

Agenda Date: November 25, 2009
Item Number: A3

Docket: UT-093012
Company Name: TracFone Wireless, Inc.

Staff: Jing Liu, Regulatory Analyst
Tim Zawislak, Regulatory Analyst
William Weinman, Assistant Director - Telecommunications

Recommendation

Issue an order:

- (1) Granting the petition of TracFone Wireless, Inc., for an exemption from Washington Administrative Code 480-123-030 (1)(d), (f) and (g); and
- (2) Designating TracFone Wireless, Inc., as an Eligible Telecommunications Carrier for the limited purpose of receiving Lifeline support (Tier 1 through Tier 3) from the federal universal service fund, subject to the conditions specified in Attachments 1 and 2 to this memo.

I. Background

On March 13, 2009, TracFone Wireless Inc. (TracFone or the company) filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) requesting 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. TracFone seeks ETC designation in Washington for the purpose of receiving low-income support from the federal universal service fund, including Lifeline support and Link up support. Lifeline support subsidizes eligible low-income households' monthly charges for basic telephone services while Link Up support subsidizes nonrecurring charges for service activation. TracFone does not seek to participate in the state Lifeline program, Washington Telephone Assistance Program (WTAP). TracFone seeks ETC designation for the entire Washington state. TracFone states that it resells wireless mobile phone service from AT&T Mobility, Inland Cellular, T-Mobile, U.S. Cellular and Verizon Wireless. It provided a list of zip codes in Washington where its services are available. It will be able to provide service in a majority of the zip codes in Washington. The company proposes to provide the subsidized service under its special rate plan, "SafeLink."

On July 10, 2009, the company filed an amendment to withdraw its request for Link Up support. It also sought exemption from WAC 480-123-030(d), (f) and (g), which require the company to provide a substantive investment plan, a service area map, and emergency back-up power supplies, respectively.

On October 26, 2009, the company filed a second amendment to correct its previous statement about its Lifeline service area. The company clarifies that it only offers Lifeline service in areas served by AT&T Mobility and T-Mobile; it will expand its Lifeline service area to include areas served by Verizon Wireless beginning April 1, 2010.

On November 5, 2009, the company filed a third amendment to clarify the options a SafeLink customer has for purchasing additional minutes. The low-value calling cards (\$3, \$5 and \$10 value) will not be offered to the company's Lifeline customers, as originally proposed.

TracFone is incorporated under the laws of the State of Delaware and is headquartered in Miami, Florida. It is a Commercial Mobile Radio Service reseller providing service throughout the United States. TracFone has more than eleven million customers nationwide. It has been providing service in Washington for 10 years. It was designated by the Federal Communications Commission (FCC) as an ETC to receive federal Lifeline support in 11 federal default states,¹ subject to conditions (Please see Attachment 1, FCC Forbearance Conditions).² TracFone has also been granted ETC status by 11 state commissions.³ Two state commissions have rejected TracFone's ETC petition. Alaska rejected TracFone's petition after finding it deficient. South Carolina rejected it because TracFone does not contribute to the state universal service fund.

The commission has jurisdiction over ETC petitions. Section 214 (e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal universal service funds.⁴ By rule, WAC 480-123-040, the UTC has the authority to approve petitions from carriers requesting ETC designation.

II. Discussion

Staff reviewed TracFone's eligibility for ETC designation and the potential consumer benefits and costs. Under 47 U.S.C. §214(e)(2), state commissions must determine the designation of a competitive ETC based on two considerations:

- (1) The applicant should meet the requirements of 47 U.S.C. §214(e)(1).
- (2) The designation should be consistent with the public interest, convenience, and necessity.

Staff finds that TracFone meets the technical qualifications under 47 U.S.C. §214(e)(1), and that the ETC designation will positively benefit low-income consumers. Staff recommends additional conditions to ensure the company will provide Lifeline services in a manner consistent with the public interest, convenience, and necessity.

The commission has the authority to impose conditions on TracFone's ETC designation. The Act provides that state designation of ETCs must be consistent with the public interest, convenience and necessity. The FCC also allows state commissions that exercise jurisdiction over ETC designations to impose other requirements consistent with federal law to ensure that supported

¹Federal default states refer to states that do not assert jurisdiction on designation of wireless ETCs. FCC designated TracFone as an ETC in Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee and Virginia.

²*In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, Order, CC Docket No.96-45. FCC 08-100 (Released April 11, 2008). (FCC TracFone ETC Designation Order)

³As of November 3, 2009, states that have designated TracFone as an ETC include Florida, Georgia, Illinois, Maryland, Michigan, Missouri, New Jersey, Ohio, Texas, West Virginia and Wisconsin.

⁴47 U.S.C. §214(e)(2). See also 47 C.F.R. §54.201(d).

services are offered in a manner that protects consumers.⁵ TracFone's SafeLink program has not been offered in Washington in the past. Staff recommends additional conditions be imposed on TracFone to ensure that the company will fulfill its commitments to provide quality service to eligible households. The FCC imposed conditions on the company when it granted TracFone forbearance from the "own-facility" requirements. The FCC required these conditions on TracFone in a number of states where the FCC was the authority granting the company ETC status. Most of the other state commissions granted TracFone's ETC designation with conditions.

Staff's recommended conditions are necessary for the commission to retain oversight of the company's Lifeline program. All wireless ETCs in Washington submit annual filings with the commission. During the annual review, staff has requested information on their Lifeline programs. The commission has the authority to revoke certification of a company's ETC status if they are not in compliance with federal and state requirements. However, the current rule does not require TracFone to come before the commission to seek annual re-certification because it does not receive federal high-cost funds. Without additional conditions, the commission will not be able to monitor the company's Lifeline service to ensure that it meets the public interest standard.

The following sub-sections A and B discuss the company's technical qualifications and public interest considerations, respectively.

A. TracFone's Technical Qualifications for Eligible Telecommunications Carrier Designation

1. Federal Requirements

Federal code 47 U.S.C. §214 (e)(1) specifies two qualifications for a common carrier to become eligible to receive universal service support throughout the designated service area. The carrier must:

- (A) offer the services that are supported by federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefore using media of general distribution.

TracFone is a resale-based wireless phone provider that does not own any physical network facilities. The company petitioned the FCC for forbearance on qualification (A), the "own-facility" requirement. The FCC concurred that the facility requirement is mainly for carriers applying for high-cost support from the universal service fund. Because TracFone only seeks support for low-income households, the facility requirement is not necessary. Furthermore, because TracFone's underlying carriers do not pass on Lifeline and Link Up credits to TracFone in their wholesale price, there is no jeopardy of double recovery for the universal service fund. Based on those grounds, FCC conditionally granted TracFone forbearance from the "own-

⁵*In the Matter of Federal-State Joint Board Universal Service*, Report and Order, CC Docket No. 96-45. FCC 05-46 (Released March 17, 2005), ¶30.

facility” requirement in 47 U.S.C. §214(e)(1) in 2005.⁶ Based on 47 U.S.C. §160(e), a state commission may not continue to apply or enforce any provision of the Telecommunication Act that the FCC has determined to forbear from applying under 47 U.S.C. §160(a). Therefore, TracFone is not required to use its own facilities to be qualified as an ETC for receiving federal Lifeline support.

TracFone demonstrated in its petition that it is capable of delivering all services supported by federal universal service support mechanisms including access to basic 911 and Enhanced 911 (E911).⁷ Because TracFone’s Lifeline service is prepaid, there is no need for the company to offer a toll limitation feature for qualified customers.

TracFone is also committed to providing adequate advertisement through various types of media (print, internet, radio, television, etc.) as well as through its arrangement with retail outlets frequented by lower income consumers. TracFone has a large customer base nationwide. Staff is convinced that the company has prior marketing experiences to promote its SafeLink program. After ETC designation, the company will have strong market incentives to continue to do so.

2. Washington State Requirements

TracFone satisfies all but three requirements of WAC 480-123-030. Given the FCC’s 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 the subsequent modifications, as listed in Attachment 1.

TracFone requests an exemption from WAC 480-123-030 (1)(d), (f) and (g), which 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. Staff recommends the commission grant the exemption because the company is a pure wireless service reseller that seeks only low-income support. These three requirements are only relevant to high-cost fund recipients who have investment obligations. TracFone does not have agreement from its underlying carriers to disclose the specific network information, nor can it control the underlying carriers’ network engineering.

B. Public Interest Considerations

The federal rule requires a public interest analysis for a state to designate a competitive ETC. The FCC suggests that the analysis includes an examination of the benefits of increased consumer choice; the impact of the designation on the universal service fund, and the unique advantages and disadvantages of the competitors’ service offering.⁸ Staff’s analysis is as follows:

1. TracFone’s Service Offering and Consumer Benefits

⁶*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). (FCC TracFone Forbearance Order).

⁷UT-093012 TracFone Petition (March 12, 2009), pp. 9-14.

⁸*In the Matter of Federal-State Joint Board Universal Service*, Report and Order, CC Docket No. 96-45. FCC 05-46 (Released March 17, 2005), ¶18.

The purpose of the federal low-income support is to make telephone services affordable for low-income households. Telephone service has strong positive externalities at a societal level. It is valuable to low-income households in helping them obtain employment opportunities, stay in touch with social services, and deal with everyday contingencies related to safety and convenience. This welfare benefit is especially important in today's troubled economy.

Unfortunately, more than a decade after the implementation of the federal Lifeline and Link Up programs, the participation rate of eligible customers in the Lifeline program is still very low. Based on the FCC's 2004 estimate, close to 20 million households in the U.S. qualify for Lifeline subsidy, but the nationwide participation rate is only 33.7 percent (21.2 percent for Washington).⁹ The Washington Department of Social and Health Services (DSHS) reported that the WTAP participation rate dropped from 24.6 percent in 2007 to 17.8 percent in 2008. During the 2008 fiscal year, 118,486 of the 666,445 eligible households participated in WTAP.¹⁰ Even adding approximately 14,000 households that subscribe to wireless Lifeline plans, the participation rate is only 20 percent in the state. Evidently, either more outreach efforts are needed to promote Lifeline services among eligible low-income households in the state, or the current Lifeline plans do not appeal to a large portion of the eligible customers.

TracFone's SafeLink program is distinctly different from the existing ETCs' programs, which may make it more appealing to some eligible participants. The program includes a free new cell phone and a specified amount of free minutes to the customers. TracFone commits that it will exchange a defective phone for customers within one year from the activation date of the service. TracFone pays for two-way shipping fees for this handset exchange. TracFone will provide 65 minutes of airtime at no charge each month to its SafeLink customers in Washington. The minutes will be automatically loaded on the customer's handset each month as long as the customer turns the handset on during the first five days of the month. Unused minutes will automatically roll over to the next month and will not expire as long as the customer remains an active customer. TracFone's handsets are equipped with proprietary software to show minute usage balances on the handset screen. When the customer has 10 minutes left for the account, the handset will emit an audible beep as an alert of "10 minutes of remaining airtime" when the customer makes or receives a phone call. Even when the customer runs out of minutes, he/she will still be able to make 911 calls.

SafeLink customers can purchase additional minutes at the rate of \$0.20 per minute. The calling card starts at a \$19.99 value (100 minutes). The additional minutes purchased by SafeLink customers will not expire until 90 days after the customer's service year. SafeLink customers can also purchase TracFone's double-minute calling card to get more volume discount (however, the monthly 65 minutes cannot be doubled). SafeLink customers may purchase additional air minutes via the SafeLink website, by calling SafeLink telephone hotline, or in retail stores that sell TracFone air minutes cards.

⁹*In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No.03-109. FCC 04-87 (Released April 29, 2004), Table 1.A.

¹⁰Washington Telephone Assistance Program. Report to the Legislature (December 2008). Available at <http://www.dshs.wa.gov/pdf/ea/GovRel/Leg1208/WTAP2008LegReport.pdf>

Based on a recent survey research, low-income households move more frequently than regular customers and they put a higher value on mobility.¹¹ The study shows that an increasing number of low-income households adopt wireless phones even without subsidies; those low-income households who have both landline and wireless phones are shifting their usage towards their wireless phones. It suggests that subsidies for acquiring and using mobile phone services might be more beneficial to low-income households than subsidies for traditional landline phones. This is another factor that may make TracFone's SafeLink more appealing to eligible customers.

TracFone's pre-paid service also has several advantages over other conventional postpaid wireless phone plans.¹² TracFone requires no credit history check when a customer signs up for SafeLink service. Nor does it require an activation fee. The prepaid plan makes it easier for customers to control their usage because they pay upfront. TracFone handsets have the feature of showing usage balances. Customers can decide whether they want to purchase additional minutes.

Staff has concerns about TracFone's relatively high rate for additional minutes. The service TracFone offers should appeal to for low-usage customers but not so for high-usage customers. Low-usage customers can benefit from the service because they do not have to purchase a monthly plan for the minutes that they may not need; the unused minutes can be rolled over to next month and will not expire as long as they remain active SafeLink customers. However, TracFone's SafeLink will not be a good choice for high volume phone users. Costs for additional minutes add up quickly. For example, a customer has to pay \$160 per month for 865 minutes under the SafeLink plan.¹³ A high volume user will be much better off signing up for wireline Lifeline plan (\$8 per month for unlimited local calls) or other wireless Lifeline plans.

The FCC has not adopted any minimum local usage requirements, nor has it specified any ceiling for monthly or per-minute charges for Lifeline plans. The federal Lifeline program works similarly to a voucher system. Eligible customers should have the choice to shop for the telephone service plan that best fits their needs and apply the subsidy credits accordingly. Staff believes that consumers can make their own choices as long as they are well informed of the rates, terms and conditions TracFone offers. TracFone's experiences in other states show that the average minutes of use for its SafeLink customers is just slightly higher than 65 minutes per month.

Staff recommends three conditions on customer protection (Please see Conditions No.1-3 in Attachment 2). Although the commission does not regulate the rates, terms and conditions of wireless carriers, the commission should have some oversight over these aspects of wireless Lifeline plans to protect the interests of low-income households. The commission should reserve the authority to investigate the adequacy of the SafeLink discounts in the form of free minutes or

¹¹Hauge, Janice A., Chiang, Eric P. and Jamison, Mark A. (2009). Whose call is it? Targeting universal service programs to low-income households' telecommunications preferences. *Telecommunications Policy*, 33, pp. 129-145.

¹²In Washington, all four existing wireless ETCs offer Lifeline discounts to eligible customers. The minutes, terms and conditions of their plans vary. The monthly charges of the existing wireless Lifeline plans start from \$16.49. The credit history check requirement and minimum one-year contract may apply. Some wireless providers waive the entire activation fee; others provide a discounted activation fee.

¹³According to the Cellular Telecommunications and Internet Association's 2007 data, an average post-paid wireless phone customer uses 826 minutes per month.

otherwise. Consistent with 47 U.S.C. §214(e)(1)(B), the commission should also review and approve the company's language in its SafeLink advertisements to ensure full disclosure of its rates, terms and conditions, especially the costs of additional minutes. TracFone should also be required to make all its rate plans available to Lifeline customers.

2. Competitive Effects of Designating an Additional ETC

Designating TracFone as an ETC in Washington is consistent with the principle of competitive neutrality in advancing universal service. The FCC also requires that the universal service support mechanisms and rules should neither unfairly advantage nor disadvantage one provider over another, and that they should neither unfairly favor nor disfavor one technology over another.¹⁴

Staff believes that TracFone's offering will facilitate the Lifeline program outreach and benefit economically disadvantaged households in Washington. As discussed above, TracFone's SafeLink plan is substantially different from other existing Lifeline plans. It will promote the participation of low-income households in the federal Lifeline program. Designating TracFone as a Lifeline-only ETC has positive competitive effects on the market serving low-income households.

3. Impact on Federal Universal Service Fund

Staff evaluated whether designating a competitive ETC will impose additional burden on the federal universal service fund.¹⁵ The potential impact is not trivial. TracFone will be eligible for a subsidy of close to \$10.00 per line per month (Please see Attachment 3 for details). TracFone's low-income support receipt will depend on the number of customers that TracFone actually serves. Given the company's aggressive marketing among low-income population, it is likely to cause a great increase to the overall federal universal service fund. For example, in October, 2009, TracFone collected over \$23 million in the 18 states in which it provides SafeLink services, \$1.3 million per state per month on average. In other words, TracFone now has over 2.3 million Lifeline accounts, about 11 percent of all the Lifeline-eligible households nationwide.¹⁶ If TracFone were to serve 11 percent of Lifeline-eligible households in Washington, the company would receive about \$8.4 million annually for Washington.¹⁷

Staff weighs the costs and benefits of the designation decision. On the one hand, the federal low-income support is currently under-utilized. Designating TracFone as an ETC will expand the

¹⁴*In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No.96-45.FCC 05-46 (Released May 8, 1997), ¶47.

¹⁵In the past, low-income support accounts for only a small percent of the total federal universal service fund. In 2007, it disbursed \$823 million, or 11.8 percent of the total federal universal service fund. However, the 2008 disbursement will increase due to the expanded Lifeline participation.

¹⁶FCC's estimate for the number of Lifeline-eligible households nationwide for 2002 is 19.5 million. TracFone asserts that the FCC's latest estimate is about 21 million.

¹⁷The net impact may be somewhat less to the extent TracFone may take some Lifeline customers away from the existing ETCs and the support associated with those customers is simply ported from the previous Lifeline provider to TracFone. However, staff does not anticipate the number of migrating customers will significantly reduce the estimate for TracFone's Lifeline receipt.

participation rate in Washington. On the other hand, all users of interstate telecommunications services will share a heavier burden to support the federal universal service fund.¹⁸ Ultimately, staff bases the recommendation on the benefits to Washington residents. While there will be an increase in federal Lifeline support, staff concludes the benefits to low-income households outweigh any additional costs on federal USF. As the FCC stated in its TracFone Forbearance Order, “granting TracFone’s Petition will not have any effect on the number of persons eligible for lifeline support.”¹⁹ To the extent that all customers TracFone serves in its SafeLink program meet the eligibility criteria, the disbursement to TracFone is a legitimate use of the universal service fund. A number of other states have also concluded that designating TracFone as an ETC for Lifeline support is consistent with the universal service goal. Staff does have concerns about the potential fraud, waste and abuse of the federal fund, which will be addressed in the next section.

4. Verification of Customers’ Eligibility

The federal rules and FCC orders mandate a few safeguards requiring the company to properly verify customers’ eligibility when the customer first participates in the program as well as on an ongoing basis. As conditioned in the FCC Forbearance Order, TracFone must deal directly with the customer to verify the customer’s initial and continued eligibility, either by telephone, fax, Internet, in-person consultation or otherwise. TracFone must require a Lifeline applicant to sign a self-certification under penalty of perjury, stating that the customer meets the federal Lifeline eligibility standard and that he/she is the head of household and only receives Lifeline service from TracFone. TracFone must also track its Lifeline customer’s primary residential address and prohibit more than one supported TracFone service at each residential address. Consistent with the federal requirements, staff recommends two conditions to ensure the company implements proper verification procedure in Washington (Condition No.4-5 in Attachment 2).

The above conditions do not sufficiently guarantee accountability in TracFone’s administrative process in verifying customers’ eligibility. First, at the point of enrollment, the company relies on the applicant’s self-certification. It is not a sufficient mechanism. The company cannot tell whether the household subscribes to another Lifeline plan provided by a different carrier. To address this concern, staff recommends that the commission and DSHS jointly audit TracFone’s SafeLink customer records in Washington annually (Condition No.6 in Attachment 2). DSHS administered the WTAP program. It has the database of households eligible for state Lifeline support and the information whether the households already receive Lifeline support from a wireline telephone company. Staff recommends that TracFone should file with the commission its complete Lifeline customer records by March 31 of each year. The information should be in an electronic format compatible with DSHS’ database. It should contain necessary identification information of each SafeLink customer, including those who subscribe for a partial year. DSHS will compare the company’s list of eligible customers to DSHS’ database. After the commission and DSHS notify the company with audit results, the company must take appropriate measures to either correct the customer records or stop providing services to ineligible customers and report the resolutions to the commission within 60 days of the notice.

¹⁸Based on the latest projection, the universal service assessment factor will rise from 12.3 percent for the fourth quarter of 2009 to 14.2 percent for the first quarter of 2010.

¹⁹FCC TracFone Forbearance Order, ¶17.

Second, because TracFone's Lifeline service is pre-paid and the minutes can be rolled over to the next month, the company cannot necessarily tell whether the Lifeline customer temporarily stops using air minutes or the customer quits the TracFone's Lifeline program. When signing the enrollment form, customers must agree to notify the company if they no longer qualify for the Lifeline service, but they may neglect to do so for various reasons. To address this problem, TracFone designs its system in a way that the Lifeline customer has to have the handset turned on some time during the first five days of a month. Only then can the free air minutes be loaded to the customer's wireless phone card. When the air minutes are not used for 60 consecutive days, the account will be de-activated. Customers may contact TracFone to reactivate their accounts within the 12 month period from the initial enrollment or requalification date. In addition, each customer must re-qualify and re-enroll on an annual basis in order to continue to receive the SafeLink service. Otherwise, the handset will be de-activated and the customer will lose the phone number.

Furthermore, TracFone commits that it will comply with the federal requirement with regard to annual certification and verification of consumer qualification for Lifeline pursuant to 47 C.F.R. §54.410.²⁰ Since TracFone will not participate in WTAP, in its annual filing to Universal Service Administration Company (USAC), it should submit the annual *Lifeline Verification* survey results (rather than annual *Low Income Certification*). Specifically, TracFone must select a statistically valid random sample of their Lifeline consumers to verify their continued eligibility and provide the results of the sample to the USAC. Surveyed customers are required to send in a new self-certification form as well as Lifeline-qualifying public assistance cards if the eligibility is program-based or corroborating household income documentation if the eligibility is income-based. Staff recommends that when TracFone submits its annual filing with the USAC by August 31 of each year, it must provide a copy to the commission at the same time (Condition No.7 in Attachment 2). Once the company detects ineligible customers, it should immediately stop providing Lifeline discounts and should stop claiming federal support for the customer account.

To summarize, the company must implement the following procedures to ensure customer eligibility:

- **Initial Sign Up** (via website or 800 hotline with follow-up mail): The company requires customers to sign the self-certifying application form under penalty of perjury. If the customer's eligibility is income-based, the customer is required to provide proof of income via fax or mail. The company checks customers' name and social security number to prevent made-up names and to make sure the customer is not already receiving TracFone's SafeLink services.
- **Annual Verification Process pursuant to 47 C.F.R. §54.410** (via mail): The company selects a statistically valid random sample and surveys sampled customers to make sure they continue to be eligible. The company then provides the survey result to the USAC and the FCC with a copy to UTC.
- **Annual Verification Process pursuant to the FCC Forbearance Order** (via website or

²⁰ All ETCs must file *certification* or *verification* of Lifeline consumers' eligibility to USAC no later than August 31 of each year. ETCs in federal default states or state that have elected to follow the federal procedures must submit *Lifeline Verification* survey results to USAC; ETCs in non-federal default states must submit their annual *Low Income Certification* to USAC.

mail): SafeLink customers must re-qualify and re-enroll after 365 days of service in order to continue to receive SafeLink service. The company asks each customer to re-certify that he/she is the head of the household and the household is only receiving one Lifeline phone.²¹

- **Annual Report in Washington:** By March 31 of each year, the company must provide the commission with all Lifeline customer records in the past calendar year. DSHS will check the customer records with their database to make sure that all customers are eligible and that each households has only one Lifeline account.

5. Service Quality and Customer Protection

The commission does not regulate the service quality of wireless carriers in general. To the extent that the wireless carrier is a commission-designated ETC, however, the carrier has the obligation to provide reliable and reasonable service quality to its customers. TracFone asserts that all of its underlying wireless carriers provide reliable wireless mobile services and that its service quality is as reliable as that of any other wireless provider serving the Washington market. TracFone also commits in its petition that it will comply with the Cellular Telecommunications and Internet Association's (CITA) Consumer Code for Wireless Service in accordance with 47 C.F.R. §54.202(a)(3) and WAC 480-123-030(1)(h).

Staff has concerns about TracFone's service quality. The Company's prior consumer complaint record shows many customers received handsets programmed with the wrong zip code or handsets that did not work properly. As discussed earlier, TracFone commits to replace the faulty handsets at no additional charge to the consumers.

After TracFone's ETC designation, the commission should monitor the consumer complaints against TracFone. Staff recommends that TracFone should be required to file with the commission by March 31 of each year, a report on consumer complaints (Condition No.8 in Attachment 2). The commission should reserve the rights to revoke TracFone's ETC designation if TracFone fails to provide reasonable quality of service.

6. 911 Issue and Emergency Capacity

TracFone states that it will provide both 911 and E911 services. All handsets provided by TracFone will be 911 and E911-compatible. As one of the FCC conditions, TracFone must replace any non-compliant handsets for SafeLink customers with an E911-compliant handset, at no charge to the customer. TracFone must provide its lifeline customers with access to 911 and 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. A SafeLink customer can still call 911 even if there are no remaining minutes on the account.

The FCC Forbearance Order also provides that TracFone must obtain a certification from each Public Safety Access Point ("PSAP") where TracFone provides Lifeline service confirming that TracFone provides its customers with access to 911 and E911 service. On March 5, 2009, the FCC modified the condition: TracFone must request 911 certification from each PSAP within its

²¹TracFone petitioned to the FCC to modify this condition to verify only a selected sample of customers. The petition is still pending as of today.

Lifeline service area; however, if within 90 days of TracFone's request, 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 services within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements.²²

Staff is aware of the ongoing court case between TracFone and Washington State Department of Revenue (DoR) on 911 excise tax collection. DoR assessed TracFone the uncollected E-911 tax. TracFone filed a complaint in the Thurston County Superior Court, claiming that it does not have the obligation to collect and remit the 911 tax under RCW 82.14B.030(4). The case is now before the Washington State Supreme Court.²³ Staff does not believe the pending court case impairs TracFone's capability to provide 911 and E911 access. The future certifications from the PSAPs and TracFone's self-certifications on its E911 capability are sufficient for ETC designation purposes. In the future, if the court rules that TracFone must collect and remit 911 excise tax and if TracFone fails to comply with the order, then the commission should reserve the authority to re-examine TracFone's qualification as an ETC.

7. Cessation of Business

Staff has concerns about competitive ETCs' withdrawal from the market for various reasons, especially when the service is prepaid. Washington rule on cessation of telecommunications services (WAC 480-120-083) does not apply to wireless carriers. TracFone relies on wholesale contracts with other licensed wireless carriers to provide services, which presents additional risk of potential service termination if the company fails to renew the contracts in a timely manner.

For this reason, staff recommends that TracFone should be required to comply with WAC 480-120-083 (Condition No.9 in Attachment 2). The company must make appropriate arrangements to deliver the service already sold to customers and provide appropriate notifications at least 30 days in advance of partial or complete cessation of business in Washington.

8. Other Issues

Because this is the first time that the commission has considered an application for ETC designation of a resale-based wireless provider offering only pre-paid Lifeline services, staff recommends additional diligence in monitoring efforts. Staff recommends the following conditions (Condition Nos.10-13 in Attachment 2):

- TracFone must collect and maintain necessary records and documentation to ensure its compliance with all applicable FCC and commission requirements, including existing requirements and any future modifications. The records and documentation should be provided to the commission staff upon request.
- The commission reserves the right to conduct audits on TracFone's SafeLink program operation in Washington.
- The commission reserves the right to suspend or revoke TracFone's ETC designation

²² *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). (FCC TracFone Forbearance Modification Order).

²³ *TracFone Wireless, Inc. v. State of Washington Department of Revenue*. Washington State Supreme Court, Docket 82741-9. .

- through appropriate procedures.
- TracFone must cooperate with commission staff on phone number conservation issues and comply with 47 C.F.R. §52.

III. Conclusion

Based on the above analysis, Staff considers that TracFone's petition, along with its commitments to recommended conditions, meets the technical qualifications under the federal statute and state rules on ETC designation. TracFone's service offering fulfills a market niche that has not been fully served by existing ETCs in Washington. Although Staff has concerns with several aspects of TracFone's petition, the potential benefits for low-income households in Washington outweigh these concerns.

Staff recommends the commission issue an order (1) granting the exemption from Washington Administrative Code 480-123-030 (1)(d), (f) and (g); and (2) designating TracFone Wireless, Inc., as an Eligible Telecommunications Carrier for the limited purpose of receiving Lifeline support (Tier 1 through Tier 3) of the federal universal service fund, subject to the conditions specified in Attachments 1 and 2 to this memo.