC's conditional grant of forbearance, TracFone is not required to own facilities to provide services as long as it complies with all the conditions in the FCC's Forbearance Order and subsequent modifications, which are set forth in Attachment A. Therefore, these requirements are not relevant to TracFone's ETC application, and it is reasonable to exempt it from the requirements.

C. Statement of Why the Settlement Satisfies Both the Parties' Interests and the Public Interest

16 With the amendments made to TracFone's application and the additional conditions included in the Settlement Agreement, Staff and TracFone agree that TracFone's Petition for designation as an ETC and for rule exemption should be granted. TracFone is eager to begin offering service in Washington to qualifying low-income consumers, and the Settlement furthers its interest in executing this business plan. Staff's interest is to expand the range of choices available to low-income consumers while ensuring adequate consumer protection and fiscal integrity. Designation of TracFone, with the agreed-to conditions, satisfies these interests and is consistent with the public interest. This action will provide consumers with an additional choice of Lifeline service providers and can be expected to increase the

number of qualifying households who benefit from the Lifeline program.²⁰ Staff and TracFone urge the Commission to find that TracFone has met all legal requirements for designation as an eligible telecommunications carrier and that designation of TracFone is in the public interest.

17 In sum, TracFone's petition meets the legal requirements for designation as an ETC and for exemption from the above-cited rules. In WAC 480-07-700, the Commission expresses support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The Parties have resolved all of the issues in dispute between them, and have filed a Settlement Agreement that meets these requirements.

D. Summary of Legal Points that Bear on the Proposed Settlement

18 TracFone's Petition, as amended, includes an application for designation as an eligible telecommunications carrier and a request for exemption from certain requirements of WAC 480-123-030. The standard for approving a petition for designation as an ETC is:

The commission will approve a petition for designation as an ETC if the petition meets the requirements of WAC 480-123-030, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and the designation is in the public interest.²¹

19 The standard for approving a request for rule exemption is:

The commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes.²²

²⁰ Earlier filings by TracFone and Staff provide additional support for approval of TracFone's application, as amended and with conditions. Application of TracFone Wireless, Inc., March 13, 2009; Staff Memorandum recommending approval with conditions, November 25, 2009; Comments of TracFone Wireless, Inc., February 2, 2010; and Staff Memorandum recommending approval with conditions, February 25, 2010.

²¹ WAC 480-123-040.

²² WAC 480-07-110(1).

III. CONCLUSION

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The Settlement Agreement and the amended Petition of TracFone meet all legal requirements, are consistent with the public interest, and should be expeditiously approved by the Commission.

DATED this 28th day of April, 2010.

TRACFONE WIRELESS, INC.

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