

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET NO. UT-093012
	)	
TRACFONE WIRELESS, Inc.	)	TRACFONE WIRELESS, INC.'S
	)	MOTION TO AMEND ORDER
for Designation as an Eligible Telecommunications	)	
Carrier for the Limited Purpose of Providing Lifeline	)	
Service	)	

TracFone Wireless, Inc. (“TracFone”) respectfully requests that the Commission amend its Order 03 in this proceeding to remove the requirement that TracFone offer a subsidized version of its Straight Talk™ service to Lifeline customers. As further explained below, TracFone has recently expanded its Lifeline offer so that it addresses the public policy concerns underlying the requirement to offer Straight Talk Lifeline service. Moreover, the Straight Talk Lifeline requirement presents significant operational and marketing issues for TracFone.

Order 03 requires TracFone to offer a Straight Talk Lifeline service by October 24, 2010 and to file terms and conditions for that service by September 24, 2010. Therefore, TracFone requests that the Commission consider this matter at an open meeting. If the Commission believes that the matter requires additional process or time, TracFone requests that the Commission grant an extension of time for all procedural dates related to a Straight Talk Lifeline requirement while it considers this motion.

**BACKGROUND**

On March 13, 2009, TracFone submitted a petition for designation as an eligible telecommunications carrier (“ETC”) for purposes of receiving low-income Lifeline support from the federal universal service program. TracFone’s petition described its SafeLink Wireless service, which it intended to offer to qualifying low-income consumers in Washington state upon

receiving the ETC designation. The SafeLink Wireless plan would provide customers with a free handset and 68 minutes per month of wireless airtime at no charge to the customer. Customers requiring additional airtime could purchase minutes at a rate of \$0.20 per minute.

During an extensive review of TracFone's application, the Commission Staff and a stakeholder group expressed concern about, among other things, the adequacy of the free airtime included in the SafeLink Wireless service and the cost of additional minutes. To address these concerns, TracFone agreed to lower the rate charged customers in Washington state for additional airtime to \$0.10 per minute and to develop an alternative Lifeline product with an increased number of airtime minutes. The alternative product was a Lifeline version of TracFone's Straight Talk service. Customers selecting the Straight Talk Lifeline plan would pay a monthly fee of \$20.00 to receive 1,000 minutes or a monthly fee of \$35.00 to have access to unlimited minutes. Under either plan, customers would be required to purchase a handset at undiscounted prices of \$29.99 and higher.

These modifications were included in a settlement between TracFone and Commission Staff filed on April 23, 2010. The settlement required TracFone to offer the Straight Talk Lifeline plans within four months of Commission approval of its ETC application and to offer these plans at retail locations within one year of approval.<sup>1</sup> The Commission on June 24, 2010, approved the settlement and granted, with conditions, TracFone's ETC application. Under the terms of the settlement, TracFone must begin offering the Straight Talk Lifeline plans in Washington state by October 24, 2010, and it must file the terms and conditions for these plans by September 24, 2010.

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<sup>1</sup> The specific provision is in Attachment 2, ¶ 6, of the settlement agreement.

On August 13, 2010, TracFone notified the Commission that it was expanding its SafeLink Wireless offer in all states, effective August 16, 2010, to include two additional options with substantially more included minutes.<sup>2</sup> The additional options give SafeLink Wireless customers the opportunity to receive as much as 250 minutes per month at no cost. The three options are described further in Table 1 below:

Table 1 – SafeLink Wireless Plan Options

Program Features - Perfect for:	68 FREE Monthly Minutes International Calling & Texting	125 FREE Monthly Minutes Carry-Over Minutes	250 FREE Monthly Minutes Talk Minutes
Carry-Over Minutes from month to month	YES	YES	NO*
100 + International long distance destinations	YES	NO	NO
Text Messaging	YES (0.3 minutes per text)	YES (1 minute per text)	YES (1 minute per text)
Voicemail/Caller ID/Call Waiting	YES	YES	YES

\* If you choose this program, all unused minutes (including purchased cards and free minutes) will be removed/wiped out and will not carry-over on your next monthly minutes delivery.

The first column reflects the SafeLink Wireless Lifeline offering as it existed prior to August 16, 2010; the second and third columns show the two additional options plans now available to customers.

**I. TRACFONE’S IMPROVED SAFELINK OFFER ADDRESSES THE PUBLIC INTEREST CONCERN THAT WAS THE BASIS FOR THE STRAIGHT TALK REQUIREMENT.**

TracFone initially proposed its SafeLink Wireless Lifeline service in Washington with 68 minutes of free airtime each month and an additional minute rate of \$0.20. The Commissioners first considered this proposal at the November 25, 2009 open meeting. The commissioners clearly stated at the meeting that the number of minutes was inadequate to warrant approval of the ETC application.

In response to this concern, TracFone revised its proposal to provide greater benefits to customers. It agreed to lower the additional minute rate to \$0.10, and it agreed to develop a

<sup>2</sup> Letter from José A. Fuentes to David W. Danner, August 13, 2010.

Lifeline option to better meet the needs of higher volume customers. At that time the best alternative for higher volume customers appeared to be TracFone's recently-introduced Straight Talk plans. TracFone suggested that it develop a Lifeline version of these Straight Talk plans in which qualifying low-income customers would receive a \$10 discount off the monthly rate. Lifeline customers would be required to purchase a Straight Talk handset at an undiscounted price because the Straight Talk service requires a wireless handset that differs from the handsets provided for free under the SafeLink Wireless Lifeline plan. The Straight Talk Lifeline alternative was ultimately incorporated into the settlement with Commission Staff and into the Commission's order conditionally approving the ETC application.

TracFone believes that it is reasonable to remove the Straight Talk Lifeline requirement because the underlying public interest has been addressed by TracFone's substantial enhancement of its SafeLink Wireless offer. The Commission identified a public interest in providing Lifeline customers with more than 68 minutes of free service. That public interest is satisfied by the expanded Lifeline offering that includes additional options that provide up to 250 minutes per month of free service.

With the availability of a Lifeline offering of 250 minutes of free airtime each month, TracFone's SafeLink Wireless Lifeline service now provides – for free – a quantity of minutes that is comparable to the level of service that other wireless ETCs provide for approximately \$17 per month. AT&T Wireless and Sprint, for example, offer 300 and 200 included anytime minutes, respectively, for approximately \$17 per month. The SafeLink Wireless plan also compares very favorably with the plans of two carriers with ETC applications pending before this Commission:

Virgin Mobil proposes to offer 200 minutes per month at no charge;<sup>3</sup> T-mobile proposes to offer 145 anytime minutes for \$6.49.<sup>4</sup>

In December 2009, TracFone proposed to meet the Commission's public interest concern with the best option available at that time, which was a discounted version of Straight Talk. However, TracFone believes that the Commission's interest was not, and should not be, in the Straight Talk offer *per se*. Rather, the Commission interest was in ensuring an adequate level of service for Lifeline customers. That interest is now satisfied by the enhanced SafeLink Wireless offer itself. Therefore, the public interest is not compromised by excusing TracFone from the requirement to develop and offer a Straight Talk Lifeline service.

## **II. THE REQUIREMENT TO DEVELOP AND OFFER STRAIGHT TALK PLANS PRESENTS OPERATIONAL AND MARKETING CONFLICTS FOR TRACFONE.**

TracFone seeks relief from the Straight Talk requirement not simply because it is unnecessary to meet the public interest, but also because, with the expanded options available in the SafeLink Wireless offer, development of Straight Talk Lifeline plans presents significant operational and marketing conflicts for TracFone.

The operational conflicts arise from the significant level of information technology work that is required to implement any change to the systems used to deliver services to TracFone's customers. TracFone has made the Commission aware of these resource demands in earlier filings, particularly the company's February 5, 2010 filing. This filing provided information on the system changes required to implement a Straight Talk Lifeline offer and reported the four-month period that would be required for development. This four-month interval was ultimately

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<sup>3</sup> *Virgin Mobile Supplement to Petition for Limited Designation as an Eligible Telecommunications Carrier*, Docket UT-100203, August 12, 2010, p. 2.

<sup>4</sup> *T-mobile Petition for ETC Designation*, Docket UT-101060, June 10, 2010, p. 7. T-mobile apparently does not offer a free handset, offering instead an "affordable" handset.

reflected in the settlement and the Commission's order.

Subsequently, TracFone's systems development efforts have focused on the expanded SafeLink Wireless Lifeline service options described above. TracFone did not simply change its SafeLink Wireless offer; it recognized that customer preferences vary and developed three options from which customers could choose. In addition, TracFone has also devoted information technology resources to implementing two provisions of the Washington settlement and order: (1) the requirement that customers be provided with free airtime when they dial 611 from their handsets to contact Customer Care, and (2) the non-standard rate of \$0.10 per minute for additional airtime purchased by Washington state customers. TracFone's basic SafeLink Wireless business has become significantly more complex than it was in February, and the company believes its information technology resources are not sufficient to develop the systems necessary to offer Straight Talk Lifeline plans without adversely affecting its SafeLink Wireless service.

The marketing conflicts arise from the popularity of the new SafeLink Wireless 250-minute option. When the only SafeLink Wireless option provided 68 minutes, TracFone believed that there could be a viable level of demand for its proposed Straight Talk Lifeline offer. With the additional option of a 250-minute SafeLink Wireless Lifeline service, TracFone anticipates that most customers who would otherwise be interested in Straight Talk Lifeline service will prefer the SafeLink Wireless 250-minute option. Moreover, the very fact that customers would have to choose among five rate plans could discourage and confuse potential customers.

This is not to suggest that Straight Talk Lifeline would lack value; TracFone's unsubsidized Straight Talk plans have met with great success in the marketplace. However,

TracFone also has the experience of working with millions of low-income consumers. These consumers will compare the up-front costs of the two options: (1) Straight Talk Lifeline would have an initial cost of \$49.99 (\$29.99 for the handset and \$20 for 30 days of service) and provide 1,000 minutes of airtime and (2) SafeLink Wireless Lifeline would have an initial cost of zero and provide 250 minutes of airtime. TracFone expects a much greater market response to the free service as compared to a \$49.99 service.

TracFone did not develop its expanded SafeLink Wireless Lifeline options for the purpose of obviating the Straight Talk Lifeline requirement. Rather, the decision to offer additional SafeLink Wireless options was a response to the competitive market and was based on TracFone's analysis of the results of marketing tests of various levels of free airtime minutes in four states. TracFone came to realize that its SafeLink Wireless Lifeline plan was a good plan, but it was not good enough to succeed in the competitive wireless Lifeline market. With other carriers offering Lifeline plans with more minutes, TracFone responded by improving its offering. In the process, TracFone realized that the presence of an expanded SafeLink Wireless Lifeline offering that provided 250 minute and a handset for free left little or no room in the marketplace for the Straight Talk Lifeline plans which would have an initial cost of at least \$49.99.

TracFone acknowledges that there are likely some customers who, if given the choice, would select Straight Talk Lifeline over SafeLink Wireless Lifeline. However, the Commission should recognize that the public interest associated with those customers is amply served by providing them with 250 minutes of airtime for free. Furthermore, the private interests of those customers are adequately met by unsubsidized offerings such as Straight Talk. Indeed, a customer requiring 1,000 minutes of airtime pays a much lower monthly rate with Straight Talk –

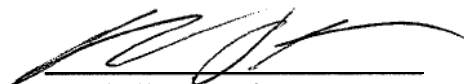
even with no universal service support – than with any Lifeline plan offered by any wireless ETC in this state.

### CONCLUSION

TracFone proposed the Straight Talk Lifeline option last December in order to satisfy the Commission's concern that the number of included minutes in the SafeLink Wireless offer was inadequate. Since then, in response to a vigorous competitive market, TracFone has greatly increased the number of included minutes with SafeLink Wireless. This improvement addresses the public interest concern underlying the Straight Talk Lifeline requirement. TracFone therefore respectfully requests that the Commission amend Order 3 to remove the requirement in Attachment 2, ¶ 6, that TracFone develop and offer Straight Talk Lifeline plans.

Respectfully submitted,

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