

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UT-093012
)	
TRACFONE WIRELESS, INC.	)	ORDER 04
)	
For Exemption from WAC 480-123-	)	ORDER SUSPENDING
030(1)(d),(f) and (g); and Designation as	)	DEADLINES FOR SUBMITTING
an Eligible Telecommunications Carrier	)	STRAIGHT TALK PLANS;
for the Purpose of Receiving Lifeline	)	ESTABLISHING DEADLINE FOR
Support from the Federal Universal	)	FILING AMENDED SETTLEMENT
Service Fund	)	AGREEMENT AND SUPPORT, OR
	)	IN THE ALTERNATIVE,
	)	COMMENTS ON TRACFONE'S
	)	MOTION TO AMEND ORDER
	)	(Due on September 30, 2010)
.....)	

1 **NATURE OF PROCEEDING.** This proceeding concerns a petition by TracFone Wireless, Inc. (TracFone or the Company), for designation as an Eligible Telecommunications Carrier (ETC) in order to receive Lifeline support from the federal universal service fund, and for exemption from Washington Utilities and Transportation Commission (Commission) rules governing ETCs.

2 **PARTY REPRESENTATIVES.** Mitchell F. Brecher and Debra McGuire Mercer, Greenberg Traurig, LLP, Washington, D.C., represent TracFone. Richard A. Finnigan, attorney, Olympia, Washington, represents the Washington Independent Telephone Association (WITA). Gregory J. Trautman and Michael A. Fassio, Assistant Attorneys General, Olympia, Washington, represent the Commission's regulatory staff (Commission Staff or Staff).¹

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

- 3 **PROCEDURAL HISTORY.** On March 13, 2009, TracFone filed a petition with the Commission requesting designation as an ETC pursuant to section 214(e)(2) of the Communications Act of 1934, as amended (the Act),² and WAC 480-123-030. TracFone requested ETC designation for all of Washington State for the purpose of receiving low-income support from the federal universal service fund, including Lifeline support and Link Up support.³ TracFone subsequently submitted three amendments to its petition, revising the petition due to concerns raised by Commission staff and the Commissioners.⁴
- 4 The Commission considered TracFone's original and amended petition at its open meetings on November 25, 2009, February 25, 2010, and March 11, 2010. At the March 11 meeting, after considering written comments filed in the docket and hearing the comments and recommendations of Commission Staff and other interested persons, the Commission set the petition for hearing.
- 5 On April 23, 2010, TracFone and Commission Staff reached a settlement, filing the Settlement Agreement with the Commission, together with Attachments 1 and 2, which identify the terms of the agreement. On April 29, 2010, the settling parties filed the Joint Narrative Supporting Settlement Agreement.
- 6 On June 24, 2010, the Commission entered a final order, Order 03, adopting the Settlement Agreement on condition.

² State law authorizes the Commission to conduct proceedings to implement the Federal Telecommunications Act of 1996. RCW 80.36.610. Proceedings to designate ETCs are such proceedings.

³ Additionally, TracFone stated it did not seek to participate in the state low-income program known as the Washington Telephone Assistance Program (WTAP) pursuant to RCW 80.36.410-470.

⁴ The procedural history of TracFone's petition for designation is more fully described in Order 03 and is not repeated in this order.

- 7 On August 30, 2010, TracFone filed a Motion to Amend Order, requesting the Commission amend Order 03 to remove one of the requirements in Attachment 2 to the Settlement Agreement related to its offering of a subsidized version of its Straight Talk™ service to Lifeline customers.

MEMORANDUM

- 8 In our final order, Order 03, we approved the settlement with one condition, specifically adopting the conditions of the settlement, including those set forth in Attachments 1 and 2 to the settlement. In Attachment 2, Section 6 of the Settlement Agreement, the parties agreed to the following terms concerning Straight Talk service offerings:

TracFone must offer Washington customers a discounted version of its Straight Talk plans, as described in its petition and amendments to the petition, *within four months after the Commission approves its ETC application*. Within one year after the Commission approves TracFone's ETC application, Tracfone shall offer Washington customers a discounted version of its Straight Talk plans through retail locations in Washington. *At least 30 days prior to offering its discounted version of its Straight Talk plans to Lifeline customers*, TracFone must make a compliance filing for approval by the Commission containing the rates, terms and conditions of service that apply to the discounted Straight Talk Lifeline services offered by TracFone in Washington state and detailed procedures explaining how eligible customers may participate in its discounted Straight Talk Lifeline services.⁵

- 9 In its motion, TracFone states that the Order requires the Company to offer a Straight Talk Lifeline service by October 24, 2010 and to file terms and conditions for that service by September 24, 2010. TracFone requests the Commission remove this requirement in light of its recent offer to expand its Lifeline offerings. TracFone requests the Commission consider this matter at an open meeting, or grant an

⁵ (Emphasis added).

extension of time for all procedural dates related to the Straight Talk Lifeline requirement while the Commission considers the Company's motion.

- 10 While Order 03 adopts the terms of the Settlement Agreement and its attachments, a change to the requirements for offering Straight Talk service requires not only an amendment to Order 03, but a change to the underlying settlement agreement between the parties. In order to allow the parties sufficient time to discuss any change to the terms of the Settlement Agreement, the Commission finds it appropriate to suspend the deadlines relating to the Straight Talk service in Attachment 2, Section 6, adopted in Order 03. The Commission establishes a deadline of **5:00 p.m. on Thursday, September 30, 2010**, for the parties to submit a modified Settlement Agreement and supporting documentation, or to file comments on TracFone's motion if the parties cannot agree on an amended or modified Settlement Agreement. Until the parties present a modified Settlement Agreement or notify the Commission that the parties cannot agree on a modified agreement, the Commission will take no action on TracFone's Motion to Amend Order.

ORDER

THE COMMISSION ORDERS:

- 11 (1) The deadlines relating to Straight Talk Lifeline service offerings in Attachment 2, Section 6, to the Settlement Agreement, adopted in Order 03 in this proceeding, are suspended.
- 12 (2) By **5:00 p.m. on Thursday, September 30, 2010**, TracFone Wireless, Inc. and Commission Staff must submit a modified Settlement Agreement and supporting documentation or file comments on TracFone Wireless, Inc.'s Motion to Amend Order if the parties cannot agree on an amended or modified Settlement Agreement.

- 13 (3) The Commission retains jurisdiction over the subject matter and the parties to this proceeding.

DATED at Olympia, Washington, and effective September 3, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner