

Agenda Date: March 27, 2014  
Item Number: A5

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

Staff: Jing Liu, Regulatory Analyst  
Tim Zawislak, Regulatory Analyst  
Roger Hahn, Regulatory Analyst  
William Weinman, Assistant Director – Telecommunications

## **Recommendation**

Renew the designation of TracFone Wireless, Inc., as an Eligible Telecommunications Carrier for the purpose of receiving Lifeline support from the federal Universal Service Fund in Washington and subject to the conditions in the attachment to this memo.

### **I. Background**

On March 13, 2009, TracFone Wireless, Inc. (TracFone or company) petitioned the Washington Utilities and Transportation Commission (UTC or commission) for designation as an Eligible Telecommunications Carrier (ETC) the purpose of receiving Low Income Support from the federal Universal Service Fund pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and WAC 480-123-030. On June 24, 2010, the commission issued the Order to designate TracFone as an ETC subject to the conditions.<sup>1</sup>

On June 24, 2011, TracFone filed a petition with the commission to renew designation as an ETC in accordance with the commission's Final Order Adopting Settlement Agreement, issued in this docket on June 24, 2010.<sup>2</sup> TracFone also seeks clarification regarding which programs qualify a consumer to receive Lifeline service.

TracFone utilizes AT&T Mobility, T-Mobile and Verizon Wireless as its underlying wireless service providers. It started its Lifeline operation in Washington in the third quarter of 2010. The company markets its three Lifeline plans under the brand name "SafeLink." It has over 43,000 Lifeline customers in Washington as of the end of 2013. The company asserted in its ETC renewal petition that it has complied with all conditions of the Settlement Agreement in the commission's ETC designation order.

### **II. Discussion**

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 Fund.<sup>3</sup> By rule, WAC 480-123-040, the commission has the authority to approve petitions from carriers requesting ETC designation. The commission's

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<sup>1</sup> TracFone requested to amend conditions and the commission approved the changes in Order 5 on October 13, 2010.

<sup>2</sup> UT-093012, Order 3, Appendix A.

<sup>3</sup> 47 U.S.C. § 214(e)(2). See also 47 C.F.R. § 54.201(c).

authority to grant or deny petitions for ETC designation includes the authority to impose conditions.<sup>4</sup>

Staff agrees that TracFone has complied with the commission's order and qualifies for ETC designation pursuant to 47 U.S.C. § 214(e)(2). It offers the services that are supported by federal universal service support mechanisms. It advertises the availability of such services and the charges using media of general distribution.

The commission imposed conditions on TracFone's interim ETC designation to ensure that the designation is consistent with the public interest. Staff believes that TracFone has complied with all conditions imposed by the commission in the 2010 ETC designation order.

Since 2012, the Federal Communications Commission (FCC) has instituted major rule changes in the federal Lifeline program to eliminate waste, fraud and abuse in the Lifeline program. The FCC has taken a series of events to ensure compliance with the FCC's rules, including the implementation of the FCC's Lifeline and Link Up Reform Order, Universal Service Administrative Company's in-depth data validation on ETCs' lifeline customer records, and the launch of National Lifeline Accountability Database. These actions appear to be working and have reduced the number of inappropriate disbursement of Lifeline benefits.

Based on these events, staff proposes a modified condition list in Attachment 1, as the revised conditions better reflect the rule changes at the federal level. The commission imposed the same conditions on Budget PrePay, Inc.'s ETC renewal.

TracFone has two pending issues with the FCC and the State of Washington Department of Revenue (DoR) but they do not change staff's evaluation that TracFone has complied with federal and state rules and conditions.

- The Notice of Apparent Liability For Forfeiture (NAL)

The FCC issued a NAL to TracFone on September 30, 2013.<sup>5</sup> The NAL alleged that TracFone violated Section 54.407, 54.409 and 54.410 of the FCC rules by seeking reimbursement from Lifeline support for 842 intra-company duplicate customer enrollments between September 2012 and February 2013. The FCC proposed a forfeiture of over \$4.5 million dollars. TracFone has filed its response to challenge the NAL findings. The issue is now pending at the FCC.

- Dispute on E911 tax payment with the Washington Department of Revenue

TracFone initiated a lawsuit against the DoR in 2010, arguing that the county and state E911 tax does not apply to prepaid wireless providers like TracFone. On October 28, 2010, the Supreme Court held that TracFone was responsible for paying E911 tax. Following the Supreme Court's decision, TracFone developed a plan to adjust the price of its products to include the E911 tax. It filed a second lawsuit against the DoR arguing

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<sup>4</sup> UT-093012, Order 03 (June 24, 2010), ¶ 78.

<sup>5</sup> *In the Matter of TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, File No.EB-IHD-13-0001066, FCC 13-133 (rel. September 30, 2013).

that no sales tax should be collected on the price adjustment for the E911 tax. In February 2011, the Court of Appeals of the State of Washington issued its opinion that 2013 legislation on point-of-sale collection of E911 tax has made the dispute moot and TracFone's appeal was dismissed.

### **Clarification on Customer Eligibility Criteria**

In the same ETC renewal petition, TracFone petitioned the commission to clarify the qualifying public assistance programs the company uses to enroll customers in its Lifeline program. TracFone was instructed to follow the Washington Telephone Assistance Program's (WTAP) customer eligibility criteria<sup>6</sup> and the federal income-based criteria. It pointed out that other ETCs such as AT&T use federal default eligibility criteria.

This issue is now also moot given the guideline in the FCC's 2012 Lifeline and Link Up Reform Order. The FCC now mandates that all states must utilize, at the minimum, the income and program criteria utilized by federal default states, as specified in 47 C.F.R. 54.409(a) and (b).<sup>7</sup> Since the federal rule change, TracFone has been using a combination of WTAP and federal default Lifeline eligibility criteria.

Given the federal requirement on uniform eligibility criteria, staff proposes Condition 1 in Attachment 1 to add clarity. This condition requires TracFone to use federal default criteria going forward. It also requires TracFone to grandfather all the existing customers who qualified based on WTAP-only eligible programs not on the federal eligibility list.

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<sup>6</sup> WTAP-qualifying assistance programs include:

- Temporary assistance for needy families (TANF)
- State family assistance (SFA)
- Pregnant women assistance (PWA)
- Aged, blind, or disabled (ABD) cash assistance
- Refugee assistance
- Food assistance
- State supplemental security income (SSI)
- Medical assistance, including medicare cost sharing programs
- Community options program entry system (COPEs)
- Chore services or
- Having completed using community service voice mail services and identified by the community agency as eligible for WTAP.

<sup>7</sup> *Lifeline and Link Up Reform Order*, ¶¶ 65-66. To qualify for federal Lifeline, a customer's income must be at or below 135% of the Federal Poverty guidelines, or the customer must participate in one of the following public assistance programs:

- (i) Medicaid;
- (ii) Supplemental Nutrition Assistance Program (formerly Food Stamps);
- (iii) Supplemental Security Income;
- (iv) Federal Public Housing Assistance (Section 8);
- (v) Low-Income Home Energy Assistance Program;
- (vi) National School Lunch Program's free lunch program; or
- (vii) Temporary Assistance for Needy Families.

### **III. Conclusion**

TracFone has complied with all federal and state statutes and rules on ETC designation as well as the conditions that the commission imposed in the 2010 ETC designation order. Staff believes the renewal of its ETC designation is consistent with public interest. The company will continue to use federal Lifeline support to offer affordable wireless services to low-income households.

Staff recommends the commission issue an order to renew the designation of TracFone Wireless, Inc., as an Eligible Telecommunications Carrier for the purpose of receiving Lifeline support from the federal Universal Service Fund in Washington and subject to the conditions in the attachment to this memo.

Attachment - 1