

Agenda Date: February 25, 2010
Item Number: A1

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

Staff: Jing Liu, Regulatory Analyst
Tim Zawislak, Regulatory Analyst
William Weinman, Assistant Director – Telecommunications
John Cupp, Regulatory Analyst

Recommendation

Issue an order:

- (1) Granting the petition of TracFone Wireless, Inc., for an exemption from Washington Administrative Code 480-123-030(1)(d), (f) and (g); and
- (2) Designating TracFone Wireless, Inc., as an Eligible Telecommunications Carrier for the limited purpose of receiving Lifeline support (Tiers 1 through 3) from the federal universal service fund, subject to the conditions set forth in Attachment 1 (Federal Communications Commission's Conditions) and Attachment 2 (Revised Washington Conditions) to this memorandum.

I. Background

On March 13, 2009, TracFone Wireless Inc. (TracFone or the company) filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) requesting designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030. TracFone seeks ETC designation in Washington for the sole purpose of receiving federal Lifeline support (Tiers 1 through 3 only). The company does not seek federal high cost funds or support from the Washington Telephone Assistance Program (RCW 80.36.410-.470). TracFone seeks ETC designation for all of Washington state. In the original petition, TracFone proposes to provide Lifeline service under its "SafeLink" program, which offers each qualified customer a free cell phone and 65 free minutes per month.

TracFone filed four amendments to its ETC petition. The first three amendments were filed before the November 25, 2009 open meeting. In its first amendment, the company withdrew its request for Link Up support. It only seeks federal Lifeline support (Tiers 1-3). It also sought an exemption from WAC 480-123-030(1)(d), (f) and (g), which require the company to provide a substantive investment plan, a service area map, and emergency back-up power supplies, respectively. The company's second amendment corrected its previous statement about its Lifeline service area. The company clarifies that it only offers Lifeline service in areas served by AT&T Mobility and T-Mobile; it will expand its Lifeline service area to include areas served by Verizon Wireless beginning April 1, 2010. The company's third amendment clarified the options a SafeLink customer has for purchasing additional minutes. The low-value calling cards (\$3, \$5 and \$10 value) will not be offered to the Company's Lifeline customers, as originally proposed.

This petition was first brought before the commission during its November 25, 2009, open meeting. Staff recommended then that the commission conditionally designate TracFone as an

ETC for the purpose of receiving federal Lifeline support. Requesting additional information prior to taking action on TracFone's petition, the commission took no action at the November 25, 2009, open meeting.

On December 29, 2009, TracFone filed a fourth amendment to its petition, revising its Lifeline offers. The company now proposes to reduce the rate for additional minutes from 20 cents per minute to 10 cents per minute for SafeLink customers. The company also proposes to provide discounts to two prepaid monthly plans under the "Straight Talk" trademark. TracFone seeks ETC designation in Washington for the sole purpose of receiving federal Lifeline support (Tiers 1 through 3 only).

TracFone has filed supplemental information in response to requests from the commissioners and staff since the November 25, 2009, open meeting. On January 28, 2010, the company filed a letter with the UTC stating that, other than the Washington State Enhanced 911 (E911) excise tax payment in dispute (pending before the Washington State Supreme Court), TracFone has no unresolved tax issues with the Washington State Department of Revenue. On February 5, 2010, TracFone filed a Washington Straight Talk Lifeline Process, describing the implementation process of the two Straight Talk options with the Lifeline discount.

In response to a request from staff, the Washington State E911 Program Office of the Washington Military Department filed comments on December 7, 2009. The E911 Program Office did not raise technological issues. It asked TracFone to cooperate and coordinate with them to ensure E911 functionality.

On February 18, 2010, the counsel for the Washington Independent Telephone Association filed a letter, informing the commission of two states' recent decisions to deny TracFone's ETC petitions and of TracFone's withdrawal of its petition in another state. The withdrawal and denials are discussed below. TracFone filed a response on February 19, 2010.

Staff also solicited comments from the the Public Counsel Section of the Attorney General's Office, the Department of Social and Health Services (DSHS) and the Department of Employment Security. Those agencies did not submit any comments.

As of February 15, 2010, TracFone has obtained ETC designation in 23 states and the District of Columbia.¹ TracFone withdrew the ETC petition in Colorado. Three state commissions rejected TracFone's ETC petitions.²

II. Discussion

¹ The FCC designated TracFone as an ETC in Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee and Virginia. As of February 11, 2010, TracFone also obtained ETC status in Florida, Georgia, Illinois, Louisiana, Maine, Maryland, Michigan, Missouri, New Jersey, Ohio, Texas, West Virginia and Wisconsin.

² Alaska rejected TracFone's petition due to deficiency in filing. California rejected it on the ground that TracFone does not contribute to the California state universal service programs. TracFone's application for rehearing is pending in California. Idaho commission rejected TracFone's petition because the Secretary of State's Office revoked the company's certificate to conduct business in Idaho in 2004.

The commission has jurisdiction over petitions for designation as an ETC. Section 214(e) of the Act and WAC 480-123-040 authorize the commission to designate a qualified common carrier as an ETC for the purpose of receiving federal universal service funds.³ Staff reviewed TracFone's petition both in terms of technical qualifications and public interest considerations for compliance with the requirements of 47 U.S.C. §214(e)(1) and WAC 480-123-030.

The following discusses the additional benefits of TracFone's new offers in its fourth amendment. Based on the new information, staff has revised the conditions it proposes be placed on any grant of TracFone's petition for ETC designation (Attachment 2, Revised Washington Conditions) from those recommended by staff at the November 25, 2009, open meeting.

Reduced Rates for Additional SafeLink Minutes

In its fourth amendment filed on December 29, 2009, TracFone proposes to reduce the rate for any additional minutes beyond the initial 65 free minutes from \$0.20 to \$0.10 per minute. Staff considers the reduced rate an improvement of TracFone's ETC petition. The commissioners and staff both had concerns about the affordability of additional minutes for low income customers. This new offer will cut the out-of-pocket expense in half, thus alleviating the potential cost burden on SafeLink customers.

Addition of Two Straight Talk Plans with Lifeline Discounts

In its fourth amendment, TracFone proposes to offer a \$10 discount each month to "Straight Talk Unlimited" and "Straight Talk All You Need" plans for qualified customers. Customers will need to purchase a TracFone handset for these Straight Talk plans at their own expense.⁴ The "Straight Talk Unlimited" Lifeline plan provides unlimited airtimes, text and picture messages, unlimited data usage and free 411 directory assistance calls for \$35 per month (net of discount) for qualified Lifeline customers. The "Straight Talk All You Need plan" provides 1,000 minutes of airtime, 1,000 text or picture messages, 30 megabits of data usage and free 411 directory assistance for \$20 (net of discount) per month for qualified Lifeline customers.

The two Straight Talk plans with Lifeline discount provide options for low income households with relatively high cell phone usage. The new offers will increase competitive choices for low income households in Washington.

TracFone has not offered discounted Straight Talk plans in any other states where it has been granted ETC status. The detailed implementation plan as well as the terms and conditions for Lifeline customers need to be further refined.⁵ Staff recommended in the November 25, 2008, memo that within 30 days of approval of its ETC designation, TracFone must file with the commission (1) its rates, terms and conditions for Lifeline customers, (2) the language to be used in Lifeline advertisement and (3) Lifeline Customer Application Form (Conditions Nos. 1-3 in Attachment 2). These three conditions should still apply. TracFone shall not start operating

³47 U.S.C. §214(e)(2). *See also* 47 C.F.R. §54.201(d).

⁴ TracFone's Fourth Amendment indicates that the prices for Straight Talk phones start at \$39.95. Based on <https://www.straighttalk.com/phones>, Straight Talk phones are priced starting at \$29.99.

⁵ For example, in its implementation plan with the commission, TracFone has not specified the cancellation policy or procedures allowing a Lifeline customer to switch between SafeLink and Straight Talk plans.

SafeLink or Straight Talk without the commission's approval on the three filings.

It should also be emphasized that staff's recommendations are based on TracFone's current filings. If TracFone changes the rates, terms and conditions or availability of its proposed Lifeline plans in any way that reduce the benefits for Lifeline customers, the commission should retain the authority to re-visit the ETC designation decision (Condition No. 16 in Attachment 2).

TracFone proposes to roll out the SafeLink program two to three weeks after the approval of ETC designation and then implement Straight Talk options in later stages. It indicates that it can roll out discounted Straight Talk plans via web and interactive phone system within four months of the commission's approval on ETC designation;⁶ it will make Straight Talk plans available at retail outlets no later than the end of the third quarter of 2010, subject to contractual agreement with retailers. Staff is concerned that early subscribers to SafeLink program will not have a choice for Straight Talk plans during this interim time of implementation. These Lifeline plans offer distinct advantages to customers based upon the customers' needs. Offering the Lifeline plans on a phased approach will lead to confusion and transition problems.⁷ If the change between plans does not occur seamlessly, the customer may have two TracFone Lifeline plans at the same time or may experience service disruption during the transitional period. To ensure that consumers have choices at their initial enrollment, Staff recommends that the commission condition the ETC designation on TracFone's deployment of all three Lifeline plans at the same time. TracFone should also be required to make the Straight Talk discount available via retail outlets no later than the timeline it proposed (Condition No. 5 in Attachment 2).

60-Day-Non-Usage Deactivation Policy

There were concerns that some customers may sign up for TracFone's SafeLink program but not use the service. In that scenario, TracFone would collect federal Lifeline support without providing actual service to the customer. To address this issue, TracFone will deactivate a SafeLink account if the customer has no usage for 60 consecutive days.⁸ Staff recommends that TracFone be required to send a notice to the customer no fewer than eight business days before deactivation. The notice should remind the customer of this deactivation policy and how to avoid unwanted deactivation. TracFone will also give the customer 30 days after deactivation to reactivate the account and restore the minutes accrued during the 60-day non-usage period and the 30-day grace period (Condition No. 6 in Attachment 2).

Annual Performance Review

As a Lifeline-only ETC, TracFone is not subject to the same annual certification and reporting requirements under WAC 480-123-060 through 080 as the other ETCs who receive federal high cost funds. To enable the commission to effectively monitor TracFone's Lifeline operation in

⁶ Only credit card, debit card or cash card (prepaid debit card) can be used for service orders via web or interactive phone system. It may create a barrier for some low income households to purchase the Straight Talk plans.

⁷ SafeLink and Straight Talk use different cell phone technologies. The handset for a SafeLink plan will not work on the Straight Talk network. If a customer wants to switch from SafeLink to a Straight Talk plan, he will have to contact TracFone's customer service to make a request for a change from the SafeLink plan, and obtain a Straight Talk enrollment ID to purchase a Straight Talk handset and discounted Straight Talk minutes.

⁸ *TracFone Comments*, Attachment 3, "TracFone Non-Usage Plan."

Washington, staff recommended three annual filing conditions in the November 25, 2008, memo (Conditions Nos. 8-10 in Attachment 2). Staff recommends adding a provision in Condition No. 8 that TracFone is required to provide the number of Lifeline customers it enrolls in the prior calendar year as well as the number of Lifeline customers it deactivates in the same period. TracFone volunteered to participate in a performance review of its Washington state Lifeline program (Condition No. 11 in Attachment 2). The first year performance review is not the same process as annual recertification process for high cost funds recipients, but staff perceives most issues will be identified during the first year of Lifeline operations. This review will provide an opportunity for TracFone, the commission and other stakeholders to comment on TracFone's Lifeline program during the first year.

Additional Conditions on E911 Compliance

In response to E911 Program Office's comments, TracFone agrees to work with state E911 program closely to ensure its compliance on 911-related issues. It will participate in 911 public education projects and handset tests to ensure technical compatibility with the new Emergency Service Information Network in Washington state (Conditions Nos. 12-14 in Attachment 2).

III. Conclusion

Staff considers that TracFone's petition with staff's conditions listed in Attachment 2 meets the public interest standards for ETC designation. In its fourth amendment, the company has expanded its Lifeline offers that increase benefits for eligible households in Washington.

The telecommunications market is very competitive in general but the availability of services fitting low income households' needs is limited. TracFone's SafeLink and two discounted Straight Talk plans fulfill a market niche for low income households. Such benefits are especially important in a distressed economy.

In summary, staff recommends the commission grant TracFone the exemption from WAC 480-123-030 (1)(d), (f) and (g) because it is a reseller of wireless telephone services who only requests access to federal Lifeline support (see page 4 of the November 25, 2009, staff memo).

Staff recommends the designation of TracFone as a Lifeline-only ETC in Washington based on the following considerations:

- TracFone's three Lifeline plans are unique and valuable competitive alternatives to other existing Lifeline plans in Washington.
- TracFone's Lifeline offers will substantially increase the Lifeline participation rate in Washington.
- The designation will be consistent with competitive neutrality principle.
- TracFone expressed commitment to work with staff, state emergency management division and DSHS to implement measures to ensure 911 compatibility, service quality and customer protection as well as enhancing accountability of its Lifeline programs.
- TracFone will provide the commission necessary information for the commission to effectively monitor its Lifeline operation in Washington.

Staff recommends the commission issue an order (1) granting the exemption from Washington Administrative Code 480-123-030 (1)(d), (f) and (g); and (2) designating TracFone Wireless,

Inc., as an Eligible Telecommunications Carrier for the limited purpose of receiving Lifeline support (Tier 1 through Tier 3) of the federal universal service fund, subject to the conditions specified in Attachments 1 and 2 to this memo.