

Agenda Date: May 29, 2014  
Item Number: A4

**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 Attachment 1 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) for 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 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 approximately 44,000 Lifeline customers in Washington as of the end of March 31, 2014. The company asserted in its ETC renewal petition that it has complied with all conditions in the commission's ETC designation order.

The matter was discussed at the commission's March 27, 2014 open meeting. Staff recommended the company's ETC renewal should be granted.<sup>3</sup> The commissioners decided to postpone the action.

### **II. Discussion**

Since March 27, 2014, staff has communicated with the company concerning compliance issues

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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> UT-093012, Staff Memo (March 27, 2014).

and the Notice of Apparent Liability (NAL) pending at the Federal Communications Commission (FCC). The company has responded to the two concerns:

a. Commitment to Comply with Modified Conditions

Staff and TracFone counsel had a conference call, discussing past practices and future compliance expectations. On April 30, 2014, TracFone filed a letter with the commission, committing that TracFone will timely respond to inquiries from staff.

b. The Notice of Apparent Liability For Forfeiture (NAL)

The FCC issued a NAL to TracFone on September 30, 2013, imposing a fine of over \$4.5 million dollar for 842 intra-company duplicate customer enrollments.<sup>4</sup> In the same April 30, 2014 letter filed with the commission, TracFone provided an explanation and status of the FCC's NAL assessment. The company stated that the number of customers in the complaint is "less than 3/100ths of 1 percent" of the company's customers. Since the issue is pending at the FCC and there is no reasonable estimate as for when it will come to a closure, staff recommends that the commission not wait on the result of the NAL to decide on TracFone's ETC renewal. Staff recommends the commission allows TracFone to continue to serve as a Lifeline provider, unless the FCC determines in the future that TracFone's violation of "one-Lifeline-per-household" rule based on NAL findings should lead to revocation of its ETC designation.

As stated in staff's March 27, 2014 memo, staff agrees that TracFone qualifies for ETC designation pursuant to 47 U.S.C. § 214(e)(2). The company has also demonstrated its willingness to abide by the revised conditions proposed by staff.

Because the FCC has mandated minimum federal eligibility criteria, TracFone's request for clarification regarding customer eligibility criteria is now moot. The commission does not need to take any action on the issue. Proposed condition #1 addresses the future Lifeline eligibility standard in Washington applicable to TracFone.

### **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 Attachment 1 to this memo.

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<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).