

April 30, 2014

VIA ELECTRONIC FILING

Mr. David Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: TracFone Wireless, Inc. Application for Renewal of Designation as an Eligible Telecommunications Carrier, Docket No. UT-093012

Dear Mr. Danner:

I am a shareholder in the law firm Greenberg Traurig, LLP, and have represented TracFone Wireless, Inc. (“TracFone”) in regulatory matters before the United States Federal Communications Commission (“FCC”) and various state commissions, including the Washington Utilities and Transportation Commission (“WUTC”). Several years ago, I represented TracFone in the proceeding before the WUTC which resulted in TracFone being designated as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (47 U.S.C. § 214(e)(2)).

On June 24, 2011, TracFone applied for renewal of its ETC designation. In a March 27, 2014 memorandum filed in this docket, the WUTC Staff recommended that the WUTC renew TracFone’s ETC designation subject to certain conditions. Those conditions are set forth in Attachment 1 to the WUTC Staff memorandum. TracFone agrees to and supports the conditions proposed by WUTC Staff. TracFone will comply with those conditions upon grant of its application, including the condition that TracFone will timely respond to inquiries from WUTC Staff. In the WUTC Staff’s memorandum, the Staff noted that the FCC had issued a notice of apparent liability (“NAL”) to TracFone in September 2013, but that the existence of the NAL did not impact the Staff’s recommendation that the WUTC should grant TracFone’s application for renewal of its ETC designation. It is my understanding that the WUTC has questions regarding the FCC’s issuance of the NAL to TracFone and the relevance of that notice, if any, to TracFone’s qualifications for renewal of its Washington ETC designation. By this letter, I am providing the WUTC with additional information regarding the content and status of the NAL.

On September 30, 2013, the FCC issued to TracFone a NAL for forfeiture for alleged violations of certain FCC rules involving the federal Lifeline program. Specifically, the FCC NAL alleged that TracFone enrolled 842 “intra-company” duplicates (multiple members of the same household had enrolled in TracFone’s Lifeline program). The FCC’s NAL was not based on any inquiry or investigation conducted by the FCC. Rather, the alleged violations were based solely on the results of In-depth Validations (“IDV”) conducted by the Universal Service Administrative Company (“USAC”).

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It is important that the WUTC understand that FCC NALs are not adjudications of guilt or determinations of wrongdoing. They are accusations which recipients have the opportunity to address in written responses. TracFone filed with the FCC its response to the FCC's NAL on December 4, 2013. In that response, TracFone denied wrongdoing and denied any violation of the FCC's rules. Moreover, it explained that of the 842 intra-company duplicates alleged by USAC and the FCC, 181 were in error. Those customers are not members of the same household. They are members of separate households, each qualified to receive Lifeline support. Those alleged intra-company duplicates comprise less than 3/100ths of 1 percent of the Lifeline customers reviewed in the IDV process – a minuscule amount and far below that of any other company which received a NAL.

Moreover, you should be aware that even this small number of alleged duplicates did not result in any benefit to TracFone and did not cause any loss of Universal Service Fund resources since all revenues paid to Lifeline providers as the result of duplicate enrollments are recaptured by USAC through the reimbursement process.

To date, no action has been taken by the FCC regarding the NAL issued to TracFone. Most NALs issued by the FCC do not result in adjudications. They either are settled by consent decree or are dismissed with no determinations ever made.

As you may be aware, TracFone has pioneered wireless no charge Lifeline programs. It was the first to propose such offerings to the FCC and was the first to request ETC designation in many states, including Washington. Of greater importance, TracFone has been at the forefront of efforts to reform the Lifeline program and to implement procedures which facilitate the detection and prevention of waste, fraud and abuse of Universal Service Fund resources. TracFone-proposed reforms which have been adopted include:

- Elimination of Link Up support (except for companies serving Tribal areas);
- Requiring providers to obtain applicants' date of birth and Social Security number (last four digits);
- De-enrollment following 60 days' non-usage;
- Annual re-certification of the Lifeline eligibility of all enrolled customers rather than re-certification of only a random sample of customers.

TracFone continues to propose Lifeline reforms and improvements. Pending TracFone proposals include a requirement that Lifeline providers not only "review" Lifeline eligibility documentation provided by applicants, but that they retain copies of such documentation and make such documentation available for audit by the FCC, state commissions and USAC; as well as a proposal to prohibit the in-person distribution of handsets associated with Lifeline-supported service. The practice of some companies of handing out phones from car trunks, tents, on street corners, etc. has created a negative perception of a very important federal support program.

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For all of these reasons, TracFone has been a leading provider of Lifeline service and its SafeLink Wireless[®] service has brought the security and convenience of mobile telecommunications to millions of low-income households in Washington and other states. Washington's residents have benefited from the availability of TracFone Lifeline service and that service should remain available to those who qualify for it.

If there are questions regarding the information contained herein, please contact me at your convenience.

Sincerely,



Mitchell F. Brecher