

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UT-093012
)	
TRACFONE WIRELESS, INC.)	ORDER 01
)	
for exemption from WAC 480-123-)	
030(1)(d), (f) and (g); and designation)	ORDER SETTING FOR HEARING
as an eligible telecommunications)	TRACFONE’S PETITION FOR
carrier for the purpose of receiving)	DESIGNATION AS AN ELIGIBLE
Lifeline support from the federal)	TELECOMMUNICATIONS
Universal Service Fund)	CARRIER
)	
.....)	

BACKGROUND

1 On March 13, 2009, TracFone Wireless, Inc. (TracFone or Company) filed a petition with the Washington Utilities and Transportation Commission (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 purpose of receiving low income support from the federal Universal Service Fund, including Lifeline support and Link Up support. TracFone does not seek to participate in the state Lifeline program or Washington Telephone Assistance Program (WTAP) (RCW 80.36.410-.470). TracFone seeks ETC designation for all of Washington state. In the Company’s original petition, TracFone states that it intends to resell wireless mobile phone service from AT&T Mobility, Inland Cellular, T-Mobile, U.S. Cellular and Verizon Wireless.

2 TracFone is incorporated under the laws of the State of Delaware and is headquartered in Miami, Florida. It is a Commercial Mobile Radio Service reseller providing service throughout the United States. TracFone has more than eleven million customers nationwide. It has been providing service in Washington for ten years. It was designated by the Federal Communications Commission (FCC) as an ETC to receive federal Lifeline support in ten federal default states and the District of

Columbia,¹ subject to conditions. TracFone also has been granted ETC status by 13 state commissions.² TracFone withdrew its petition for ETC designation in Colorado. Three state commissions denied TracFone's ETC petition.³

3 The Commission has jurisdiction over whether to grant or deny ETC petitions. Section 214(e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal universal service funds.⁴

4 On July 10, 2009, TracFone filed an amendment to its petition, withdrawing its request for Link Up support. It only sought federal Lifeline support (Tiers 1-3). TracFone also sought an exemption from WAC 480-123-030(1)(d), (f) and (g), which require it to provide a substantive investment plan, a service area map, and emergency back-up power supplies, respectively.

5 On October 26, 2009, TracFone filed a second amendment to correct its previous statement about its Lifeline service area. TracFone clarified 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.

¹ Federal default states are states that do not assert jurisdiction over the designation of wireless ETCs. The FCC designated TracFone as an ETC in Alabama, Connecticut, Delaware, the District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee and Virginia.

² 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.

³ Alaska rejected TracFone's petition as deficient as to content. California rejected TracFone's petition on the ground that TracFone refuses to pay public purpose surcharges in California including contribution to California state universal service funds. TracFone's application for rehearing is pending in California. The 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.

⁴ 47 U.S.C. § 214(e)(2). See also 47 C.F.R. §§ 54.201(b)-(c).

- 6 On November 5, 2009, TracFone filed a third amendment to clarify 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 TracFone's Lifeline customers, as originally proposed.
- 7 The petition was first brought before the Commission at its open meeting on November 25, 2009. Requesting additional information prior to taking action on TracFone's petition, the Commission took no action at the November 25, 2009, open meeting.
- 8 On December 7, 2009, the Washington State Enhanced 911 Program Office of the Washington State Military Department filed comments with the Commission. The E911 Program Office did not raise technological issues with regard to TracFone's 911 compliance. The E911 Program Office asked TracFone to cooperate and coordinate with them to ensure E911 functionality.
- 9 On December 29, 2009, TracFone filed a fourth amendment to its petition, revising its Lifeline offers. TracFone proposed to reduce the rate for additional minutes for SafeLink customers and provide discounts to two prepaid monthly plans under the "Straight Talk" trademark.
- 10 TracFone filed supplemental information in response to information requests from the Commissioners and Staff after the November 25, 2009, open meeting. On January 28, 2010, TracFone filed a letter stating that, other than the Washington State Enhanced 911 (E911) excise tax payment in dispute (which is the subject of litigation pending before the Washington State Supreme Court), TracFone has no unresolved tax issues with the Washington State Department of Revenue (DOR). On February 2, 2010, TracFone filed comments in response to a number of outstanding issues raised by the Commissioners and Staff. On February 5, 2010, TracFone filed a detailed description of the two Straight Talk options with the Lifeline discount.
- 11 On February 18, 2010, counsel for the Washington Independent Telephone Association filed a letter, informing the Commission of several states' recent decisions on TracFone's ETC petitions. TracFone filed a response on February 19, 2010.

- 12 The amended petition of December 29, 2009, was brought before the Commission at its February 25, 2010, open meeting. The Commission took no action at the February 25, 2009, open meeting and continued the matter to the Commission's March 11, 2010, open meeting.
- 13 On March 9, 2010, TracFone filed additional information with the Commission concerning customer service calls and requested the Commission not impose an additional condition on TracFone requiring it to provide Lifeline customers with free airtime for customer service calls.
- 14 At the March 11, 2010, open meeting, the Commission heard comments from representatives for the Company, Staff, and Community Voice Mail. Following the comments, the Commission set the matter for hearing.

FINDINGS AND CONCLUSIONS

- 15 (1) The Commission has jurisdiction over eligible telecommunications carriers in Washington and the subject matter of this Order pursuant to 47 U.S.C. § 214(e)(2), 47 C.F.R. §§ 54.201(b)-(c) and WAC 480-123-040.
- 16 (2) TracFone Wireless, Inc. is a reseller of Commercial Mobile Radio Service throughout the United States.
- 17 (3) This matter came before the Commission at its regularly scheduled meeting on March 11, 2010.
- 18 (4) TracFone has not yet demonstrated that the Commission should grant its petition requesting designation as an eligible telecommunications carrier pursuant to Section 214(e)(2) of the Act, and WAC 480-123-030.

ORDER

THE COMMISSION ORDERS:

- 19 (1) The petition TracFone Wireless, Inc., filed in Docket UT-093012, and as amended, for designation as an eligible telecommunications carrier pursuant to Section 214(e)(2) of the Act, and WAC 480-123-030 is set for hearing.

- 20 (2) The Commission will hold hearings at such times and places as may be required.

DATED at Olympia, Washington, and effective March 11, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner