

July 24, 2014

Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce**  
Docket No. P6823/M-09-802 and P6823/M-10-519

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce in the following matter:

In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible  
Telecommunications Carrier for the Limited Purpose of Offering Lifeline Service to Qualified  
Households

and

In the Matter of an Investigation into TracFone's Compliance with Remittance Responsibilities  
under Minn. Stat. §§403.11 and 237.52

The initial petition was filed on July 1, 2009 by:

Mitchell F. Brecher  
Debra McGuire Mercer  
Greenberg Traurig, LLP  
2101 L Street NW, Suite 1000  
Washington D.C. 20037

TracFone Wireless, Inc.'s Second Supplemental Compliance Filing was filed on June 19, 2014 by:

Nancy Hylden  
Faegre Baker Daniels, LLP  
220 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

The Department's recommendations are contained herein. The Department is available to answer any questions the Commission may have.

/s/ KATHERINE DOHERTY  
Rate Analyst

KD/lt  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NOS. P6823/M-09-802 and P6823/M-10-519

**I. BACKGROUND**

On July 1, 2009, TracFone Wireless, Inc. (TracFone) submitted a petition to the Minnesota Public Utilities Commission requesting that it be designated as an eligible telecommunications carrier (ETC) for the limited purpose of offering Lifeline service to qualified households in Minnesota. TracFone requested ETC designation throughout Minnesota.

On June 9, 2010, the Commission issued an Order<sup>1</sup> granting TracFone a one-year conditional ETC designation subject to certain requirements. The Commission's order required that within 30 days of the date of the order, TracFone make a filing demonstrating its compliance with all terms and conditions set forth in the order. At the same time, the Commission opened an investigation under Minn. Stat. §237.081 to determine whether TracFone was violating or had in the past violated Minn. Stat. §§403.11 or 237.50 *et. seq.* related to the Minnesota 911 and Telecommunications Access Minnesota fund.

On November 12, 2010 and December 21, 2010, TracFone submitted compliance filings in response to the conditions enumerated in the Commission's June 9, 2010 Order.

On May 16, 2014, the Department of Public Safety (DPS) filed a letter indicating that DPS and TracFone had reached an agreement concerning TracFone's collection and remittance of applicable 911 and TAM fees pursuant to Minn. Stat. §§403.11 and 237.52.

DPS provided certification that "pursuant to that agreement, TracFone is not in arrears for any amounts it was obligated to collect and remit for 911 and TAM fees through May 6, 2014."

On June 19, 2014, TracFone filed a Second Supplemental Compliance Filing (June 19, 2014 Filing).

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<sup>1</sup> In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order Granting One Year Conditional ETC Designation and Opening Investigation

On June 24, 2014, the Commission issued a notice soliciting comments with respect to the following issues:

1. Has TracFone sufficiently addressed all the conditions for ETC designation required in the Commission's June 9, 2010 Order?
2. Are there new FCC or Commission directives governing ETC designations and Lifeline service that became effective after the Commission's June 9, 2010 Order that TracFone should comply with?
3. Should the Commission grant TracFone's request to remove the condition relating to a certification that the Company's service will be available to all customers making a reasonable request for service?
4. What Commission actions are warranted related to the 09-802 and 10-519 cases?
5. Are there other issues for Commission consideration?

## II. DEPARTMENT RESPONSES TO COMMISSION QUESTIONS

### A. *HAS TRACFONE SUFFICIENTLY ADDRESSED ALL THE CONDITIONS FOR ETC DESIGNATION REQUIRED IN THE COMMISSION'S JUNE 9, 2010 ORDER?*

The Commission's June 9, 2010 Order granting conditional ETC status to Tracfone required that Tracfone comply with the following conditions (reflected in ordering paragraphs 3 through 14 of the Commission's Order):

3. a) Provide its Lifeline customers with access to E911 service, regardless of activation status and availability of prepaid minutes; b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; c) Obtain a certification from each Public Safety Answering Point where TracFone provides Lifeline service confirming that TracFone complies with condition a).
4. Require its customers to self-certify at the time of service activation and annually thereafter that the customer is the head of household and is receiving Lifeline-supported service only from TracFone. TracFone shall establish safeguards to prevent customers from receiving multiple TracFone Lifeline subsidies at the same address.
5. Document its service area and coverage within the service area in a manner consistent with Minnesota rules.

6. Submit to the Department of Commerce for its approval a plan listing the local and community newspapers and commercial broadcast stations in Minnesota through which it intends to advertise the availability of Lifeline and a proposed schedule or anticipated frequency of such advertising. TracFone shall post notice of the availability of Lifeline service on its website and shall submit an advertising plan for approval by the Department of Commerce.
7. Revise its informational tariff and/or customer service agreement to address the concerns raised by the Department of Commerce as follows:
  - a) Revise policies regarding disconnection, de-enrollment, deactivation of handsets, and flagging of customers' personal information to thwart future Lifeline eligibility to comply with Minn. Rules 7810.1800 - 7810.2000, which allow disconnection only under certain defined circumstances and provide for appropriate notice to customers.
  - b) Include commitments to comply with the Commission's consumer protection and service quality standards codified in Minn. Rules Chapter 7810, including those relating to record keeping and reporting billing practices and complaint handling procedures.
  - c) Clearly list and explain the pricing for the Lifeline offering.
  - d) Include a narrative description of the area in which TracFone proposes to offer service and explain the steps TracFone will take to provide service to customers within its proposed service area but outside its existing network coverage.
  - e) Provide clear notice that this Commission is available for assistance in resolving customer questions, concerns, comments, and complaints; provide contact information for the Commission; and eliminate the provision in the Terms and Conditions requiring binding arbitration.
8. Comply with the collection and remittance provisions of Minn. Stat. §§403.11 and 237.52.
9. Provide an annual 60-day inactivity report that reports on customers whose service is cancelled due to 60 days of non-usage and submit evidence that TracFone does not collect Universal Service Fund subsidies for those inactive phones.
10. TracFone's Minnesota Lifeline service offering shall include the highest number of free minutes of use TracFone offers in any jurisdiction and supplementary minutes priced at the ten-cent level offered in other jurisdictions.
11. TracFone shall not subtract from the free-minutes allowance customer calls to its customer service center, providing those calls use the 611-customer-service number and that calls about handset issues are made from another line.

12. Assign its Lifeline customers only numbers that are local to their billing address, with "local" meaning that the TracFone customer will be assigned a number assigned to the free calling area for the local telephone exchange where the customer's billing address is located.
13. Comply with the same annual Lifeline verification procedures that apply to other Minnesota Eligible Telecommunications Carriers.
14. Promptly report any changes to its Lifeline service and promptly update its informational tariff or customer service agreement to reflect those changes.

On December 6, 2010, the Department filed comments recommending that the Commission approve TracFone's compliance filing with respect to conditions 3 through 6, and 9 through 14. The Department recommended that the Commission require further filings and/or clarification on conditions 7 and 8, prior to granting full and operative ETC status.

TracFone's December 21, 2010 supplemental compliance filing satisfactorily addressed the Department's expressed concerns regarding condition 7, with the exception of the portion of condition 7 (d), which, as noted above, required that TracFone explain the steps it will take to provide service to customers within its proposed service area but outside its existing network coverage is no longer necessary.

The Department discusses the applicability of the above condition in response to Commission Question 3.

Condition 8 requires that TracFone comply with the collection and remittance provisions of Minn. Stat. §§403.11 and 237.52.

Condition 8 has been resolved by the agreement reached between DPS and Tracfone described in a letter filed by DPS on May 16, 2014. In the letter, DPS certified that the agreement resolves DPS' contention that TracFone failed to collect and remit 911 and TAM fees pursuant to Minnesota Statute §§ 403.11 and 237.52, and that pursuant to the agreement, TracFone is not in arrears for any amounts it was obligated to collect and remit for 911 and TAM fees through May 6, 2014, the date of the agreement.

TracFone has sufficiently addressed the conditions of the Commission's June 9, 2010 Order.

*B. ARE THERE NEW FCC OR COMMISSION DIRECTIVES GOVERNING ETC DESIGNATIONS AND LIFELINE SERVICE THAT BECAME EFFECTIVE AFTER THE COMMISSION'S JUNE 9, 2010 ORDER THAT TRACFONE SHOULD COMPLY WITH?*

Relevant FCC Orders

- *CAF-ICC Order*

On November 18, 2011, the FCC released its Report and Order and Further Notice of Proposed Rulemaking (CAF-ICC Order), 1 which comprehensively reformed universal service and intercarrier compensation mechanisms.

Among other reforms to universal service mechanisms, the FCC revised the definition of supported services in 47 C.F.R. 54.101(a) to reflect that “*Voice Telephony* services shall be supported by federal universal service support mechanisms” (emphasis added).

The FCC eliminated its former list of nine supported services, and specified that “eligible voice telephony service” must provide the following:

- Voice grade access to the public switched network or its functional equivalent
- Minutes of use for local service provided at no additional charge to end users
- Toll limitation to qualifying low income consumers
- Access to 911 and enhanced 911 emergency services

In addition, the FCC modified the requirements for FCC designation of ETCs itemized in 47 C.F.R. §54.202 and extended the requirements to all state-designated ETC applicants on a prospective basis.

Notably, the FCC eliminated the requirement that an ETC commit to provide service on a timely basis throughout its designated service area to requesting customers where the applicant’s network already passes the potential customer’s premises; and that the ETC certify as to the specific steps it will take to provide service to requesting customers who are within the applicant’s service area but outside its existing coverage. The FCC replaced this requirement with a requirement that the carrier “certify that it will comply with the service requirements applicable to the support that it receives.” [47 C.F.R. 54.202 (a) (1) (i)]. The FCC also eliminated the requirement that an ETC applicant demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in service areas for which it seeks certification.

- *Lifeline-Linkup Reform Order*

On February 6, 2012, the FCC released its Report and Order and Further Notice of Proposed Rulemaking in the Matter of Lifeline and Linkup Reform and Modernization (WC Docket No. 11-42), Lifeline and Linkup (WC Docket 03-109) Federal State Joint Board on Universal Service (CC Docket No. 96-45) and Advancing Broadband through Digital Literacy Training (WC Docket No. 12-23) (*Lifeline Linkup Reform Order*).

The FCC made several changes specifically to “reflect the growing role of Lifeline-only ETCs in today’s marketplace,” including the following:

- Amended 47 C.F.R. §54.202 to clarify that a carrier seeking ETC designation for the purpose of providing Lifeline only would not be subject to the requirement to file a five-year service improvement plan, and eliminated the requirement that an applicant certify that its handsets provide access to 911 and E911 service regardless of the activation status or the availability of airtime.
- Amended 47 C.F.R. §54.201 and 54.202 to require that a Lifeline-only ETC demonstrate its financial and technical capability to provide the supported Lifeline supported services.
- Created a new section (54.422) to reflect annual reporting requirements for Lifeline-only ETCs including the number of complaints per 1000 connections, certification of compliance with service quality and consumer protection standards, and certification that the carrier is able to function in emergency situations.

The FCC also established a requirement that Lifeline-only ETCs must annually report the names and identifiers used by the ETC, its holding company, operating companies and affiliates, and clarified (and codified in 47 C.F.R §54.401(a) (2)) that:

- a) Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service. If an eligible telecommunications carrier charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers' Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering.
- b) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan that includes voice telephony service, including bundled packages of voice and data services; and plans that include optional calling features such as, but not limited to, caller identification, call waiting, voicemail, and three-way calling. Eligible telecommunications carriers may also permit qualifying low-income consumers to apply their Lifeline discount to family shared calling plans.
- c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline service for plans that:
  - 1) Do not charge subscribers additional fees for toll calls; or
  - 2) That charge additional fees for toll calls, but the subscriber voluntarily elects toll limitation service.
- d) When an eligible telecommunications carrier is designated by a state commission, the state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier's Lifeline plan meets the criteria set forth in this subpart and describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for

- each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart.
- e) Consistent with §52.33(a) (1) (i) (C) of this chapter, eligible telecommunications carriers may not charge Lifeline customers a monthly number-portability charge.

The FCC also adopted rules (47 C.F.R. §54.405(b) and (c)) to require that ETCs make specific disclosures in all marketing materials including the company name under which it does business, the details of its Lifeline offerings, and clear, easily understood language indicating that the offering is Lifeline-supported, that only eligible consumers with documentation may enroll, and that the program is limited to one benefit per household.

#### Applicable FCC Rules for ETC designation

FCC Rule 47 C.F.R. §54.201 (d) requires that a common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

- 1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier);<sup>2</sup> and
- 2) Advertise the availability of such services and the charges therefore using media of general distribution.

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<sup>2</sup> The FCC granted, on its own motion, blanket forbearance from applying the facilities requirement of section 214(e)(1)(A) of the Act to *all* telecommunications carriers that seek designation limited to participation in the Lifeline program, subject to the following conditions:

- Each carrier must (a) provide its Lifeline subscribers with 911 and E911 access, regardless of activation status and the availability of minutes (b) provide its Lifeline subscribers with E911 compliant handsets and replace, at no charge, non-compliant handsets of Lifeline-eligible subscribers.
- Each carrier must submit and receive FCC approval of a compliance plan providing "specific information about the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in [the Lifeline Linkup Reform Order] as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary."



FCC Rule 47 C.F.R. §54.202 sets forth requirements for designation of eligible telecommunications carriers, and states:

- 1) (i) Certify that it will comply with the service requirements applicable to the support that it receives.  
(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. ***Except, a common carrier seeking designation as an eligible telecommunications carrier in order to provide supported services only under subpart E of this part does not need to submit such a five-year plan.***(emphasis added)
- 2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
- 3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
- 4) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.
- 5) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

The rule also requires, in Part b) that prior to designating an eligible telecommunications carrier pursuant to section 214(e) (6), the Commission must determine that such designation is in the public interest.

*C. SHOULD THE COMMISSION GRANT TRACFONE'S REQUEST TO REMOVE THE CONDITION RELATING TO A CERTIFICATION THAT THE COMPANY'S SERVICE WILL BE AVAILABLE TO ALL CUSTOMERS MAKING A REASONABLE REQUEST FOR SERVICE?*

TracFone requests that the Commission delete condition 7(d), which requires that TracFone explain the steps it will take to provide service to customers within its proposed service area but outside its existing network coverage.

The Department agrees with TracFone that there is no longer a legal basis for the requirement. TracFone provides service solely through the use of the established networks of other major wireless providers, and does not own facilities. TracFone, as a Lifeline-only ETC does not and will not be eligible for high cost funding to extend its network.

Further, the condition is unnecessary. TracFone states that:

TracFone's service area does not include any part of its underlying carriers' service area that is not currently served. Therefore there would not be a situation in which potential Lifeline customers would be denied service because they were within TracFone's service area, but not within the network coverage area of TracFone's underlying carriers.<sup>3</sup>

TracFone also commits that "[i]f a Lifeline customer does not receive adequate service on one of TracFone's underlying carrier networks, TracFone will migrate that customer to another carrier network."<sup>4</sup>

The Department recommends that condition 7(d) be eliminated as TracFone requests. The Department notes that elimination of condition 7(d) does not relieve TracFone of the obligation, pursuant to 47 C.F.R. §54.405 to make Lifeline service available to qualifying low income consumers and to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

*D. WHAT COMMISSION ACTIONS ARE WARRANTED RELATED TO THE 09-802 AND 10-519 CASES?*

TracFone states that the current ETC designation requirements are not applicable to TracFone because the Commission has already designated TracFone as an ETC.

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<sup>3</sup> TracFone June 19, 2014 Filing, fn. 10, page 5.

<sup>4</sup> *Id.*

Regardless of TracFone's position, however, the Department believes that TracFone has provided sufficient information in its June 19, 2014 Filing to demonstrate that it has met current ETC designation requirements.

The Department provides the following analysis of TracFone's compliance with current ETC designation rules and recent Commission Orders designating Lifeline-only ETCs:

**Voice Grade Access to the Public Switched Network (47 C.F.R.54.101 (a))**

TracFone certifies on page 7 of its petition that it "provides voice grade access to its end users so that they are able to transmit and receive voice communications."<sup>5</sup> TracFone provides minutes of use for local service at no additional charge, and access to emergency services,<sup>6</sup> as required by 47 C.F.R. 54.101 (a).

**TracFone's Willingness to Comply with the Applicable Service Requirements (47 C.F.R. 54.202(a)(1)(i))**

TracFone has provided adequate assurances that it will comply with the service requirements applicable to the low-income support it receives. The Department notes that TracFone will be bound by the service requirements codified in FCC Rules 54.405, 54.410,<sup>7</sup> 54.416, 54.417, and 54.422.

**TracFone's Ability to Remain Functional in Emergency Situations (47 C.F.R. §54.202(a)(2))**

TracFone states in its petition that it has the ability to remain functional in emergency situations, and that its "underlying vendors have implemented state-of-the-art network reliability standards." TracFone's underlying providers include AT&T, T-Mobile, and Verizon, each of whom has provided certification in other dockets before the Commission that they have reasonable amounts of back-up power to ensure functionality without an external power source, the ability to reroute traffic around the damaged facilities and the ability to manage traffic spikes resulting from emergency situations.

The Department believes sufficient information has been provided for the Commission to conclude that TracFone has the capability of remaining functional in a variety of emergency situations.

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<sup>5</sup> TracFone June 19, 2014 Filing, page 7.

<sup>6</sup> Id. pages 7-8.

<sup>7</sup> The Department notes that on June 25, 2013, the FCC issued an Order underscoring "certain compliance requirements that are contained in the Lifeline Reform Order and its accompanying rules." Noting that "despite the directives provided in the Lifeline Reform order, some ETCs may be activating phones that they represent enable use of Lifeline-supported service for consumers prior to fully verifying the eligibility of such consumers," the FCC amended section 54.410(a) of the FCC's rules to reflect that an ETC may not provide Lifeline service, ***even on an interim basis*** while the consumer's application is being processed, before verifying eligibility. The FCC also took the opportunity to reiterate, in its order, that Lifeline is a "non-transferable retail service offering, a fact that must be disclosed to the consumer and included on the certification form." (In the Matter of Lifeline and Link Up Modernization and Reform, WC Docket No. 11-42, June 25, 2013)

**Service quality, Consumer Protection, and Customer Service Commitments (47 C.F.R. §54.202(a)(3))**

TracFone states on page 9 of its petition that it will comply with the Cellular Telecommunications and Internet Association (CTIA) Consumer Code, which the FCC has found to be an adequate commitment to consumer protection and service quality standards. The stated purpose of the CTIA code is “to provide consumers with information to help them make informed choices when selecting wireless service,” and includes, among other requirements and voluntary commitments:

- Provisions related to disclosure of all rates, terms and conditions to consumers at the point of sale and on the carriers’ websites.
- A commitment to make coverage maps available to consumers at the point of sale and on their websites.
- A commitment to provide specific disclosures in advertising.
- A commitment to provide ready access to customer service, specifically: Customers will be provided a toll-free telephone number to access a carrier’s customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers’ web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier’s customer service departments.
- A commitment to respond promptly (in writing, within 30 days) to consumer inquiries and complaints received from government agencies.

TracFone has met the requirements of 47 C.F.R. §54.202 (a) (3).

**Financial and Technical Capability (47 C.F.R. §54.202(a)(4))**

Citing to the comments of the Indiana Commission (in the Lifeline-Linkup Reform Docket) that “companies that have made a business case to service a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program,”<sup>8</sup> the FCC determined that a carrier seeking designation as an ETC for the purpose of offering only Lifeline service must demonstrate that it is financially and technically capable of providing the supported (Lifeline) service in compliance with the applicable rules.

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<sup>8</sup> Lifeline-Linkup Reform Order, fn 1010.

Specifically, the FCC stated that “among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement or ETC revocation in any state.”<sup>9</sup>

TracFone states that it “has been an ETC since 2008 and currently provides Lifeline service to over 4.2 million customers in 39 states,” and that its financial stability is ensured that it is a 98%-owned subsidiary of American Mobil, the fourth largest wireless telecommunications carrier in the world.”<sup>10</sup>

The Department believes that TracFone has provided sufficient information for the Commission to conclude that it has the financial and technical ability to offer and provide Lifeline service to qualified consumers in Minnesota.

**TracFone’s Description of its Lifeline Offerings (47 C.F.R. §54.202(a)(5))**

TracFone’s Lifeline service provides the following functions<sup>11</sup>:

- Access to the public switched telephone network;
- Local Usage;
- Access to 911 and E911 emergency services;
- Text Messaging;
- VoiceMail;
- Call Waiting.

TracFone offers three Lifeline plans to qualified customers, each of which include access to the public switched telephone network, local usage; access to 911 and E911 emergency services, text messaging, voice mail, and call waiting<sup>12</sup>:

1. 250 free minutes each month, which do not carry over to the next month if unused, and 1,000 text messages; or
2. 125 free minutes each month, which carry over to the following month if unused, and 1,000 text messages; or
3. 68 free minutes each month, which carry over to the following month if unused, and 1,000 text messages, plus International Long Distance calling to over 60 destinations.

TracFone states that it “provides wireless handsets to its customers at no charge. The handsets will be delivered to customers upon enrollment in the program with the first month’s free allotment of usage already activated.”<sup>13</sup>

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<sup>9</sup> *Id.*, para. 388.

<sup>10</sup> TracFone June 19, 2014 Filing, pages 9-10.

<sup>11</sup> TracFone Informational tariff, page 8.

<sup>12</sup> TracFone Informational tariff, page 8.

Additional minutes may be purchased at a rate of \$0.10 per minute or less.

The Commission has previously found Lifeline offerings of 250 free minutes adequate, and TracFone's basic Lifeline offerings compare favorably to a 250 minute plan. In addition, TracFone has committed to offer, in Minnesota, the highest number of free minutes of TracFone offered by TracFone in other jurisdictions.<sup>14</sup>

The Department believes that TracFone has adequately described its Lifeline offerings to meet the requirements of 47 C.F.R. §54.202(a)(5).

### **Public Interest**

The Commission has already found that designation of TracFone as a Lifeline-only ETC is in the public interest subject to the conditions enumerated in the Commission's June 9, 2010 Order.

The Department notes that, largely in response to concerns expressed by consumer advocates in more recent ETC designation dockets, the Commission has also made clear its expectations with respect to certain customer service policies and practices. To that end, the Commission has incorporated the following requirements in previous orders designating ETCs:

1. Customers should have access to *usable* phones. Frequent static or other interference on the line, lack of clarity, dropped calls, inability to place a call or receive a call under normal circumstances are not acceptable. If the buttons on phones are too small to use, for example, customers should have an opportunity to try a different make or model. Hearing-aid compatible handsets should be available to Lifeline-qualified customers, at no charge.
2. Policies regarding repair, maintenance, replacement of handsets, batteries, and chargers and options to purchase handsets should be clear to consumers, and available to consumers who do not have web access. TracFone should provide detailed information in writing, at the time of enrollment, of repair and replacement policies for phones and accessories (batteries, chargers) and purchase options.
3. Instruction manuals should be offered to consumers, and should be available upon request. It is not unreasonable to require that instruction manuals be provided to customers at the point of sale.
4. Customers should have access to customer service without lengthy hold-times, and without use of air time minutes.

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<sup>13</sup> TracFone Informational tariff page 3.

<sup>14</sup> See TracFone ETC Order, Condition 10.

5. Consumers should have access to information, via telephone as well as website, on all Minnesota distribution events, locations, and times.<sup>15</sup>

The Department finds such principles reasonable and appropriate for application to other Lifeline-only ETCs including TracFone. While compliance with the above expectations does not require TracFone to make further filings, the Commission may wish to incorporate the expectations as conditions in its Order, as it has for other ETCs.

The Department offers the following alternatives for Commission consideration:

### III. COMMISSION ALTERNATIVES

1. Find that TracFone has fulfilled the conditions of the Commission's June 9, 2010 Order.
2. Find that TracFone has fulfilled the conditions of the Commission's June 9, 2010 Order with the exception of Condition 7(d).
3. Remove Condition 7(d).
4. Retain Condition 7(d) and require TracFone to explain the steps it will take to provide service to customers within its proposed service area but outside its existing network coverage is no longer necessary.
5. Find that TracFone has not fulfilled other conditions of the Commission's June 9, 2010 Order
6. Find that TracFone has provided sufficient information to demonstrate its compliance with current FCC rules and Commission Orders relating to Lifeline-only ETC designation.
7. Find that TracFone has not provided sufficient information to demonstrate its compliance with current FCC rules and Commission Orders relating to ETC designation.
8. Find that it is not necessary for TracFone to provide information demonstrating its compliance with current FCC rules and Commission Orders relating to ETC designation.
9. Approve TracFone's request to operate as a Lifeline-only ETC in Minnesota and begin serving qualified customers.

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<sup>15</sup> In the Matter of the Petition of Telrite Corporation for Designation as an Eligible Telecommunications Carrier, Docket No. P6962/M-11-132, *Order Granting ETC Designation*, Ordering paragraph 6 (a through e), November 28, 2012.

10. Approve TracFone's request to operate as a Lifeline-only ETC in Minnesota and begin serving qualified customers subject to the following conditions:
  - a) Customers should have access to *usable* phones. Frequent static or other interference on the line, lack of clarity, dropped calls, inability to place a call or receive a call under normal circumstances are not acceptable. If the buttons on phones are too small to use, for example, customers should have an opportunity to try a different make or model. Hearing-aid compatible handsets should be available to Lifeline-qualified customers, at no charge.
  - b) Policies regarding repair, maintenance, replacement of handsets, batteries, and chargers and options to purchase handsets should be clear to consumers, and available to consumers who do not have web access. TracFone should provide detailed information in writing, at the time of enrollment, of repair and replacement policies for phones and accessories (batteries, chargers) and purchase options.
  - c) Instruction manuals should be offered to consumers, and should be available upon request. It is not unreasonable to require that instruction manuals be provided to customers at the point of sale.
  - d) Customers should have access to customer service without lengthy hold-times, and without use of air time minutes.
  - e) Consumers should have access to information, via telephone as well as website, on all Minnesota distribution events, locations, and times.<sup>16</sup>
11. Approve TracFone's request to operate as a Lifeline-only ETC in Minnesota with other conditions of the Commission's choosing.
12. Deny TracFone's request to operate as a Lifeline-only ETC in Minnesota

#### IV. DEPARTMENT RECOMMENDATION

The Department recommends Alternatives 1, 3, 6, and 10 conditioned upon the items enumerated in a, b, c, d, and e.

##### A. *ARE THERE OTHER ISSUES FOR COMMISSION CONSIDERATION?*

The Department has no other issues to raise at this time. To the extent that other parties identify issues in their comments, the Department may respond in its Reply Comments.

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<sup>16</sup> In the Matter of the Petition of Telrite Corporation for Designation as an Eligible Telecommunications Carrier, Docket No. P6962/M-11-132, *Order Granting ETC Designation*, Ordering paragraph 6 (a through e), November 28, 2012.



## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce**  
**Comments**

**Docket No. P6823/M-09-802 and P6823/CI-10-519**

**Dated this 23<sup>rd</sup> day of July 2014**

**/s/Sharon Ferguson**



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