

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UT-093012
	)	
TRACFONE WIRELESS, INC.	)	MODIFIED SETTLEMENT
	)	AGREEMENT
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	)	
_____	)	

**MODIFIED SETTLEMENT AGREEMENT<sup>1</sup>**

1           This Modified Settlement Agreement (“Agreement”) is entered into between TracFone Wireless, Inc. (“TracFone”) and the Staff of the Washington Utilities and Transportation Commission (“Staff”) (collectively the “Parties” or individually a “Party”).

**A. Background**

2           This docket involves a petition by TracFone requesting (1) designation as an eligible telecommunications carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030, and (2) exemption from subsections (d), (f), and (g) of WAC 480-123-030(1) (hereafter, “Petition”). TracFone seeks ETC designation in Washington for the purpose of receiving low income support from the federal Universal Service Fund, including Lifeline support and

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<sup>1</sup> This Modified Settlement Agreement was prepared by the Parties at the direction of the Commission for the purpose of documenting the effect of Order 03 and Order 05 on the conditions applicable to TracFone’s ETC designation.

Link Up support. TracFone does not seek to participate in the state Lifeline program or Washington Telephone Assistance Program (WTAP) (RCW 80.36.410-.470). TracFone seeks ETC designation for all of Washington State.

3 TracFone filed its petition on March 13, 2009 and amended its petition on July 10, 2009; October 26, 2009; November 5, 2009; and December 29, 2009. The Commission considered TracFone's petition at its open meetings on November 25, 2009; February 25, 2010; and March 11, 2010. At each open meeting, Staff recommended that the Commission approve the petition subject to conditions. At the March 11, 2010, open meeting the Commission set the matter for hearing.

4 The Commission conducted a prehearing conference on this matter on April 12, 2010 before Administrative Law Judge Ann Rendahl, at which time the Commission granted a motion to intervene by the Washington Independent Telecommunications Association ("WITA"). At the time of the prehearing conference, the Parties informed the Commission that a settlement had been reached, and a procedural schedule was established for the filing and consideration of the Settlement Agreement and supporting documents. On April 14, 2010, WITA filed a motion to withdraw its intervention in this docket, conditioned upon the filing of, and the Commission's approval of, this Settlement Agreement between TracFone and Staff.

**B. Nature of Agreement**

5 This Agreement is a settlement of all issues within the meaning of WAC 480-07-730. The Parties present this Agreement to the Commission for its approval as a compromise to resolve all issues arising from the Commission's review of TracFone's ETC application and request for rule exemption.

**C. Positions Are Not Conceded**

6 Subject to the terms of this Agreement, each of the Parties maintains the positions espoused throughout the proceeding. No Party necessarily accedes to any argument made by any other Party.

**D. Agreement Subject to Commission Approval**

7 The Parties understand and agree that this Agreement in no manner binds the Commission in ruling on the pending proceeding until such a time as the Commission approves the Agreement. This Agreement is expressly subject to Commission approval except for ¶ I (Support of the Agreement) below. The Parties agree that if the Commission approves the Agreement without material change, this docket will be concluded.

**E. Agreed Terms of Settlement**

8 The Parties agree that TracFone meets the federal requirements for ETC designation set forth in 47 U.S.C. § 214(e)(1), and that the Commission should approve TracFone's amended Petition requesting designation as an ETC pursuant to 47 U.S.C. § 214(e)(2), and an exemption from subsections (d), (f), (g) of WAC 480-123-030(1), subject to the conditions stated in Attachment 1 and Attachment 2 to this Agreement. Attachment 1 represents a restatement of conditions imposed on TracFone by the Federal Communications Commission and is the same as Attachment 1 to Staff's February 25, 2010, open meeting memorandum. Attachment 2 represents additional conditions developed by Staff. These conditions are revised from those in Attachment 2 of Staff's February 25, 2010, open meeting memorandum in order to address certain concerns raised by commissioners during the open meeting discussion.

**F. Effective Date**

9 This Agreement is effective upon Commission approval, without material change, of the Agreement. Notwithstanding the effective date of the Agreement as a whole, ¶ I below, which requires the Parties to support the Agreement, is effective as of the date the Agreement has been executed by both parties.

**G. Filing of the Agreement**

10 The Parties agree to use the following procedures to seek Commission approval of the Agreement. The Parties will file this Agreement no later than April 23, 2010. The Parties will file the required narrative supporting this Agreement (“Narrative”) no later than April 28, 2010. Staff will file this Agreement and the Narrative with the Commission on behalf of it and TracFone. The transmittal letter will recommend that the Commission accept the settlement as the resolution of all issues in the case.

**H. Agreement Approval**

11 The Parties understand the Commission has discretion, consistent with applicable law, to determine whether it will approve this Agreement. Pursuant to WAC 480-07-740(1), the Parties urge the Commission to approve the Agreement.

**I. Support of the Agreement**

12 The Parties agree to use their best efforts to support the Agreement as a settlement of all contested issues in the pending proceeding. If the Commission requests, the Parties will present witnesses in support of the Agreement at a Commission hearing and recommend that the Commission issue an order adopting this Agreement in its entirety as the appropriate resolution of this proceeding, and provide such other documentation that the Commission may require pursuant to WAC 480-07-740(2). No Party to this Agreement or their agents,

employees, consultants or attorneys will engage in any advocacy inconsistent with the Agreement or contrary to the Commission's prompt consideration of this Agreement. Nothing in this Agreement, however, requires any Party to support a material modification to this Agreement, if one is ordered by the Commission.

**J. Procedure if the Commission Provides Less than Full Approval**

13 If the Commission rejects this Agreement, the provisions of WAC 480-07-750(2)(a) shall apply. If the Commission accepts the Agreement subject to conditions not proposed herein, each Party reserves the right, upon written notice to the Commission and the other Parties within five (5) days of the Commission's Order, to state its rejection of the conditions and to withdraw from the Agreement. In such event, the objecting Party may request the prompt convening of a prehearing conference for purposes of establishing a procedural schedule for the completion of the case pursuant to WAC 480-07-750(2)(a).

**K. The Agreement as Precedent**

14 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty and delay. Nothing in this Agreement (or any testimony, presentation or briefing offered by the Parties to support the Agreement), shall be cited or construed as or deemed to be precedent by any Party to this Settlement with respect to any issue, principle, or interpretation or application of law and regulations, for any purpose or in connection with any proceeding before any court of law or any state or federal government regulatory body.

15 Because this Agreement represents a compromise position of the Parties, no conduct, statements or documents disclosed in the negotiation of the Agreement shall be admissible

as evidence in this or any other proceeding. This paragraph does not apply to non-privileged, publicly available documents.

**L. Entire Agreement**

16 The Parties acknowledge that this Agreement is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Agreement. This Agreement constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements, on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties.

**M. Integrated Agreement**

17 The Parties have negotiated this Agreement as an integrated document. Accordingly, the Parties request that the Commission approve this Agreement with no material changes.

**N. Manner of Execution**

18 This Agreement is considered executed when all Parties sign the Agreement. A designated and authorized representative may sign the Agreement on a Party's behalf. The Parties may execute this Agreement in counterparts, and as executed, all counterparts shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

**O. Advance Review of News Releases**

19 The Parties agree to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement. This right of advance review includes a reasonable opportunity to request

changes to the text of such announcements. However, no Party is required to make any change requested by the other party. The Parties agree to include in any news release or announcement a statement that Staff's recommendation to approve the Agreement is not binding on the Commission itself, unless the news release or announcement otherwise makes no reference to Staff.

DATED this 25 day of October, 2010

**TRACFONE WIRELESS, INC.**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
STAFF**

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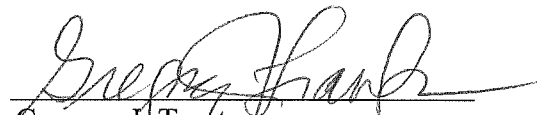
changes to the text of such announcements. However, no Party is required to make any change requested by the other party. The Parties agree to include in any news release or announcement a statement that Staff's recommendation to approve the Agreement is not binding on the Commission itself, unless the news release or announcement otherwise makes no reference to Staff.

DATED this 26<sup>th</sup> day of October, 2010

**TRACFONE WIRELESS, INC.**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
STAFF**

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## Attachment 1

### **Federal Communications Commission's Conditions on TracFone Forbearance from the Facilities Requirement for ETC Designation for Lifeline Support Only**

1. TracFone must provide its lifeline customers with access to 911 and enhanced 911 (E911) access immediately upon activation of service, and continue to provide access to 911 and E911 regardless of activation status and availability of prepaid minutes.
2. TracFone must provide its Lifeline customers with E911-compliant handsets and must replace any non-compliant handset of an existing customer that obtains Lifeline-supported service, at no charge to the customer.
3. TracFone must comply with conditions 1 and 2 as of the date it provides Lifeline service.
4. TracFone must request a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service. If, within 90 days of TracFone's request for such certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements.
5. TracFone must require its Lifeline customers to self-certify under penalty of perjury at time of service activation and annually thereafter that they are the head of household and the household receive Lifeline-supported service only from TracFone. TracFone must deal directly with the customer to certify and verify the customer's Lifeline eligibility. TracFone must have direct contact with the customer, whether by telephone, fax, Internet, in-person consultation or otherwise, when establishing initial and continued eligibility.
6. TracFone must track its Lifeline customer's primary residential address and establish safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.

#### References:

*In the Matter of Federal-State Joint Board on Universal Service and Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214 (e) (1) (A) and 47 CFR § 54.201 (i), Order, CC Docket No. 96-45. FCC 05-165 (Released September 8, 2005).*

*In the Matter of Federal-State Joint Board on Universal Service, et al., Order, CC Docket No. 96-45. FCC 09-17 (Released March 5, 2009).*

## Attachment 2

### Washington State Conditions on TracFone Designation as an Eligible Telecommunications Carrier

1. TracFone's designation as an Eligible Telecommunications Carrier (ETC) shall be for an interim period of one year from the effective date of the Commission's Order approving such designation, subject to Commission review. Before the end of one year after the effective date of the Order, TracFone may seek to renew its designation pursuant to WAC 480-123-030 through -040. TracFone's interim designation shall continue until the Commission's decision on designation.<sup>2</sup>
2. Within 30 days of approval of its ETC designation in Washington and prior to offering Lifeline services, TracFone must make a compliance filing for approval by the Commission containing the following:
  - a. TracFone's Lifeline rate plans, terms and conditions. The rates, terms and conditions shall include all provisions that apply to the Lifeline services offered by TracFone in Washington state and detailed procedures explaining how customers can participate in a particular Lifeline plan.
  - b. TracFone's proposed language to be used in all advertising of Lifeline services and on its websites. The language shall include information directing customers to the Washington State Office of the Attorney General for complaints regarding any Lifeline service issues.
  - c. TracFone's Lifeline Customer Application Form.

Commission Staff shall review TracFone's compliance filing and recommend to the Commission whether it should be approved or rejected within ten business days. TracFone shall not offer Lifeline services until the Commission has approved its compliance filing.

3. TracFone shall file with the Commission any future changes to its rates, terms, or conditions at least one day prior to the effective date of the change.
4. The information on TracFone's rates, terms and conditions shall be provided in a welcome package sent to Lifeline customers after enrollment in TracFone's Lifeline program, as well as at TracFone's official Lifeline websites.
5. TracFone shall also provide Lifeline customers with the choice of all other rate plans available to regular customers.

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<sup>2</sup> Modified at the direction of the Commission pursuant to Order 03, ¶62.

6. TracFone will offer Washington customers Lifeline service consisting of the three options listed in Table 1 below. During this interim period (i.e., the time until the Commission issues an order recertifying TracFone’s ETC designation for Lifeline services), the following conditions will apply to the plans:
1. Plan 1 and Plan 2 will be offered throughout the interim period. TracFone will have the ability to change these plans, in accordance with Condition No. 3 to Attachment 2 of the Settlement Agreement, but must not eliminate these plans.
  2. Plan 3 must be offered throughout the interim period. TracFone must offer a minimum of 250 minutes. The company may invoke Condition No. 3 to Attachment 2 of the Settlement Agreement only for the purpose of increasing the number of minutes in this plan.

Customers may switch from one SafeLink® plan to another SafeLink® plan by contacting Customer Care. A change in plan requested by the 25<sup>th</sup> day of a month will take effect at the beginning of the next month.<sup>3</sup>

Table 1 – SafeLink Wireless® Plan Options					
	<b>Free Monthly Minutes Included in Plan</b>	<b>Unused Minutes Carryover Each Month</b>	<b>Text Message Charge*</b>	<b>Free International Long Distance</b>	<b>Voicemail Caller ID Call Waiting</b>
<b>Plan 1</b>	68 in all states (80 in MA)	Yes	3 Texts/1 Minute	Yes	Yes
<b>Plan 2</b>	125	Yes	1 Text/1 Minute	No	Yes
<b>Plan 3</b>	250	No**	1 Text/1 Minute	No	Yes
<p>*These text messaging rates will apply even if a different text messaging rate is stated on an airtime card.</p> <p>**Phone will reset to 250 minutes each month when the monthly minutes are delivered and all unused minutes, including purchased airtime minutes and free</p>					

<sup>3</sup> Modified pursuant to the Parties’ Joint Motion to Modify Settlement Agreement, approved by the Commission in Order 05.

monthly minutes from the previous month, will be lost.

7. TracFone shall deactivate a SafeLink Wireless account if the customer has no usage for 60 consecutive days. No fewer than eight business days before deactivation, TracFone shall send the customer a written notice by mail about the potential deactivation and ways to avoid unwanted deactivation. The customer shall have a 30 day grace period from the deactivation date to reactivate the SafeLink Wireless account and restore the minutes accrued during the 60 day non-usage period and the 30 day grace period.
8. On a quarterly basis beginning with the quarter ending on June 30, 2010, TracFone shall provide the number of Lifeline customers by service plan (SafeLink, Straight Talk Unlimited and Straight Talk All You Need) that it enrolls each month. TracFone shall also report the number of deactivated Lifeline customers each month by service plan and the reasons for deactivation (e.g., no usage for 60 consecutive days, annual verification unsuccessful, or voluntary exit). Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter, beginning with the quarter ending on June 30, 2010.
9. TracFone shall respond within 30 days to Commission Staff's information requests on TracFone's Lifeline operations, including but not limited to Lifeline customers' usage patterns and Lifeline customer records.
10. TracFone shall cooperate with the Commission and the Department of Social and Health Services (DSHS) to work out a procedure to verify TracFone Lifeline customers' eligibility.
11. TracFone must modify its Lifeline services in Washington so that airtime minutes are not deducted for calls to customer care made from the customer's handset by dialing 611. TracFone shall explicitly state the policy of free 611 calls in its Lifeline service agreements. TracFone may require the customer to call the toll-free customer care number from another phone if necessary to resolve technical issues related to the handset or its programming.
12. By March 31 of each year, TracFone shall file with the Commission its complete Lifeline customer records of the prior calendar year. The customer records are subject to review of the Commission and DSHS. The records must have all the necessary information and be in an electronic format required by DSHS. After the Commission and DSHS notify TracFone of the results of the review, TracFone must take appropriate measures to either correct the customer records or stop providing services to ineligible customers and report the resolutions to the agencies within 60 days of the notice.

13. TracFone shall provide the Commission a copy of its annual Lifeline Verification survey results that it files with the Universal Service Administration Company (USAC) by August 31 of each year.
14. TracFone shall file with the Commission, by March 31 of each year, a report on the number of complaints, categorized by the different nature of complaints, that it received from Washington Lifeline customers during the prior calendar year (e.g., billing disputes and service quality complaints). This report shall include complaints filed with TracFone, the Commission's Consumer Protection and Communications Section, the Washington State Office of the Attorney General, and the Federal Communications Commission (FCC). The Commission reserves the rights to revoke TracFone's ETC designation if TracFone fails to provide reasonable quality of service.
15. TracFone shall cooperate with the Washington State Enhanced 911 Program (E911) and all Public Safety Answering Points on E911 issues and shall, upon request, designate a representative to serve as a member or alternate member of the Washington State E911 Advisory Committee or its Communications Sub-committee.
16. TracFone shall participate in the Washington State E911 Program's "What's Your Location" public information campaign if the E911 Program requests the participation of wireless carriers.
17. TracFone shall collaborate with the Washington State E911 Program to test the compatibility of its handsets with the new Emergency Service Information Network in Washington, including supplying handsets representative of TracFone's proprietary software and technical assistance should call delivery discrepancies be discovered.
18. TracFone shall comply with rules on cessation of business as specified in WAC 480-120-083.
  - a. Prior to cessation of business, TracFone shall make arrangements with its underlying carriers to provide minutes already sold to customers under the same terms and conditions it has with the customers, or provide refunds to the existing customers.
  - b. TracFone shall provide written notice to the following persons at least 30 days in advance of cessation of service:
    - i. The Commission;
    - ii. The state 911 program;
    - iii. Each of its customers;
    - iv. The national number administrator.
  - c. The notice to the Commission and the state 911 program must include the same information required by WAC 480-120-083 (3).

- d. The notice to the customers must include the same information required by WAC 480-120-083 (4).
  - e. The notice to the national number administrator must include the same information required by WAC 480-120-083 (7).
  - f. TracFone shall file with the Commission at least 30 days in advance of its cessation of business and request the relinquishment of its ETC designation in Washington.
19. TracFone shall collect and maintain necessary records and documentation to ensure its compliance with the applicable FCC and Commission requirements, including existing requirements and any future modifications. The records and documentation shall be provided to Commission staff upon request.
20. TracFone shall cooperate with Commission staff on phone number conservation issues and shall comply with 47 C.F.R. §52.
21. TracFone shall comply with all applicable federal and Washington state statutes and regulations.