



circumstances underlying the Commission's grant of exemption from WAC 480-123-030(1)(d), (f), and (g) remain unchanged.

- 4 TracFone states that its service continues to advance the purposes of universal service set forth in 47 U.S.C. § 254. TracFone states that its designation as an ETC remains in the public interest because ETC service benefits low-income household in Washington.<sup>3</sup>
- 5 At the Commission's March 27, 2014, Open Meeting, Commission Staff (Staff) expressed its support of TracFone's application with certain new or revised conditions and the deletion of some previously imposed conditions. Staff believes that proposed condition #1 addresses future Lifeline eligibility standards in Washington, mooting the Company's previous request for clarification on this topic. On April 20, 2014, TracFone filed a letter with the Commission stating its agreement to these revised conditions on its ETC status, as enumerated in Appendix A.
- 6 Staff believes that TracFone has complied with all federal rules and state conditions to continue to be an ETC. According to Staff, because current federal rules strengthened the ETC's accountability in the Lifeline program, the Company will no longer need to seek separate annual ETC renewal from the Commission.
- 7 Staff notes that the FCC issued a Notice of Apparent Liability For Forfeiture (NAL) to TracFone on September 30, 2013, imposing a fine of over \$4.5 million for 842 intra-company duplicate customer enrollments.<sup>4</sup> In its April 20, 2014 letter, TracFone included an explanation of its position on this matter. Staff suggests that because there is no reasonable estimate as to when the FCC will resolve the NAL, the Commission should not wait on the result of the NAL to decide on TracFone's ETC renewal. This issue does not change Staff's evaluation of TracFone's ETC Renewal petition.

## DISCUSSION

- 8 Common carriers receiving designation as ETCs under 47 U.S.C. § 214 are eligible to receive subsidies from the federal Universal Service Fund. State utility commissions are responsible for designating common carriers as ETCs for the purpose of receiving such funds, and may impose conditions on a common carrier so designated. The Commission will approve applications from carriers requesting ETC designation if the application meets the requirements of WAC 480-123-030, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and the designation is in the public interest.<sup>5</sup>

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<sup>3</sup> TracFone Application to Renew at 16-19.

<sup>4</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).

<sup>5</sup> WAC 480-123-040.

- 9 The Commission agrees with Staff that the Company has demonstrated that it continues to meet the criteria for designation as an ETC set forth in Order 03, including offering all services supported by the federal universal service support mechanisms set forth in 47 U.S.C. § 254. Additionally, TracFone should continue to be exempt from WAC 480-123-030(1)(d),(f), and (g) because the Company is not a high cost fund recipient and because it relies on other carriers' facilities. TracFone has also demonstrated compliance with the 21 conditions set forth in the Settlement Agreement approved in Order 03.
- 10 The Commission also agrees with Staff that the amended conditions set forth in Appendix A to this order are appropriate, given the FCC's adoption of more stringent requirements for the federal Lifeline program.
- 11 The Commission concurs with Staff that the Company's ETC renewal application should not be delayed pending FCC resolution of the NAL. The Commission recognizes the importance of accurate customer eligibility records and we are concerned that the Company may have some issues with its current practices. However, the Commission will consider TracFone's renewal petition on the record now before us. We may choose to revisit the Company's ETC status once the FCC finalizes this matter.
- 12 The Commission agrees with Staff that the Company may continue to be designated as an ETC and is entitled to continued exemptions from WAC 480-123-030(1)(d),(f), and (g), subject to the amended conditions set forth in Appendix A to this order.

### FINDINGS AND CONCLUSIONS

- 13 (1) The Commission has jurisdiction over ETCs in Washington and the subject matter of this order under 47 U.S.C. § 214(e)(2), 47 C.F.R. 54.201(b)-(c) and WAC 480-123-040.
- 14 (2) TracFone Wireless, Inc. is a telecommunications company doing business in the state of Washington as an Eligible Telecommunications Carrier. TracFone has demonstrated that it continues to meet the requirements for designation as an ETC, subject to the amended conditions set out in Appendix A to this Order.
- 15 (3) TracFone Wireless, Inc.'s continued designation as an ETC will advance the purpose of universal service because TracFone will offer voice telephony services, which facilitate universal service.
- 16 (4) TracFone Wireless, Inc., has also demonstrated that its designation as an ETC is in the public interest because its services will benefit low-income customers.
- 17 (5) This matter came before the Commission at its regularly scheduled meeting on May 29, 2014.

**ORDER**

**THE COMMISSION ORDERS:**

- 18 (1) TracFone Wireless Inc.'s request for continued designation as an ETC in its designated service areas is hereby GRANTED, subject to the amended conditions set forth in Appendix A.
- 19 (2) TracFone Wireless Inc.'s request for continued exemption from WAC 480-123-030(1)(d),(f) and (g) is hereby GRANTED, subject to the amended conditions set forth in Appendix A.
- 20 (3) The Commission retains jurisdiction over this matter for purposes of effectuating this order.

DATED at Olympia, Washington, and effective May 29, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

JEFFREY D. GOLTZ, Commissioner

**APPENDIX A**

**Washington State Conditions on Designation of TracFone Wireless, Inc.  
as an Eligible Telecommunications Carrier**

1. TracFone Wireless, Inc.'s (TracFone or Company) shall utilize federal default eligibility criteria only, i.e., stop utilizing Washington Telephone Assistance Program's eligibility criteria that are not on the federal list, no later than July 1, 2014. All existing customers who enrolled in the Company's Lifeline plan prior to July 1, 2014 based on criteria other than programs on the federal default list must be grandfathered.
2. TracFone shall file with the Commission any future changes to its rates, terms, conditions or Lifeline customer application form at least one day prior to the effective date of the change.
3. The information on TracFone's rates, key terms and conditions, e.g., return policy, usage definition, refill methods, annual recertification requirement, and customer service contact, shall be provided in a package sent or given to Lifeline customers after enrollment in TracFone's Lifeline program, as well as at TracFone's official Lifeline website.
4. For the rate plans free of charge to customers, TracFone must offer at least one plan with a minimum of 250 minutes per month. The Company may invoke Condition No. 2 only for the purpose of increasing the number of minutes or enhancing the features in the Lifeline plan, but not decreasing the number of minutes.
5. TracFone shall deactivate a Lifeline account if the customer has no usage for 60 consecutive days pursuant to 47 C.F.R. § 54.407(c)(2). 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 Lifeline account by incurring "usage" as defined in 47 C.F.R. § 54.407(c)(2). When a customer reactivates the account, TracFone must deposit the minutes the customer is entitled to for the grace period.
6. On a quarterly basis, TracFone shall provide the number of Lifeline customers that it enrolls each month. TracFone shall also report the number of deactivated Lifeline customers each month by service plan and the by 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.

7. 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.
8. 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. TracFone shall maintain access to DSHS's online query database to verify the eligibility of Lifeline applicants who qualify based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income and Temporary Assistance for Needy Families. This condition shall be required until the national Lifeline eligibility database is fully functional.
9. TracFone must not deduct airtime minutes 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.
10. TracFone shall have DSHS audit its Washington Lifeline customers' eligibility (including program eligibility and duplication with other Lifeline providers) at least once a year. By January 31 of each year, TracFone shall provide DSHS with the complete record of its Washington Lifeline customers who qualify based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income and Temporary Assistance for Needy Families in the prior calendar year. The records must have all the necessary information and be in an electronic format required by DSHS. After DSHS notifies 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 Commission and DSHS within 60 days of the DSHS notice. This condition shall be required until the national database for Lifeline customer eligibility is fully functional.
11. TracFone shall provide the Commission a copy of its annual Lifeline Re-certification results within 30 days it files with the Universal Service Administration Company (USAC) each year.
12. 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). This report shall not include calls from customers with regard to general inquiries such as account balance, additional

purchases, service availability or technical support. The Commission reserves the right to revoke TracFone's ETC designation if TracFone fails to provide reasonable quality of service.

13. 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.
14. 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.
15. 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.

16. TracFone shall cooperate with Commission Staff on phone number conservation issues and shall comply with 47 C.F.R. § 52.
17. TracFone shall comply with all applicable federal and Washington state statutes and regulations, including E911 tax contributions.
18. TracFone shall file with the Commission of the results of any audits (including in-depth data validations) or investigations on the Company's Lifeline operation in any states or jurisdictions conducted by the FCC or USAC within 14 calendar days from the receipt of results. The Company must also notify the Commission of any ongoing investigation that has resulted in monetary or administrative penalty (e.g., suspension of Universal Service Fund reimbursement, suspension of Lifeline program operation) within 14 calendar days of the occurrence of such events. To the extent the Company deems the above information confidential, the Company may submit the notification on a confidential basis consistent with Commission rules.