

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09A-393T

IN THE MATTER OF THE APPLICATION OF TRACFONE WIRELESS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO FOR THE LIMITED PURPOSE OF OFFERING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS

NOTICE OF WITHDRAWAL

TracFone Wireless, Inc. (“TracFone”) hereby withdraws its above-captioned pending application for designation as an Eligible Telecommunications Carrier (“ETC”). TracFone states the following as the basis for its withdrawal of its ETC application.¹

On June 1, 2009, TracFone applied to the Commission for designation as an ETC pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended.² By that application, TracFone sought Commission designation as an ETC for the limited purpose of providing its SafeLink Wireless® Lifeline service to low-income Colorado households. As a designated ETC in 24 states and the District of Columbia, TracFone is now providing SafeLink Wireless® Lifeline service to more than 2.5 million low-income households in those states. TracFone’s Lifeline customers receive free wireless telephone handsets and specified quantities of free wireless airtime each month. In Colorado, TracFone proposed to provide each SafeLink Wireless® customer with 83 minutes of airtime per month -- 15 minutes more than it provides in any other state. Importantly, the entire SafeLink Wireless® Lifeline benefit in Colorado would

¹ By this filing, TracFone withdraws its Motion to Hold Application for Designation as Eligible Telecommunications Carrier in Abeyance, or, in the Alternative, Notice of Withdrawal, filed December 21, 2009.

² 47 U.S.C. § 214(e)(2).

be funded by the federal Universal Service Fund and by TracFone. It would not cost Colorado's intrastate rate payers, its tax payers, the state treasury or any state fund a single dime.

TracFone had hoped that the Commission would expeditiously consider its application and that it would be able to offer this important federal benefit to qualified low-income Colorado households within a reasonable period. However, TracFone's application has now been pending for nearly seven months and there appears to be little prospect of favorable action any time soon.

The primary reason for this prolonged delay has been the intervention and outright opposition to TracFone's application by the Adams County E-911 Emergency Telephone Service Authority, the Arapahoe County E-911 Emergency Communications Service Authority, and the Jefferson County E-911 Emergency Communications Service Authority (collectively, the "E911 Authorities"). The E911 Authorities have intervened in this proceeding solely based on their allegation that TracFone does not pay the emergency telephone charge "contrary to Colorado Revised Statutes."³

This assertion that TracFone somehow is in violation of state law is remarkable and is indeed contradicted by the E911 Authorities themselves who stated in a pleading filed in this proceeding:

No court has ever determined whether C.R.S. 29-11-102 applies to prepaid wireless for TracFone's regular customers. It is a pure question of law whether C.R.S. 20011-100.5 et seq. applies to service providers and service users in the prepaid wireless arena.⁴

In other words, in one pleading filed in this docket, the E911 Authorities assert that TracFone is in violation of state law and that its application for designation as an ETC should be

³ See, e.g., E911 Authorities' Motion to Intervene, filed September 21, 2009, ¶ 10.

⁴ E911 Authorities' Response to TracFone Wireless, Inc.'s Motion to Set Aside Interim Order and Alternative Motion to Certify Interim Order as Immediately Appealable, filed November 23, 2009, at 3.

denied. In another pleading filed by the E911 Authorities in the very same docket, they candidly acknowledge (notwithstanding their prior assertion) that no court has ever concluded whether the state 911 fee law is applicable to TracFone or that it is in violation of that law. The inapplicability of Colorado's current E911 fee law to prepaid wireless service is further noted by the Colorado 9-1-1 Resource Center which notified the Federal Communications Commission ("FCC") on behalf of the State of Colorado as follows:

There is currently no mechanism in place in Colorado for collecting surcharges from individuals using pre-paid cell phone plans. Although these individuals use their pre-paid service to call 911, they are not contributing to the revenues used to defray the cost of providing 911 services.⁵

Importantly, that correspondence to the FCC from the Colorado 9-1-1 Resource Center was prepared by the 9-1-1 Resource Center at the request of the Commission and the Governor's Office. As such, it articulates the views of the Commission on whose behalf the report was prepared and filed with the FCC. Notwithstanding this public acknowledgement by the Commission through the 9-1-1 Resource Center that current Colorado law does not contain a statutory mechanism for collection of 911 fees from customers of prepaid wireless services, the Commission has permitted the E911 Authorities to continue for months to utilize Commission processes to advance their unsupported allegation that TracFone is in violation of state law and to delay completion of this proceeding and designation of TracFone as an ETC.

What has become apparent is that the question of 911 fees will remain at issue in this proceeding so long as the E911 Authorities remain intervenors, and so long as they elect to clutter the record with unsupported and contradictory allegations about state 911 fee law compliance. Not only are these disingenuous tactics of the E911 Authorities delaying resolution

⁵ Response of Colorado 9-1-1 Resource Center to the Federal Communications Commission, dated March 23, 2009.

of TracFone's ETC application, and postponing the date of availability of SafeLink Wireless® Lifeline service to Colorado's neediest households, they are imposing substantial burdens on Colorado's E911 fund. Moneys contributed by users of wireless services which could be used to deploy E911 in Colorado are instead being diverted by the E911 Authorities to finance its ongoing litigation against TracFone's ETC application. This continued waste of E911 funds inevitably will place pressure on the fund and may ultimately necessitate increases in E911 fees.

The PUC 911 Task Force whose members include the E911 Authorities' counsel, as well as other representatives of the E911 Authorities, is working with members of the wireless industry -- including TracFone -- to develop a legislative solution which will contain a mechanism for collecting E911 fees from all consumers of wireless services, including consumers of prepaid wireless services. TracFone is hopeful that those cooperative efforts will lead to enactment of such legislation which will result in collection of 911 fees from all users of wireless service in Colorado.

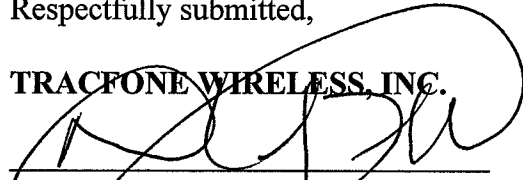
Therefore, rather than continue to contest the E911 Authorities in this ETC proceeding, TracFone prefers to work with the E911 Authorities and other interested stakeholders to formulate an appropriate E911 fee collection mechanism for prepaid wireless and to seek enactment of legislation containing such a mechanism.

TracFone plans to refile its ETC application with the Commission following enactment and implementation of such legislation. TracFone looks forward to providing low-income Colorado households with its SafeLink Wireless® Lifeline service once the matter of E911 collections from consumers of prepaid wireless service is resolved through appropriate legislation.

For the reasons described herein, TracFone hereby notifies the Commission, as well as the parties to this proceeding, that TracFone is withdrawing its application effective the date of this notice. Such withdrawal is without prejudice to resubmission of the ETC application at an appropriate time.

Respectfully submitted,

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December 22, 2009

CERTIFICATE OF SERVICE

This is to certify that I have duly served TracFone Wireless, Inc.'s Notice of Withdrawal electronically on all parties listed, this 22nd day of December, 2009, addressed as follows:

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