

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

In the Matter of the Petition of)	DOCKET UT-093012
)	
TRACFONE WIRELESS, INC.)	ORDER 05
)	
For Exemption from WAC 480-123-)	
030(1)(d)(f) and (g); and Designation as)	ORDER GRANTING JOINT
an Eligible Telecommunications Carrier)	MOTION AND APPROVING
for the Purpose of Receiving Lifeline)	REVISIONS TO SETTLEMENT
Support from the Federal Universal)	AGREEMENT
Service Fund)	
)	
.....)	

1 **SYNOPSIS.** *In this order, the Commission grants the Joint Motion of TracFone and Commission Staff and approves the proposed modifications to their settlement agreement subject to the parties filing a modified Settlement Agreement that includes the proposed modifications and the Commission’s modification in Order 03.*

I. INTRODUCTION

2 **NATURE OF PROCEEDING.** This proceeding concerns a petition by TracFone Wireless, Inc. (TracFone or the Company), for designation as an Eligible Telecommunications Carrier (ETC) to receive Lifeline support from the federal universal service fund, and for exemption from Washington Utilities and Transportation Commission (Commission) rules governing ETCs. In this proceeding, the Commission addressed for the first time an application for ETC designation of a resale-based wireless provider offering only pre-paid Lifeline services.

3 **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

4 **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

5 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.

6 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.

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.*

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 June 24, 2010, the Commission entered a final order, Order 03, adopting the Settlement Agreement on condition.
- 8 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.
- 9 On September 3, 2010, the Commission entered Order 04 in which it stated that 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. The Commission directed the parties to submit a modified Settlement Agreement and supporting documentation, or for Staff to file comments on TracFone's motion if the parties could not agree on an amended or modified Settlement Agreement, by September 30, 2010.
- 10 On September 28, 2010, TracFone and Commission Staff (collectively Joint Movants) filed a Joint Motion to Amend Settlement Agreement and Narrative in Support (Joint Motion). The Joint Movants did not submit a modified Settlement Agreement, but they agree on how to revise that Agreement and seek Commission approval of the proposed modifications.

II. PROPOSED MODIFICATION

- 11 Paragraph 6 of Attachment 2 to the Settlement Agreement provides that within four months of Commission approval of its ETC petition, TracFone must offer the discounted versions of the Straight Talk™ plans addressed in its fourth amendment to its application, and after one year, TracFone must offer these discounted plans in retail locations. That paragraph further states that TracFone must make a compliance filing with the Commission concerning its Straight Talk™ offering and must obtain Commission approval before offering the service.
- 12 TracFone and Staff propose to delete paragraph 6 in its entirety and replace it with a new paragraph. The revised paragraph 6 requires TracFone to offer the following three options for Lifeline service:

Table 1 – SafeLink Wireless® Plan Options					
	Free Monthly Minutes Included in Plan	Unused Minutes Carryover Each Month	Text Message Charge*	Free International Long Distance	Voicemail Caller ID Call Waiting
Plan 1	68 in all states (80 in MA)	Yes	3 Texts/1 Minute	Yes	Yes
Plan 2	125	Yes	1 Text/1 Minute	No	Yes
Plan 3	250	No**	1 Text/1 Minute	No	Yes

*These text messaging rates will apply even if a different text messaging rate is stated on an airtime card. **Phone will reset to 250 minutes each month when the monthly minutes are delivered and all unused minutes, including purchased airtime minutes and free monthly minutes from the previous month, will be lost.

13 TracFone would be prohibited from eliminating these plans but would be able to change them in accordance with Condition No. 3 to Attachment 2 of the Settlement Agreement. Customers would be permitted to switch from one plan to another, and change requests received by the 25th day of the month would take effect at the beginning of the following month.⁵

14 TracFone and Staff assert that the requirement in the Settlement Agreement for TracFone to offer Straight Talk™ service is no longer necessary because the Company is expanding and improving the calling options available for Lifeline customers.⁶ The Joint Movants represent that this is the only change to the Settlement Agreement and that the change is beneficial to customers and consistent with the public interest.⁷

⁵ Joint Motion, ¶ 3.

⁶ *Id.* ¶ 4.

⁷ *Id.* ¶ 6.

III. DISCUSSION

- 15 We agree with TracFone and Staff that the proposed modifications to paragraph 6 of Attachment 2 to the Settlement Agreement represent an improvement in the Company's Lifeline service plans. Indeed, in our prior order we found it disturbing that TracFone's offering "contain[ed] such a meager monthly airtime allotment given the potential revenues the Company will likely derive by tapping the federal universal service fund"⁸ The availability of additional plans with significantly larger amounts of local usage compares favorably with the services that other wireless ETC applicants intend to offer pursuant to applications that are currently pending before us in other proceedings and otherwise alleviates our concerns with TracFone's petition. Accordingly, we find that the proposed modifications are in the public interest and should be approved.
- 16 We note, however, that in Order 04, the Commission directed TracFone and Staff to submit a modified Settlement Agreement and supporting documentation, or for Staff to file comments on TracFone's motion if the parties could not agree on an amended or modified Settlement Agreement. The purpose of this requirement was, in part, to provide clarity of the obligations of TracFone in one document that could be referenced in future proceedings. The parties neither filed a modified Settlement Agreement nor provided any explanation of why they failed to do so.
- 17 We imposed that requirement for a reason, and we still find that reason valid. TracFone initially filed a motion to revise Order 03, which approved the Settlement Agreement but conditioned that approval on certain modifications to Condition 1 of Attachment 2 to the agreement.⁹ The Joint Motion, on the other hand, proposed both to modify Order 03 and to amend the Settlement Agreement and stated, "All other provisions of the Settlement Agreement remain intact."¹⁰ The Joint Motion, however, does not state whether the proposed amendment has any impact on the modified condition that the Commission required in Order 03. Our decision on the Joint

⁸ Order 03 ¶ 51.

⁹ *Id.*, ¶ 62.

¹⁰ Joint Motion, ¶ 6.

Motion assumes that there is no such impact, but we are not willing to rest on that assumption.

- 18 Accordingly, we continue to require the parties to comply with Order 04. Specifically, the Commission orders the Joint Movants to submit a modified Settlement Agreement that includes both the Commission-ordered modifications in Order 03 and the proposed modifications in the Joint Motion. The parties must submit the modified Settlement Agreement by October 29, 2010.

DATED at Olympia, Washington, and effective October 13, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner