

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Petition of TracFone Wireless, Inc.)
for Designation as an Eligible Telecommunications)
Carrier in the State of Missouri and for the Limited) **Case No. TA-2009-0327**
Purpose of Offering Lifeline and Link Up Service to)
Qualified Households)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and submits its *Staff Recommendation* as follows:

1. On March 9, 2009, TracFone Wireless, Inc. (TracFone or the Company) submitted to the Missouri Public Service Commission (the Commission) its *Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Missouri for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households* (Petition), requesting designation as an Eligible Telecommunications Carrier (ETC) in the State of Missouri for the purpose of receiving federal “Lifeline” universal service support.

2. On March 23, 2009, the Commission issued its *Order Directing Notice and Setting Intervention Deadline*, setting an intervention deadline of April 12, 2009 and directing the Commission’s Data Center to send notice of the *Petition* to all incumbent and competitive local exchange carriers certificated in the State of Missouri.

3. On April 27, 2009, TracFone submitted its *Amendment to Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Missouri* (First Amendment), providing Staff with information concerning compliance with Commission Rule 4 CSR 240-3.570.

4. On April 29, 2009, TracFone submitted its *Second Amendment to Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Missouri* (Second Amendment), providing Staff with further information concerning compliance with Commission Rule 4 CSR 240-3.570.

5. In order to receive federal universal service support an eligible telecommunications company must comply with the requirements contained in 47 CFR Section 54, including the requirement that such company be designated as an Eligible Telecommunications Carrier (ETC). *See* 47 CFR § 54.201.

6. In Missouri, the authority to grant an ETC designation is vested in the Commission and is governed by Commission Rule 4 CSR 240-3.570. Report and Order, *In the Matter of Federal-State Joint Board on Universal Service*, p. 72, CC Docket No. 96-45 (1997). *See also* 47 U.S.C. § 254(e).

7. Although there are varying levels of federal universal service support, in the instant *Petition*, TracFone requests designation as an ETC for the purpose of providing what is referred to in 47 CFR § 54 as “Lifeline” support. Lifeline support is available to those ETC’s providing retail local service to qualifying low-income customers. *See* 47 CFR § 54.401.

8. Pursuant to 47 CFR Section 54.403 there are three (3) tiers by which ETC’s typically receive Lifeline support. The support requested by TracFone, in the context of those respective tiers, is summarized by Staff in Appendix A, attached hereto.

9. In Appendix A, Staff states that upon review of the Company’s *Petition* and the First and Second Amendments thereto, that TracFone has committed to comply with the requirements of Commission Rule 4 CSR 240-3.570, with the exception of 4 CSR 240-

3.570(3)(A) and 4 CSR 240-3.570(3)(B), compliance with which the Company has requested waivers.

10. Because TracFone provides wireless service to customers on a prepaid basis and the rules from which the Company requests a waiver concern the issuance of bills to customers, Staff states that Staff has no objection to the requested waivers.

11. TracFone is not delinquent in either the submission of its annual reports or in the payment of its Commission assessment.

WHEREFORE, Staff recommends that TracFone be granted ETC designation in the State of Missouri for the purposes of providing Lifeline support, conditional upon the following requirements:

- A. That TracFone receive no more support reimbursement per customer than the amount a TracFone customer would have paid in such customer's respective underlying ILEC service area;
- B. Individuals shall only be eligible for Lifeline assistance if the customer requesting or receiving TracFone service participates or has a dependent residing in the customer's household who participates in a program pursuant to 42 U.S.C. sections 1396-1396v, food stamps (7 U.S.C. section 51), Supplementary Security Income (SSI) (42 U.S.C. section 7), federal public housing assistance or Section 8 (42 U.S.C. section 8), National School Lunch Program's free lunch program (42 U.S.C. section 13), Temporary Assistance for Needy Families (42 U.S.C. section 7(IV)), or Low Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. section 94);

- C. TracFone shall require customers to complete an application similar to the Missouri Universal Service Board approved application, which certifies under penalty of perjury that the individual or a dependent residing in the individual's household:
- i. receives benefits from one of the qualifying programs, identifies the program or programs which that individual receives benefits; and,
 - ii. agrees to notify the carrier if that individual ceases to participate in the program or programs;
- D. TracFone shall require customers to provide documentation of participation in the applicable program(s) as identified on the application;
- E. TracFone shall develop a process for recording the type of documentation received;
- F. TracFone shall develop a process for returning or destroying the documentation once recorded;
- G. TracFone shall establish state procedures to verify a customer's continued eligibility and shall provide such procedures to the commission staff and/or the office of public counsel for review within thirty days of request;
- H. TracFone shall terminate an individual's enrollment in Lifeline if the individual ceases to meet eligibility requirements.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont

Assistant General Counsel

Missouri Bar No. 60892

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-5472 (Telephone)
(573) 751-9285 (Fax)
eric.dearmont@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of May, 2009.

/s/ Eric Dearmont

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. TA-2009-0327
Company Name: TracFone Wireless, Inc.

From: Sara Buyak
Telecommunications Department

Natelle Dietrich 5/20/09
Division Director/Date

Subject: Approve TracFone Wireless, Inc.'s Petition for Designation as an Eligible
Telecommunications Carrier

Date: May 20, 2009

Summary

On March 9, 2009, TracFone Wireless, Inc. (TracFone) filed a petition for Designation as an Eligible Telecommunications Carrier (ETC). On April 27, 2009 and April 29, 2009, TracFone submitted an Amendment and a Second Amendment to Petition of TracFone Wireless, Inc. For Designation As An Eligible Telecommunications Carrier In The State Of Missouri, incorporating items in its March 9, 2009 petition as well as providing additional information. TracFone only seeks ETC designation for Lifeline assistance to provide prepaid wireless service for qualifying low-income customers.

Staff recommends approval of the Petition and Amendments as long as TracFone does not provide the customer with Lifeline support in excess of the amount the customer would have paid for service. Also, Staff recommends the Commission grant TracFone ETC designation for Lifeline support only with conditions outlined below.

History

TracFone's request for ETC designation is for the purpose of receiving Federal USF Lifeline funding to provide assistance to qualifying low-income consumers in the entire State of Missouri as identified in Exhibit 9 of its Application. TracFone does not seek high cost federal universal support. TracFone intends to resell service from underlying facilities-based providers and will commence offering the service to all locations served by the underlying carriers after receiving ETC designation.

TracFone intends to offer prepaid wireless service to qualifying low income customers. In addition, TracFone will provide a free handset to qualified low-income consumers and

no activation or usage charges will be incurred (Page 3 of the Application). These items will not be reimbursed from the universal service fund. Also, customers will receive an amount of free minutes without a credit check, deposit, or term agreements.

The Amendments to the Petition state that TracFone will comply with all ETC designation requirements including Missouri's ETC Rule, 4 CSR 240-3.570 except TracFone requests a waiver of the following: 4 CSR 240-3.570 (3)(A) and 4 CSR 240-3.570 (3)(B). (Page 4 & 5 of the Amendment) TracFone is seeking a waiver of the requirements on the basis the service is a prepaid wireless service so TracFone does not issue bills to its customers.

Also, the Petition includes a public interest statement which states that the TracFone designation is consistent with the public interest, convenience and necessity by providing consumers with larger calling areas, convenience and security, and control of cost by purchasing minutes in advance of usage. (Page 18 of the Application) Part of the public interest review should include a review of the impact of the request on the federal universal service fund. Inherent to lifeline programs where the customer does not make any monthly payment to the service provider, and service is obtained through authorized agents, is the potential for a lack of control over the identity of the consumer using the service. Therefore, it is important that customer eligibility and verification standards similar to those in 4 CSR 240-31.050(3)(D) and (E) be followed. Staff recommends the Commission condition ETC designation on the following requirements:

TracFone will comply with the following procedures for certification and verification of customer eligibility for Lifeline support:

- Individuals shall only be eligible for Lifeline assistance if the customer requesting or receiving TracFone service participates or has a dependent residing in the customer's household who participates in a program pursuant to 42 U.S.C. sections 1396-1396v, food stamps (7 U.S.C. section 51), Supplementary Security Income (SSI) (42 U.S.C. section 7), federal public housing assistance or Section 8 (42 U.S.C. section 8), National School Lunch Program's free lunch program (42 U.S.C. section 13), Temporary Assistance for Needy Families (42 U.S.C. section 7(IV)), or Low Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. section 94).
- Customers shall complete an application similar to the Missouri Universal Service Board approved application, which certifies under penalty of perjury that the individual or a dependent residing in the individual's household:
 - receives benefits from one of the qualifying programs, identifies the program or programs which that individual receives benefits
 - agrees to notify the carrier if that individual ceases to participate in the program or programs.

- Customers shall provide documentation of participation in the applicable program(s) as identified on the application.
- TracFone shall develop a process for recording the type of documentation received.
- TracFone shall develop a process for returning or destroying the documentation once recorded.
- TracFone shall establish state procedures to verify a customer's continued eligibility and shall provide such procedures to the commission staff and/or the office of public counsel for review within thirty days of request.
- TracFone shall terminate an individual's enrollment in Lifeline if the individual ceases to meet eligibility requirements.

Pursuant to 47 CFR §54.403, there are three tiers by which carriers typically receive federal Lifeline support. TracFone intends to maximize support under the tiers as follows:

Tier 1 - Provide qualifying low income customers up to \$6.50 per month in Lifeline support consistent with the amount the incumbent local exchange carrier (ILEC) receives as reimbursement for the subscriber line charge (SLC). Carriers are required to submit Form 497 to the Universal Service Administrative Company (USAC) to claim support reimbursement. In Form 497, Tier 1 support, or reimbursement of the SLC, is available to all eligible subscribers. Although TracFone and other wireless resellers do not charge the SLC, this form does not distinguish between landline and wireless carriers. For this reason, TracFone is requesting the amount of the underlying ILEC SLC up to \$6.50, as support under Tier 1. (Most ILECs in Missouri are allowed to charge the maximum SLC charge of \$6.50; however, AT&T is only allowed to charge \$5.31 according to TracFone.)

Tier 2 - The federal fund will provide up to a maximum of \$1.75 per month under Tier 2 support.

Tier 3 - Offers an additional \$1.75 per month in support from the fund, which is one-half of the state-mandated support. Since wireless providers do not participate in the MoUSF, TracFone will apply the wireline state-mandated support amount of \$3.50 to the customer's bill in order to receive the Tier 3 federal matching portion from the fund.

TracFone indicates that in Missouri, the customer will receive 66 minutes at no charge. If the customer had to pay for the service, TracFone indicates the minutes would cost \$.20 per minute, or \$13.20. Assuming TracFone requests support in an area where the ILEC is allowed to charge \$6.50 for the SLC, TracFone will receive support

reimbursement in the amount of \$13.50 for a service that would have only cost customers \$13.20. (See Attachment 1)

A carrier, or the customer, should not receive Lifeline support in excess of the amount of service. If service is \$13.20, then Lifeline support should be no more than \$13.20. This reduction in support could be accomplished by reducing the \$3.50 support that TracFone is providing to receive Tier 3 support. For instance, if TracFone only provided \$3.25 in Lifeline support, the federal matching support would be one-half that amount, or \$1.62. In this example, the total support amount would be \$13.12, which is less than the customer service charge of \$13.20. (See Example in Attachment 1)

Staff Recommendation

Staff reviewed the instant Petition and Amendments. With the exception of a few requested waivers, TracFone has committed to comply with all requirements of Commission rule 4 CSR 240-3.570. Staff does not object to the requested waivers.

Staff recommends TracFone be granted ETC designation for Lifeline support only with the following conditions:

TracFone will comply with the following procedures for certification and verification of customer eligibility for Lifeline support:

- Individuals shall only be eligible for Lifeline assistance if the customer requesting or receiving TracFone service participates or has a dependent residing in the customer's household who participates in a program pursuant to 42 U.S.C. sections 1396-1396v, food stamps (7 U.S.C. section 51), Supplementary Security Income (SSI) (42 U.S.C. section 7), federal public housing assistance or Section 8 (42 U.S.C. section 8), National School Lunch Program's free lunch program (42 U.S.C. section 13), Temporary Assistance for Needy Families (42 U.S.C. section 7(IV)), or Low Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. section 94).
- Customers shall complete an application similar to the Missouri Universal Service Board approved application, which certifies under penalty of perjury that the individual or a dependent residing in the individual's household:
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- Customers shall provide documentation of participation in the applicable program(s) as identified on the application.
- TracFone shall develop a process for recording the type of documentation received.
- TracFone shall develop a process for returning or destroying the documentation once recorded.
- TracFone shall establish state procedures to verify a customer's continued eligibility and shall provide such procedures to the commission staff and/or the office of public counsel for review within thirty days of request.
- TracFone shall terminate an individual's enrollment in Lifeline if the individual ceases to meet eligibility requirements.

Also, Staff recommends the Commission condition the grant on the requirement that TracFone receive no more in support reimbursement than the customer would have paid for service in the respective underlying ILEC service area.

The Company is not delinquent in filing an annual report and paying the PSC assessment.

The Company is delinquent:(No annual report Unpaid PSC assessment.
Amount owed:)

Attachment 1:

TracFone's Allocation of Lifeline Funds

TracFone's per minute charge of \$.20 @ 66 free minutes =			\$13.20
<u>Less:</u>			
	Tier One	Maximum ILEC SLC	\$6.50
	Tier Two	Federal Support	\$1.75
	TracFone	State portion of matching funds that TracFone is providing support since wireless providers do not participate in MoUSF	\$3.50
	Tier Three	Federal Matching Amount	\$1.75
			<u>\$13.50</u>

Example:

TracFone's per minute charge of \$.20 @ 66 free minutes =			\$13.20
<u>Less:</u>			
	Tier One	Maximum ILEC SLC	\$6.50
	Tier Two	Federal Support	\$1.75
	TracFone	State portion of matching funds that TracFone is providing support since wireless providers do not participate in MoUSF	\$3.25
	Tier Three	Federal Matching Amount	\$1.62
			<u>\$13.12</u>
			<u>\$0.08</u>

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Petition of TracFone Wireless, Inc. for)
Designation as an Eligible) Case No. TA-2009-0327
Telecommunications Carrier.)

AFFIDAVIT OF Sara Buyak

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Sara Buyak, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying staff recommendation, and that the facts therein are true and correct to the best of her knowledge and belief.



SARA BUYAK

Subscribed and affirmed before me this 20th day of May 2009.



NOTARY PUBLIC

ROSEMARY R. ROBINSON Notary Public - Notary Seal State of Missouri Commissioned for Callaway County My Commission Expires: September 23, 2012 Commission Number: 08499510
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