

**Before the  
RHODE ISLAND PUBLIC UTILITIES COMMISSION**

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In the Matter of )

Petition of TracFone Wireless, Inc. )  
for Designation as an Eligible Telecommunications )  
Carrier in the State of Rhode Island for the Limited )  
Purpose of Offering Lifeline Service to Qualified )  
Households )

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Docket No. \_\_\_\_\_

**PETITION OF TRACFONE WIRELESS, INC.  
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER  
IN THE STATE OF RHODE ISLAND FOR THE LIMITED PURPOSE OF  
OFFERING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS**

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TracFone Wireless, Inc. (“TracFone”), by its undersigned counsel, and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Communications Act”), and the Rules of the Rhode Island Public Utilities Commission (“Commission”),<sup>1</sup> hereby submits this Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Rhode Island. TracFone seeks ETC designation solely to provide Lifeline service, under the trade name SafeLink Wireless®, to qualifying Rhode Island consumers; it will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high cost areas.<sup>2</sup> As demonstrated herein, and as certified in Exhibit 1 to this Petition, TracFone meets all the statutory and regulatory requirements for designation as an ETC in the State of

<sup>1</sup> Rules and Regulations Governing the Certification and Verification Procedures for Telecommunications Carriers Eligible to Receive Payments from the Federal Universal Service Fund and Certification and Verification Processes for Compliance with Providing Lifeline and Linkup Service, effective February 4, 2010 (“Commission ETC Rules”).

<sup>2</sup> Given that TracFone only seeks Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to TracFone.

Rhode Island. TracFone respectfully requests that the Commission grant this Petition and that it do so expeditiously so that TracFone may provide Lifeline service to low income households at the earliest practicable time.

**I. TracFone's Universal Service Offering.**

TracFone is incorporated under the laws of the State of Delaware and is headquartered at Miami, Florida. Its corporate offices are located at 9700 N.W. 112<sup>th</sup> Avenue, Miami, FL 33178. TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States, including the State of Rhode Island. TracFone provides service through a "virtual network" consisting of services obtained from numerous licensed operators of wireless networks. TracFone has provided CMRS service throughout the State of Rhode Island continuously for the past ten years. In Rhode Island, TracFone obtains service from several underlying carriers: AT&T Mobility, T-Mobile, and Verizon Wireless. TracFone's arrangements with these providers enable it to offer services wherever any of those providers offer service in the State of Rhode Island. With more than eleven million customers nationwide, TracFone is the leading provider of prepaid wireless service in the United States.

TracFone, through its arrangements with its underlying carriers, has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Federal Communications Commission ("FCC") Rules (47 C.F.R. § 54.101(a)) and the Commission ETC Rules, § III. Upon designation as an ETC, TracFone will make available to consumers a Lifeline offering which will provide consumers with all of the functionalities and features currently provided by TracFone to existing customers. TracFone will provide Lifeline service to qualifying customers requesting this service throughout Rhode Island

pursuant to the universal service program and in accordance with 47 C.F.R. § 54.202(a)(1) and the Commission ETC Rules, § III.

TracFone's Lifeline offerings will differ from other ETCs' Lifeline programs in several very important respects. For one thing, TracFone will offer low income consumers the convenience and portability of wireless services. TracFone believes that many Lifeline-eligible consumers will take advantage of the opportunity to obtain subsidized wireless service. In addition, unlike any other ETC's Lifeline programs, TracFone's Lifeline service will provide quantities of wireless usage at no charge to the consumer. Stated simply, TracFone's Lifeline service will be free! Typically, Lifeline programs provide participating consumers with discounts below carriers' standard rates. However, participating customers still must pay the discounted rates and face service disconnection if they fail to pay the amounts owed. For example, if a provider's standard monthly charge is \$30.00 and the Lifeline customer receives a \$10.00 discount funded by the USF, the customer still receives an invoice for \$20.00, plus additional charges incurred during the billing period. TracFone's Lifeline customers will also receive a free wireless handset. Thus, TracFone's Lifeline customers will be able to initiate and receive calls from their wireless phones while incurring no activation or usage charges. TracFone's Lifeline plan is described at Section III.B of this Petition.

Indeed, even without classification as an ETC, TracFone currently operates in accordance with the spirit of universal service. Because TracFone utilizes the networks of many licensed CMRS providers, TracFone service is available virtually nationwide (including throughout the State of Rhode Island). Moreover, TracFone service is available at nationally-uniform rates. TracFone service is priced the same at all locations in Rhode Island, and throughout the United States.

## **II. TracFone Meets the Requirements For Designation as an Eligible Telecommunications Carrier to Serve the Designated Areas in the State of Rhode Island.**

Section 254(e) of the Communications Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.” Section 214(e)(2) of the Communications Act provides that a State commission “shall . . . upon request designate a common carrier that meets the requirements of paragraph 1 [of Section 214(e)] as an eligible telecommunications carrier for a service area designated by the State commission.” There are no rural ILECs in Rhode Island. Therefore, any ETC requirements relevant to rural service areas are not applicable.

As demonstrated below, and as set forth in the Declaration of F.J. Pollak, TracFone’s President and Chief Executive Officer, Exhibit 1, TracFone meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of the Communications Act. In addition, TracFone complies with the standards established by the FCC for determining whether applicants for ETC status to serve areas served by non-rural local exchange carriers would serve the public interest.<sup>3</sup> TracFone recognizes that Section 214(e)(1)(A) of the Communications Act states that ETCs shall offer services, at least in part, over their own facilities and that Section 54.201(i) of the FCC’s Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier’s services. However, as described at Section II.B of this Petition, on June 8, 2004, TracFone filed with the FCC a petition requesting that the FCC exercise its forbearance authority under Section 10 of the

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<sup>3</sup> See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, ¶¶ 40-43 (2005).

Communications Act (47 U.S.C. § 160) with respect to the facilities-based service requirement.<sup>4</sup> The FCC granted the petition for forbearance in an Order dated September 8, 2005.<sup>5</sup> In an Order dated April 11, 2008, the FCC granted all of TracFone's pending petitions for designation as an ETC, subject to the conditions set forth in the TracFone Forbearance Order.<sup>6</sup>

**A. The Rhode Island Public Utilities Commission Has Jurisdiction to Designate TracFone as an ETC.**

Section 214(e)(2) of the Communications Act authorizes state commissions, such as the Rhode Island Public Utilities Commission, to designate ETC status for federal universal service purposes.<sup>7</sup> Indeed, "state commissions have the primary responsibility for the designation of eligible telecommunications carriers under Section 214(e)(2)."<sup>8</sup> Although Section 332(c)(3)(A) of the Communications Act prohibits states from regulating the entry of or the rates charged by any provider of commercial mobile service or any private mobile service, this prohibition does

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<sup>4</sup> See TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004, as amended by TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed August 16, 2005 and TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004 ("Petition for Forbearance").

<sup>5</sup> Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order"). A copy of the TracFone Forbearance Order is attached as Exhibit 2.

<sup>6</sup> In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al., 23 FCC Rcd 6206 (2008) (granting TracFone's ETC Petitions for Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Virginia) ("TracFone ETC Order"). A copy of the TracFone ETC Order is attached as Exhibit 3.

<sup>7</sup> See Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) ("USF Order").

<sup>8</sup> Federal-State Joint Board on Universal Service, Twelfth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 93 (2000).

not allow states to deny wireless carriers ETC status.<sup>9</sup> Therefore, the Rhode Island Public Utilities Commission is authorized to designate TracFone as an ETC.

Section 214(e)(2) of the Communications Act provides that a State commission shall designate a common carrier as an ETC, if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) requires a carrier designated as an ETC to offer the services that are supported by Federal universal service support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier's services and to advertise the availability of such services and the related charges using media of general distribution. As discussed in Section II.D. of this Petition, TracFone will advertise the availability of its Lifeline plan and the associated charges using media of general distribution.

As noted above, the FCC decided to forbear from applying the facilities-based requirement for ETCs to TracFone. Section 10(e) of the Communications Act (47 U.S.C. § 160(e)) provides: “[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.” As such, the Rhode Island Public Utilities Commission is required by Section 10(e) to act in accordance with the FCC’s TracFone Forbearance Order, and therefore, may not apply the facilities-based requirement to TracFone. Indeed, thirteen state utility commissions already have complied with the FCC’s Forbearance Order and have designated TracFone as an ETC in those states.<sup>10</sup>

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<sup>9</sup> USF Order, at 8858-59, ¶ 145.

<sup>10</sup> State utility commissions in the following states have designated TracFone as an ETC: Florida, Georgia, Illinois, Louisiana, Maine, Maryland, Michigan, Missouri, New Jersey, Ohio, Texas, West Virginia and Wisconsin. A list of the state utility commission orders is attached as Exhibit 4.

**B. TracFone Will Provide Service Through Resale.**

In the TracFone Forbearance Order, the FCC granted TracFone's Petition for Forbearance subject to certain conditions. The FCC explained that requiring "TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live."<sup>11</sup> The FCC also stated that grant of TracFone's petition for forbearance "serves the public interest in that it should expand participation of qualifying consumers" in the under-utilized low-income program.<sup>12</sup> The low income program supported by the Universal Service Fund includes the Lifeline program.

The FCC's grant of forbearance is subject to the following conditions: (a) TracFone providing Lifeline customers with basic 911 and enhanced 911 ("E911") access regardless of activation status and availability of prepaid minutes; (b) TracFone providing its new Lifeline customers with E911-compliant handsets and replacing any existing customers' non-compliant handsets at no additional charge; (c) TracFone complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) TracFone obtaining a certification from each Public Service Answering Point ("PSAP") where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) TracFone requiring its customers to self-certify at the time of service activation and annually thereafter that they are the heads of the households and receive Lifeline-supported service only from TracFone; and (f) TracFone establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.

The FCC required TracFone to describe how it would implement each of these

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<sup>11</sup> TracFone Forbearance Order, ¶ 23.

<sup>12</sup> Id. ¶ 24.

conditions. In October 2005, TracFone described to the FCC how it would comply with each of the FCC's stated conditions. TracFone committed to providing all Lifeline customers with access to basic and E911 service even if the customer has no remaining prepaid minutes on his or her handset. TracFone further represented that it will provide new Lifeline customers with an E911-compliant handset and will replace any existing customers' non-E911-compliant handsets with a compliant handset free of charge at the time such customers enroll in Lifeline. TracFone also stated that its Lifeline enrollment forms will require each applicant to certify under penalty of perjury that he or she is the head of the household and that he or she receives Lifeline service only from TracFone. In addition, TracFone explained that its enrollment form will require each applicant to list a primary residential address which TracFone will use to check its customer records to ensure that the applicant is not receiving Lifeline service for more than one handset associated with a particular address. TracFone also will verify annually that its Lifeline customers are still heads of households and that they only receive Lifeline service from TracFone. In the TracFone ETC Order, the FCC approved TracFone's plan for complying with those conditions.<sup>13</sup>

The PSAP certification condition imposed by the FCC was difficult to implement and resulted in delaying the availability of TracFone's SafeLink Wireless® Lifeline service in several jurisdictions. On November 21, 2008, TracFone petitioned the FCC to modify the PSAP certification condition. On March 5, 2009, the FCC issued an Order granting TracFone's request to modify the requirement that TracFone obtain a certification from each PSAP where TracFone provides Lifeline service confirming that it provides its customers with access to basic and E911

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<sup>13</sup> TracFone ETC Order, ¶ 23.

service.<sup>14</sup> The FCC modified the PSAP certification to require the following: TracFone must still request such certification from each PSAP within its Lifeline service area; however, if within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements.

**C. TracFone Offers All Required Services and Functionalities.**

TracFone offers, or will offer upon designation as an ETC in Rhode Island, all of the services and functionalities required by Sections 54.101(a) and 54.202(a) of the FCC's Rules (47 C.F.R. §§ 54.101(a), 54.202(a)) and the Commission ETC Rules, § II.A including the following:<sup>15</sup>

**1. Voice Grade Access to the Public Switched Network.**

Voice grade access to the public switched telecommunications network ("PSTN") means the ability to make and receive traditional voice phone calls between the approximately 500 Hertz and 4,000 Hertz for a bandwidth of approximately 3500 Hertz.<sup>16</sup> The voice grade access provided by TracFone enables a user of telecommunications services to transmit voice

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<sup>14</sup> Federal-State Joint Board on Universal Service, et al., 24 FCC Rcd 3375 (2009) (attached as Exhibit 5).

<sup>15</sup> The FCC's Rules require an applicant for ETC status to demonstrate that it satisfies network build-out and improvement requirements (47 C.F.R. § 54.202(a)(1)(ii)) and to provide a certification that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area (47 C.F.R. § 54.202(a)). In the TracFone ETC Order, the FCC determined that TracFone was not required to make these showings because it is a pure reseller. See n.35. TracFone maintains that it also is not required to make these showings for this Petition.

<sup>16</sup> See USF Order, at 8810-11, ¶¶ 63-64; see 47 C.F.R. § 54.101(a)(1).

communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

## 2. Local Usage.

As part of the voice grade access to the PSTN, an ETC must provide local calling pursuant to 47 C.F.R. § 54.101(a)(2). TracFone provides subscribers the ability to send and receive local phone calls wherever it provides service. Moreover, local usage is included in TracFone's calling plan. FCC Rule 54.202(a)(4) requires an ETC applicant to "demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation." The FCC has explained that an ETC applicant's local usage plans should be reviewed on a case-by-case basis to ensure that each ETC provides a local usage component in its universal service offering that is comparable to the plan offered by the incumbent LEC in the area.<sup>17</sup> Importantly, the requirement is that ETCs offer local usage plans "comparable" to those of the ILEC, not that the plans be identical. The FCC has not adopted any minimum local usage requirements.<sup>18</sup> As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the FCC.

Wireless and wireline services, though increasingly substitutable for each other, are different from each other and they are priced differently. Unlike any ILECs' or other ETCs' Lifeline plans, TracFone's Lifeline offerings will go beyond those of other providers in a very important respect: TracFone's Lifeline customers will receive as part of Lifeline service 67 minutes of free wireless service. That is, Lifeline customers will be able to use TracFone's

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<sup>17</sup> Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6385, ¶ 33 (2005).

<sup>18</sup> Id. ¶ 32.

service to initiate and receive specified amounts of wireless calling -- local and long distance -- with no charge to the customers.

**3. Dual Tone Multi-Frequency (“DTMF”) Signaling or Its Functional Equivalent.**

DTMF signaling allows carriers to provide expeditious call set-up and call detail information and enables modem usage.<sup>19</sup> The FCC permits carriers to provide signaling that is functionally equivalent to DTMF to satisfy the DTMF requirement. All telephone handsets provided by TracFone are DTMF-capable as required by 47 C.F.R. § 54.101(a)(3).

**4. Single-party service or Its Functional Equivalent.**

Single-party service means that only one party will be served by a subscriber line or access loop in contrast to a multi-party line.<sup>20</sup> TracFone provides customers with single-party access for the duration of every phone call in accordance with 47 C.F.R. § 101(a)(4). TracFone does not provide “multi-party” or “party line” services.

**5. Access to 911 and E911 Emergency Service.**

The FCC has declared that access to emergency services is essential.<sup>21</sup> TracFone provides universal access to the 911 system for its customers. TracFone has implemented and will continue to implement enhanced 911 (“E911”) services consistent with the FCC’s Rules, including 47 C.F.R. § 54.101(a)(5), and orders when such services are made available by the carriers from whom TracFone purchases services. In particular, TracFone will fully comply with

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<sup>19</sup> USF Order, 12 FCC Rcd at 8814, ¶ 71.

<sup>20</sup> Id. at 8810, ¶ 62.

<sup>21</sup> Id. at 8815, ¶ 72.

the FCC's E911 requirements applicable to wireless resellers.<sup>22</sup> Pursuant to the FCC's E911 Order, providers that use other carriers' facilities to provide wireless voice service to customers have an obligation to comply with the FCC's E911 rules "to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP [public service answering point]."<sup>23</sup> TracFone will make available access to E911 service in accordance with applicable FCC requirements. In addition, in accordance with 47 C.F.R. § 54.202(a)(2), TracFone has the ability to remain functional in emergency situations. As described in this Petition, TracFone provides service in Rhode Island by reselling services of underlying wireless network carriers, including AT&T Mobility, T-Mobile, and Verizon Wireless. Those network operators have implemented state-of-the-art network reliability standards and TracFone and its customers benefit from their high standards. Throughout its ten years of existence, TracFone's service reliability has compared favorably with that of any facilities-based operator in the wireless telecommunications industry.

#### **6. Access to Operator Services.**

TracFone offers all of its customers access to operator services, in accordance with 47 C.F.R. § 54.101(a)(6).

#### **7. Access to Interexchange Service.**

TracFone customers can use TracFone's services to complete toll calls as required by 47 C.F.R. § 54.101(a)(7). In fact, TracFone does not impose separate charges for interexchange calls. Long distance calling is included in TracFone's service with no additional charge.

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<sup>22</sup> See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340 (2003).

<sup>23</sup> Id. at 25378-79, ¶ 91.

**8. Access to Directory Assistance.**

All TracFone customers receive access to directory assistance service through the TracFone virtual network as required by 47 C.F.R. § 54.101(a)(8). Specifically, all TracFone customers, including those customers located in Rhode Island, have access to directory assistance services provided by TracFone's vendors.

**9. Toll Limitation for Qualified Low-Income Customers.**

There is no need for TracFone to offer a toll limitation feature to qualifying low-income customers. Since TracFone's service is a prepaid service, no customers will be disconnected for failure to pay toll charges or, for that matter, any other charges. TracFone treats long distance minutes of use as any other usage and the customers are not charged separately for toll services. Inasmuch as all TracFone services are prepaid there is no danger that low income customers will incur large charges for heavy toll (or other) calling and no risk that they will be disconnected for nonpayment. Since customers pay for the service in advance – they can use only what they already have paid for or what service quantities they have been provided to them under the Lifeline program. Thus, TracFone's prepaid services are especially beneficial to lower income users since the consumers enjoy the ability to control or limit their charges for toll service (as well as local service) in a manner that customers of traditional post-paid (billed in arrears) services do not.<sup>24</sup>

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<sup>24</sup> Commission ETC Rule, § II.A.9, II.C., and III.c. provide that all ETCs must provide Lifeline and Linkup service. In the TracFone Forbearance Order, the FCC only decided not to forbear from the facilities-based requirement for purposes of TracFone providing Lifeline service. As a non-facilities-based provider, TracFone may not offer Linkup service in Rhode Island, or in any other state.

**D. TracFone Will Be Able to Serve the Designated Areas Within a Reasonable Time.**

TracFone provides service in Rhode Island by reselling service which it obtains from underlying facilities-based providers. Each of those providers' networks are operational and are largely built out. Thus, TracFone will be able to commence offering its Lifeline service to all locations served by any of its underlying carriers very soon after receiving approval from the Rhode Island Public Utilities Commission. Indeed, it already serves those areas. The only delay will be the time needed to implement procedures and internal systems to offer the Lifeline program. Thus, TracFone will be able to provide Lifeline service to all qualified customers on a timely basis or within a reasonable period of time in accordance with 47 C.F.R. § 54.202(a)(1).

**E. Service Quality Commitments.**

As a reseller of other carriers' wireless services, TracFone's service is of the same quality and reliability as that of its underlying vendors. TracFone cannot assure the Commission that it will never experience service disruptions. Occasional dropped calls and inconsistent coverage depending on atmospheric conditions are a fact of life in the wireless industry. TracFone believes that its service is as reliable as that of any other wireless provider serving the Rhode Island market. To demonstrate its commitment to high service quality, TracFone will comply with the CTIA - The Wireless Association® Consumer Code for Wireless Service in accordance with 47 C.F.R. § 54.202(a)(3). In addition, TracFone's Privacy Policy for its SafeLink Wireless® Lifeline service is available to all customers on its website at <http://www.safelinkwireless.com> and it is attached as Exhibit 6.

**F. TracFone Will Advertise the Availability of Supported Services.**

TracFone will aggressively advertise the availability of its Lifeline service and the

associated charges using media of general distribution, in accordance with the requirements of Section 214(e)(1)(A) of the Communications Act and Section 54.201(d)(2) of the FCC's Rules (47 C.F.R. § 54.201(d)(2)). TracFone plans to utilize such marketing and outreach efforts as necessary and appropriate to ensure that as many eligible consumers as possible avail themselves of TracFone's prepaid wireless Lifeline offering. TracFone understands that it will be competing with other ETCs in Rhode Island, including the incumbent local exchange carrier, to be chosen by consumers to be their Lifeline service provider. TracFone will utilize traditional means for promoting the availability of its Lifeline program. These means will include print and broadcast advertising in media outlets most likely to reach consumers eligible for Lifeline. These would include national publications as well as local and community newspapers, and commercial broadcast stations, especially those stations whose programming is targeted to significant lower income communities including, for example, Spanish language stations in areas with significant Spanish-speaking populations. Examples of TracFone's advertisements for SafeLink Wireless® Lifeline service are attached as Exhibit 7.

The Commission should be aware that TracFone has had previous experience marketing Lifeline service and was profoundly successful. In October 2005, following the devastation caused by Hurricane Katrina, the FCC established a special Lifeline program which enabled wireless providers to be designated as ETCs to offer a one-time Lifeline service to persons in the states of Louisiana, Mississippi, and Alabama who had been displaced by the hurricane.<sup>25</sup> TracFone was one of the first providers to be designated as an ETC under the FCC's Hurricane

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<sup>25</sup> Federal-State Joint Board on Universal Service, 20 FCC Rcd 16883 (2005). Under the Hurricane Katrina Lifeline program, ETCs provided \$130.00 in support to qualified customers in the form of a free wireless handset and at least 300 free minutes. If the subscriber did not need a handset, then the subscriber could opt instead for a Lifeline-supported package of greater than 300 minutes. Id. ¶¶ 13, 22.

Katrina program. Within a period of several months, TracFone was able to enroll nearly 30,000 hurricane victims in its Lifeline program using marketing efforts similar to those proposed herein, as well as other methods intended to address the special challenges of reaching out to potential Lifeline customers who had lost their homes, and were residing in temporary locations - - often far away from their home communities. TracFone believes that its advertising and outreach efforts detailed above will result in increased participation in the Lifeline program. The Commission's grant of TracFone's ETC Petition will promote the important goal of increasing Lifeline participation.

**G. TracFone Will Comply with the Lifeline Certification and Verification Requirements in the Commission ETC Rules.**

Section 54.410 of the FCC's Rules require ETCs in states, such as Rhode Island, that mandate Lifeline support, to comply with the state's certification of eligibility and verification of continued eligibility requirements for Lifeline participation. TracFone will certify and verify consumer eligibility in accordance with the Commission ETC Rules, §§ V and VI. In accordance with those rules, TracFone will work with the Department of Human Service and the Department of Administration, Division of Planning, initially certify and annual verify eligibility of its Lifeline customers.

**H. TracFone Requests Designation Throughout Its Service Area in Rhode Island.**

TracFone will offer Lifeline service in all areas in Rhode Island that are served by AT&T Mobility, T-Mobile, and Verizon Wireless. TracFone reiterates the fact that it is applying for ETC designation solely to utilize USF funding to provide Lifeline service to qualified low

income consumers.<sup>26</sup> It does not seek and will not accept high cost support. As such, its designation as an ETC will cause no growth in the high cost portions of the USF. Rhode Island only includes non-rural service areas. For non-rural service areas, there are no restrictions on how a state commission defines the “service area” for purposes of designating a competitive ETC. TracFone’s authorized service area covers the non-rural telephone company service area of Verizon. The Commission may designate TracFone as an ETC in non-rural areas that TracFone serves without redefining the service areas of non-rural telephone companies.

### **III. Designation of TracFone as an ETC in the State of Rhode Island Would Serve the Public Interest.**

As noted above, TracFone seeks certification as an ETC in areas served by non-rural telephone companies. The Communications Act requires that the Commission determine that TracFone’s designation as an ETC would serve the public interest.<sup>27</sup>

TracFone’s SafeLink Wireless® Lifeline service offers important benefits that are especially needed by low income Rhode Island residents in this time of economic downturn. As the Commission is aware, the Dow Jones Industrial Average, a primary indicator of the health of the economy, has substantially declined since 2008. Thus, the savings accounts upon which many Rhode Island residents depend for emergencies and for retirement have been significantly eroded. According to the United States Bureau of Labor Statistics, as of December 2009, Rhode

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<sup>26</sup> In accordance with Commission ETC Rules, § VI.G., TracFone states that it electronically files FCC Form 497 with USAC by the fifteenth day of each month to report Lifeline service provided in the previous month.

<sup>27</sup> 47 U.S.C. § 214(e)(2); see Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, ¶ 42 (2005) (“We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.”).

Island experienced an unemployment rate of 12.7 percent.<sup>28</sup> These conditions have had a significant impact on Rhode Island residents.

The availability of a regular mobile telephone will be critical to many of those unemployed Rhode Island residents' efforts to search for other employment opportunities. Without a mobile telephone, unemployed individuals face extreme difficulty in finding a job. A mobile telephone allows individuals to be reached at any time and location and enables unemployed individuals to respond to potential employers immediately. In addition, a mobile telephone assists employed low-wage individuals by allowing those individuals to stay in contact with employers, manage relationships with supervisors, and respond to requests to work additional shifts or hours. TracFone's SafeLink Wireless® Lifeline program will enable thousands of Rhode Island residents, including many who have been adversely impacted by the failing economy or job loss, to obtain a handset and wireless service, which would otherwise be unavailable to them, to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.

The dire economic situation facing an increasing number of Rhode Island residents indicates that now, more than ever, low income individuals can greatly benefit from the advantages offered by TracFone's SafeLink Wireless® Lifeline service. TracFone's SafeLink Wireless® Lifeline service will allow low income Rhode Island residents, including many who have been adversely impacted by the failing economy or job loss, to have access to free wireless service to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.

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<sup>28</sup> Bureau of Labor Statistics, Local Area Unemployment Statistics, <http://www.bls.gov/lau/home.htm>, viewed on March 4, 2010.

Designation of TracFone as an ETC will also provide an incentive to the incumbent LECs serving those portions of the state to improve their existing networks in order to remain competitive, resulting in improved services to consumers. Designation of TracFone as an ETC will also benefit consumers because support to services provided by TracFone will help assure that quality services are available at “just, reasonable, and affordable rates” as envisioned in the Communications Act.<sup>29</sup>

The FCC has identified factors to be considered in determining whether designation of an additional ETC would serve the public interest. These factors require the Commission to weigh whether the benefits of an additional ETC would outweigh potential harms. The factors to be considered include: 1) the benefits of increased competitive choice; and 2) the unique advantages of the applicant company’s service offerings.<sup>30</sup> As described in the following paragraphs, TracFone meets these criteria.

**A. The Benefits of Increased Competitive Choice.**

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the FCC for more than three decades.<sup>31</sup> TracFone’s prepaid wireless service alternative will provide consumers with convenient and affordable telecommunications service, both from their residences and when they are away from their homes.

In addition, designating TracFone as an ETC will increase the competitive choices for low-income Rhode Island households. The Universal Service Administrative Company

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<sup>29</sup> See 47 U.S.C. § 254(b)(1).

<sup>30</sup> See 47 C.F.R. § 54.202(c).

<sup>31</sup> See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

(“USAC”), the administrator of the federal USF, tracks ETCs in every state and maintains data on the amounts of Lifeline support received by each ETC. Recent data published by USAC, reveals that there are only two ETCs in Rhode Island (Verizon and Cox Rhode Island Telecom, LLC), neither of which offers wireless service. The existence of only two landline ETCs and no wireless ETCs providing Lifeline service anywhere in Rhode Island provides no meaningful competitive choice to Rhode Island consumers. TracFone’s experience operating as a designated ETC in many other states indicates that its SafeLink Wireless® Lifeline service is an attractive alternative to many low-income consumers.

TracFone believes that many consumers, including qualified Lifeline customers, view the portability and convenience of wireless service as a modern necessity, not a luxury. Parents need to be able to reach their children wherever they may be (and vice versa); persons seeking work need to be reachable by potential employers; persons need to call for emergency assistance while away from home. According to FCC data, Rhode Island's statewide Lifeline participation rate is only 59.1 percent of eligible households.<sup>32</sup> In other words, over forty percent of low income Rhode Island households which are eligible to participate in Lifeline are not doing so. TracFone expects that qualified consumers will elect to participate in Lifeline, if a wireless option is available.

**B. Unique Advantages of TracFone’s Service Offerings.**

As described elsewhere in this Petition, TracFone’s entire business model is predicated

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<sup>32</sup> See *In the Matter of Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-87 (April 29, 2004) Table 1.A. The Universal Administrative Company estimates that in 2007 the participation rate for eligible households in Rhode Island was between twenty and fifty percent (20-50%). See 2007 Participation Rates by State, available at <http://www.usac.org/li/about/participation-rate-information.aspx>.

on providing easy-to-use, pay-as-you-go, affordable wireless telecommunications service to consumers to whom wireless service would be otherwise unavailable or unaffordable. TracFone offers consumers an opportunity to acquire wireless service using state-of-the-art handsets and such features as caller ID, voice mail, text messaging, and long distance calling without toll charges. Because TracFone's service requires no term contracts, no minimum service periods or volume commitments, no credit checks, and no early termination fees, the service is available to everyone – irrespective of age; irrespective of residency; irrespective of creditworthiness. Moreover, TracFone's prepaid service is unique in that usage information and remaining balance information is stored in the handsets and is thus available to consumers on a "real-time" basis. TracFone's prepaid service offers Lifeline-qualified customers access, quality and price. The two other ETCs serving the areas covered by TracFone in Rhode Island do not offer service to consumers under comparable conditions.

TracFone will offer the following Lifeline plan to its customers. Under the plan, TracFone's customers will receive free monthly service, free airtime each month, and a free handset. A description of the Lifeline plan is as follows:

TracFone SafeLink Wireless® Lifeline Plan

Each TracFone Lifeline customer will be provided with 67 minutes of use each month. The amount of free minutes of airtime is based on the amount of federal USF low income support available pursuant to the rules of the FCC. TracFone calculates the number of minutes each Lifeline customer will receive per month to ensure that each Lifeline customer receives the full value of the Lifeline discount to which he or she is entitled, based upon the amount of the Lifeline discount required by the Commission. The free minutes will be automatically added to each customer's prepaid account balance each month. Unused minutes will roll over from

month-to-month so long as the customer remains enrolled in the Lifeline program. The free minutes may be used for calls to or from anywhere in the United States -- local or long distance, intrastate or interstate. They may also be used for calls to more than 100 international destinations, and there are no roaming charges, which enables TracFone's Lifeline customers to use the service anywhere. In addition, Lifeline customers will be allowed to purchase additional usage cards at a rate of \$0.20 per minute. TracFone pledges that one hundred percent of the federal Lifeline support it receives will be flowed through to Lifeline customers in the form of free usage.<sup>33</sup> The terms and conditions governing SafeLink Wireless® Lifeline service are attached as Exhibit 8.

TracFone will make available handsets to its participating Lifeline customers at no charge. TracFone's average cost of purchasing handsets is above \$50.00 per unit. TracFone will pre-activate handsets provided to qualified customers,<sup>34</sup> enroll the customers in the Lifeline plan, and allocate the appropriate number of minutes of usage to the customers' accounts. The handsets will be delivered to customers upon enrollment in the program with the first month's free usage allotment already activated. The phones will remain active for one year even if no additional usage is purchased. Low income customers who have limited access to communications sources will gain immediate and free access to wireless telecommunications service simply by turning on the handsets provided by TracFone.

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<sup>33</sup> TracFone reserves the right to modify its Lifeline plan based on changes in market conditions or the amount of USF support available. However, under the Lifeline plan, 100 percent of federal and state required Lifeline support will be provided to Lifeline customers in the form of free usage.

<sup>34</sup> Customers who do not qualify for Lifeline must purchase a handset and then activate it by calling TracFone's Customer Care department from a landline telephone or by completing a form on TracFone's website.

TracFone's Lifeline service is unique in that it will be free to qualified subscribers and will include a free E911-compliant wireless handset. The Lifeline programs offered by other ETCs in Rhode Island provide participating consumers with discounts below carriers' standard rates. However, enrolled Lifeline customers still must pay the ETC's discounted charges, as well as purchase telephone equipment necessary to use those discounted services. Given Rhode Island's low Lifeline participation rate, the existence of only two landline ETCs, and the unique benefits of TracFone's SafeLink Wireless® Lifeline service, the public interest would be served by the Commission's designation of TracFone as Rhode Island's first wireless ETC for the purpose of providing Lifeline service.

**C. Impact on the Universal Service Fund.**

The FCC has considered the impact on the USF when determining whether to grant TracFone's petitions for designation as an ETC.<sup>35</sup> Whatever impact classification of TracFone as an ETC will have on the universal service fund will be negligible. TracFone seeks ETC designation solely to enable it to offer Lifeline benefits to eligible low income consumers. TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of obtaining high cost support. As noted in the FCC's TracFone Forbearance Order, "the potential growth of the fund associated with high-cost support distributed to competitive ETCs" is not relevant to carriers seeking support associated with the low-income program.<sup>36</sup> In 2007, low-income support accounted for only 11.8 percent of the distribution of the total universal service fund, while high-cost support accounted for 61.6 percent.<sup>37</sup> "Any increase in the size of

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<sup>35</sup> TracFone ETC Order, ¶ 16 n.47.

<sup>36</sup> TracFone Forbearance Order, ¶ 17.

<sup>37</sup> Wireline Competition Bureau, Federal Communications Commission, Trends in Telephone Service, Table 19.1 and Chart 19.1 (2008).

the fund [associated with granting TracFone's ETC petition] would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers."<sup>38</sup> Indeed, the FCC has acknowledged the benefits of designating a carrier as an ETC, when the carrier only seeks to participate in the USF's low income programs. The FCC included the following statement in a May 1, 2008 Order in which it established an interim cap on high-cost support:

Moreover, there are advantages to obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support. In particular, the ability of competitive ETCs to receive low-income universal service support shows value in obtaining and maintaining ETC designation separate and apart from high-cost support. Indeed, TracFone Wireless, Inc. (TracFone) sought forbearance from section 214(e)(1) of the Act so that it could seek designation as an ETC eligible only to receive universal service Lifeline support. TracFone took this step because "offering prepaid plans which make wireless service available to low income users ... has been a critical component of TracFone's business strategy since the company's inception." Other ETCs may have similar business strategies. Further, by offering Lifeline and Link Up service, a competitive ETC may attract new subscribers that may not otherwise have taken telephone service. This would increase a competitive ETC's base of subscribers and, consequently, lower its average cost of serving all of its subscribers. Moreover, competitive ETCs may be eligible for separate universal service support at the state level.<sup>39</sup>

Furthermore, it is important to recognize the differences between low income funding for the Lifeline program and high cost funding. With Lifeline, ETCs only receive USF support for customers they obtain. If TracFone acquires Lifeline customers currently served by other ETCs, TracFone will gain the Lifeline support for those customers, but the ETCs losing the customers will lose the support. TracFone will only increase the amount of USF Lifeline funding in

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<sup>38</sup> TracFone Forbearance Order, ¶ 17.

<sup>39</sup> High-Cost Universal Service Support, et al., Order, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (released: May 1, 2008), ¶ 30.

situations where it obtains new Lifeline customers, i.e., customers not currently enrolled in other ETCs' Lifeline programs. In contrast, with high cost support, when new ETCs enter the market and capture customers from the existing ETCs, both the incumbent ETCs and the new ETCs receive high cost support -- based on the incumbent LECs' costs, thereby increasing the size of the USF.

**D. Designation of TracFone as an ETC Will Benefit the Public Interest of Consumers Throughout Rhode Island.**

In addition to meeting the public interest factors, TracFone, if designated as an ETC, will also serve the public interest because TracFone will participate in the Lifeline program as required by the FCC's Rules and will otherwise comply with all FCC and Commission Rules governing universal service programs, which are designed to ensure that the public interest standards of the Communications Act are achieved. As a national leader in prepaid wireless services, TracFone has done much to advance the availability of wireless service for those portions of the population for whom wireless service is otherwise unavailable or, if available, is too costly and requires term duration and volume commitments which are beyond the means of many consumers.

Moreover, grant of TracFone's Petition will serve the public interest in increasing the number of ETCs in Rhode Island. By increasing the number of carriers eligible for federal USF support, the amount of federal USF dollars distributed to Rhode Island consumers may increase. Rhode Island residents are substantial net contributors to the federal universal service programs, contributing more than \$13,244,000.00 to the federal USF than was received by Rhode Island from the federal USF in 2007.<sup>40</sup> Thus, it only seems equitable that a greater share of this federal

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<sup>40</sup> See Universal Service Monitoring Report, CC Docket No. 98-202, 2008, Table 1.12.

funding be made available to Rhode Island residents, especially low income Lifeline-eligible Rhode Island residents. By granting ETC status to TracFone, the Commission will enable TracFone to increase the number of Rhode Island residents receiving Lifeline support, thereby increasing the amount of USF money flowing into Rhode Island.

Finally, designation of TracFone as an ETC will serve the public interest by further promoting the extensive role TracFone plays in the provision of communications services to lower income and lower volume users, transient users, as well as other consumers who either choose not to enter into long-term service commitments or who are unable to meet the credit requirements necessary to obtain service from other wireline or wireless carriers. TracFone's "pay-as-you-go" wireless service enables consumers to enjoy the convenience and security of wireless telecommunication without being subject to extensive credit reviews and long-term service commitments which historically have limited the availability of wireless service to many Americans, including many Rhode Island residents. For all the reasons described herein, designation of TracFone as an ETC will serve the public interest.

### **CONCLUSION**

Based on the foregoing, TracFone contends that the requirements for eligibility for designation as an ETC have been met. Accordingly, TracFone requests that the Rhode Island Public Utilities Commission promptly grant its petition for designation as an eligible telecommunications carrier.

Respectfully submitted,



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*Counsel for TracFone Wireless, Inc.*

March 8, 2010

# Exhibit 1

**DECLARATION OF TRACFONE WIRELESS, INC.**

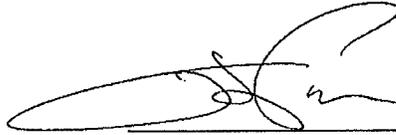
I, F.J. Pollak, state as follows:

1. I am President and Chief Executive Officer of TracFone Wireless, Inc. ("TracFone"). My business address is 9700 N.W. 112<sup>th</sup> Avenue, Miami, FL 33178.

2. In my capacity as President and Chief Executive Officer of TracFone, I am an authorized representative of TracFone. I have read TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of Rhode Island for the Limited Purpose of Offering Lifeline Service to Qualified Households. I confirm that the information contained therein is true and correct to the best of my knowledge.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on March 8, 2010

A handwritten signature in black ink, appearing to read 'F.J. Pollak', written over a horizontal line.

F.J. Pollak  
President and Chief Executive Officer

# Exhibit 2

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition of TracFone Wireless, Inc. for	)	
Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47	)	
C.F.R. § 54.201(i)	)	

ORDER

Adopted: September 6, 2005

Released: September 8, 2005

By the Commission: Commissioner Abernathy issuing a statement.

**I. INTRODUCTION**

1. In this Order, we address a petition filed by TracFone Wireless, Inc. (TracFone)<sup>1</sup> pursuant to section 10 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act)<sup>2</sup> requesting that the Commission forbear from the requirement that a carrier designated as an eligible telecommunications carrier (ETC) for purposes of federal universal service support provide services, at least in part, over its own facilities.<sup>3</sup> TracFone requests that its eligibility for federal universal service support be limited to Lifeline only. Subject to the conditions that we describe below, we grant TracFone forbearance from the facilities requirement for ETC designation for Lifeline support only.<sup>4</sup>

**II. BACKGROUND**

2. Procedural History: TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider (i.e., a pure wireless reseller) that provides prepaid wireless telecommunications services. On June 8, 2004, TracFone filed a Petition for Forbearance from section 214(e) of the Act, which requires that an ETC offer service using its own facilities or a combination of its own facilities and resale of another carrier's services (Forbearance Petition or Petition).<sup>5</sup> Contemporaneously with its Petition, TracFone filed

<sup>1</sup> TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004 (Forbearance Petition or Petition). On February 17, 2005, pursuant to section 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until September 6, 2005, the date on which TracFone's Petition shall be deemed granted in the absence of a Commission decision that the Petition fails to meet the standard for forbearance under section 10(a). *TracFone Wireless, Inc.'s Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 3677 (2005).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>3</sup> 47 U.S.C. § 214(e).

<sup>4</sup> We note that this grant of forbearance does not establish TracFone as an ETC. We will address TracFone's petitions for ETC designations in subsequent orders.

<sup>5</sup> On June 24, 2004, the Bureau issued a Public Notice seeking comment on TracFone's Petition for Forbearance. *Parties are Invited to Comment on TracFone Wireless' Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and Petition for Forbearance from Application of Section 214*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 11264 (2004). Comments and replies to the June 24<sup>th</sup> Public Notice were received

with the Commission petitions for ETC designation for several states.<sup>6</sup> On August 8, 2004, TracFone, in its reply comments, and shortly thereafter in its applications for ETC designation, amended its Petition and related ETC applications to limit its eligibility for federal universal service support to the Lifeline portion of the low-income program.<sup>7</sup> TracFone states that it will meet all ETC obligations except for the requirement to "own facilities" and commits to providing its Lifeline customers with access to E911 service, regardless of activation status and availability of prepaid minutes, and to requiring its customers to self-certify they are receiving only one Lifeline-supported service.<sup>8</sup> On September 24, 2004, TracFone amended its Petition a second time to include a request for forbearance from section 54.201(i) of the Commission's rules, which provides that state commissions shall not designate as an ETC a carrier that offers services supported by federal universal service support mechanisms exclusively through resale of another carrier's service.<sup>9</sup>

3. Applicable Statutes and Rules: The Act provides that only an ETC shall be eligible for universal service support.<sup>10</sup> To be eligible for ETC designation, a carrier must meet certain statutory requirements including offering service over its own facilities or a combination of its own facilities and resale of another

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on July 26 and August 9, 2004, respectively. In response to certain comments, TracFone limited its Petition to Lifeline support in its August 9<sup>th</sup> reply comments. Because TracFone modified its Petition in its reply comments, commenters did not provide comment in the Forbearance proceeding on the Lifeline-only limitation. Despite this fact, commenters did address the Lifeline-only limitation in the related TracFone ETC proceedings, which TracFone likewise modified to reflect the request for limited universal service support. See *The Wireline Competition Bureau Seeks Comment on Petitions Concerning Eligible Telecommunications Designations and the Lifeline and Link-up Universal Service Support Mechanism*, CC Docket No. 96-45 and WC Docket No. 03-109, Public Notice, 19 FCC Rcd 20462 (2004).

<sup>6</sup> TracFone has eight ETC petitions pending before the Commission. See TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed June 8, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed June 21, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed June 21, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45, filed November 9, 2004.

<sup>7</sup> TracFone Reply Comments, filed August 9, at 2-3 (August Reply Comments). See TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed Aug. 16, 2004.

<sup>8</sup> TracFone Reply Comments, filed October 4, 2004, at 3-4 (October Reply Comments); August Reply Comments at 10.

<sup>9</sup> 47 C.F.R. § 54.201(i); TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004.

<sup>10</sup> 47 U.S.C. § 254(e).

carrier's service.<sup>11</sup> Only ETCs may receive high-cost and low-income support.<sup>12</sup> The low-income support mechanism of the universal service fund consists of the Lifeline and Link-Up programs.<sup>13</sup>

4. Collectively, the Lifeline and Link-Up programs are designed to reduce the monthly cost of telecommunications service and the cost of initial connection, respectively, for qualifying consumers: Lifeline provides low-income consumers with discounts of up to \$10.00 off of the monthly cost of telephone service.<sup>14</sup> Link-Up provides low-income consumers with discounts of up to \$30.00 off of the initial costs of installing telephone service.<sup>15</sup> Recognizing the unique needs and characteristics of tribal communities, enhanced Lifeline and Link-Up provide qualifying low-income individuals living on tribal lands with up to \$25.00 in additional discounts off the monthly costs of telephone service and up to \$70.00 more off the initial costs of installing telephone service.<sup>16</sup> TracFone seeks eligibility to receive support only for the Lifeline portion of the low-income program.<sup>17</sup>

<sup>11</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>12</sup> A carrier need not be an ETC to participate in the schools and libraries or rural health care programs. 47 U.S.C. § 254(h)(1)(A) and (B)(ii). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015, para. 449 (1997 *Universal Service Order*) (concluding that any telecommunications carrier, not just ETCs, may receive universal service support for providing supported services to schools and libraries); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114-5, para. 19 (1999) (*Fourteenth Order on Reconsideration*) (finding that although only ETCs may receive universal service support, a non-ETC that provides supported services to eligible rural health care providers may offset the value of the discount provided against its universal service contribution obligation and, to the extent such discount exceeds its contribution obligation, receive a refund).

<sup>13</sup> 47 C.F.R. §§ 54.401, 54.411.

<sup>14</sup> See 47 C.F.R. § 54.401(a)(2).

<sup>15</sup> See 47 C.F.R. § 54.411(a)(1).

<sup>16</sup> See 47 C.F.R. §§ 54.405(a)(4), 54.411(a)(3). Under the Commission's rules, there are four tiers of federal Lifeline support. All eligible subscribers receive Tier 1 support which provides a discount equal to the ETC's subscriber line charge. Tier 2 support provides an additional \$1.75 per month in federal support, available if all relevant state regulatory authorities approve such a reduction. (All fifty states have approved this reduction.) Tier 3 of federal support provides one half of the subscriber's state Lifeline support, up to a maximum of \$1.75. Only subscribers residing in a state that has established its own Lifeline/Link-Up program may receive Tier 3 support, assuming that the ETC has all necessary approvals to pass on the full amount of this total support in discounts to subscribers. Tier 4 support provides eligible subscribers living on tribal lands up to an additional \$25 per month towards reducing basic local service rates, but this discount cannot bring the subscriber's cost for basic local service to less than \$1. See 47 C.F.R. § 54.403.

<sup>17</sup> August Reply Comments at 3 (requesting eligibility for Lifeline only support); October Reply Comments at 4 (specifying it does not seek eligibility for Link-Up support). TracFone has filed details of two proposed Lifeline plans. TracFone Wireless, Inc. *Ex Parte* Supplement to Petition for Forbearance and Petitions for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, at 3-5, filed July 15, 2005. The first plan, the "Pay-As-You-Go" Lifeline Plan, provides Lifeline customers with access to the network for one year and 30 minutes of airtime each month. Under TracFone's proposal, the cost of this plan would be completely subsidized by the Lifeline support. *Id.* at 3-4. The second plan, the "Net10 Pay-As-You-Go" Lifeline Plan, would require the Lifeline customer to purchase buckets of minutes to be used in an identified period of time that are discounted from TracFone's retail price to reflect the Lifeline subsidy. *Id.* at 4-5. One variation under this plan would require Lifeline customers to redeem coupons monthly. *Id.* TracFone states that, under any plan, the Administrator would provide support to TracFone as it does to all other recipients of Lifeline support; that is, TracFone's Lifeline support will be calculated on a monthly basis and distributed on a quarterly basis. Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 3, filed August 22, 2005.

5. The Commission has in the past declined to extend ETC status to pure resellers. In the 1997 *Universal Service Order*, the Commission found that the plain language of the statute requires that a carrier seeking ETC designation must own facilities, at least in part, thus precluding a carrier that offers services solely through resale from being designated as eligible.<sup>18</sup> The Commission reasoned, without distinguishing among the various universal service support programs, that it was appropriate to deny pure resellers universal service support because pure resellers could receive the benefit of universal service support by purchasing wholesale services at a price that includes the universal service support received by the incumbent provider.<sup>19</sup> Later in the 1997 *Universal Service Order*, the Commission found that although resellers were not eligible to receive universal support directly, they were not precluded from offering Lifeline services. Resellers could offer Lifeline services by purchasing services at wholesale rates pursuant to section 251(c)(4) that reflect the customer-specific Lifeline support amount received by the incumbent local exchange company (LEC) and then passing these discounts through to qualifying low-income customers.<sup>20</sup> The Commission, in so finding, considered only that the underlying carrier was an incumbent LEC, subject to price-regulated resale obligations. Further, the Commission declined to forbear from the facilities requirement, finding that the statutory criteria had not been met.<sup>21</sup> Making no finding with respect to the first two prongs, the Commission concluded that forbearance was not in the public interest because allowing pure resellers to receive universal service support would result in double recovery by the resellers.<sup>22</sup> In making this finding, however, the Commission again did not distinguish among the various universal service support programs. Specifically, it did not consider whether providing only Lifeline support directly to a pure wireless reseller would result in double recovery.

### III. DISCUSSION

6. For the reasons provided below, we conditionally grant TracFone's Petition and forbear from section 214(e) of the Act and sections 54.201(d)(1) and 54.201(i) of our rules for the purpose of considering its Petitions for ETC Designation for Lifeline support only.<sup>23</sup> If ultimately granted ETC status, TracFone will be eligible only for Lifeline support. As a limited ETC, TracFone would not be eligible to receive support for the other supported services under the low-income program nor would it be eligible, as an ETC, to receive support for services supported by the other universal support mechanisms.<sup>24</sup> We will address TracFone's petitions for ETC designation in subsequent orders. In sum, this grant is conditional on TracFone (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides it provides Lifeline service; (d) obtaining a certification from each Public Safety

<sup>18</sup> *Id.* at 8875, para. 178 (adopting Joint Board's analysis and conclusion); see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 172-73, paras. 160-161 (1996).

<sup>19</sup> 1997 *Universal Service Order*, 12 FCC Rcd at 8866, para. 161 and 8875, para. 178.

<sup>20</sup> *Id.* at 8972, para. 370. The Commission noted that it would reassess this approach in the future if the Lifeline program appeared to be under-utilized. *Id.*

<sup>21</sup> *Id.* at 8875-6, para. 179.

<sup>22</sup> *Id.*

<sup>23</sup> In addition, and on our own motion, we forbear from section 54.201(d)(1) of the Commission's rules. 47 C.F.R. § 54.201(d)(1). This section mirrors section 214(e) of the Act and requires that ETCs be facility-based, at least in part. We apply the same forbearance analysis we applied to section 214(e) to this section of our rules in determining that forbearance is warranted.

<sup>24</sup> See n. 16, *supra*, for discussion regarding participation by non-ETCs in the schools and libraries and rural health care programs.

Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) requiring its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.<sup>25</sup> Finally, as explained below, within thirty days of the release of this Order, we require TracFone to file with the Commission a plan outlining the measures it will take to implement these conditions.

7. Section 10 of the Act requires that the Commission forbear from applying any regulation or any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in section 10(a) are satisfied. Specifically, section 10(a) provides that the Commission shall forbear from applying such provision or regulation if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>26</sup>

8. In addition, when considering the public interest prong under section 10(a)(3), the Commission must consider "whether forbearance ... will promote competitive market conditions."<sup>27</sup> If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.<sup>28</sup> Forbearance is warranted, however, only if all three prongs of the test are satisfied. For the reasons explained below, we find that TracFone satisfies all three prongs.

9. This Petition requires that we consider the statutory goals of two related but different provisions of the Act. We first examine the statutory goals of universal service in section 254 specifically in the

<sup>25</sup> Commenters have raised concerns about the administrative costs, complexities, and burdens of granting this Petition and presumably the associated ETC designation petitions. See Letter from Robin E. Tuttle, USTelecom, to Marlene Dortch, FCC, CC Docket No. 96-45 (filed August 17, 2005) (USTelecom August 17 *Ex Parte*). We believe that this conditional forbearance will serve to further the statutory goal of the providing telecommunications access to low-income subscribers while establishing the necessary safeguards to protect the universal service fund and the functioning of the low-income support mechanism. To the extent, however, that our predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, the parties can file appropriate petitions with the Commission and the Commission has the option of reconsidering this forbearance ruling. See *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21508-9, para. 26 n.85 (2004); see also *Petition of SBC Communications Inc. for Forbearance from Structural Separations Requirements of Section 272 of the Communications Act of 1934, As Amended, and Request for Relief to Provide International Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, 19 FCC Rcd 5211, 5223-24, para. 19 n.66 (2004); *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6<sup>th</sup> Cir. 1998). Additionally, we note that the conditions we impose here will be incorporated into any grant of the ETC designation petitions and any violation of such conditions may result in loss of ETC status.

<sup>26</sup> 47 U.S.C. § 160(a).

<sup>27</sup> 47 U.S.C. § 160(b).

<sup>28</sup> *Id.*

context of "low-income consumers."<sup>29</sup> We then consider the statutory purpose underpinning the facilities requirement in section 214(e) as it relates to qualifying for federal low-income universal service support. After careful examination of the regulatory goals of universal service as applied to low-income consumers, we determine that a facilities requirement for ETC designation is not necessary to ensure that a pure wireless reseller's charges, practices, classifications or regulations are just and reasonable when that carrier seeks such status solely for the purpose of providing Lifeline-supported services. Indeed, for the reasons provided below, we find that the facilities requirement impedes greater utilization of Lifeline-supported services provided by a pure wireless reseller.

10. Universal service has been a fundamental goal of federal telecommunications regulation since the passage of the Communications Act of 1934.<sup>30</sup> Congress renewed its concern for low-income consumers in the Telecommunications Act of 1996 when it established the principles that guide the advancement and preservation of universal service.<sup>31</sup> Specifically, the Act directs the Commission to consider whether "consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, ... have access to telecommunications [services] ... at rates that are reasonably comparable to rates charged ... in urban areas."<sup>32</sup> We therefore examine the facilities requirement from which TracFone seeks forbearance in light of the statute's goal of providing low-income consumers with access to telecommunications services.

11. Just and Reasonable: As an initial matter, we note that a provision or regulation is "necessary" if there is a strong connection between the requirement and regulatory goal.<sup>33</sup> Section 10(a)(1) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline support only is necessary to ensure that the charges, practices, classifications or regulations are just and reasonable and not unjustly or unreasonably discriminatory.

12. We find that the facilities requirement is not necessary to ensure that TracFone's charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only. The Commission has in the past declined to extend ETC status to pure resellers because it was concerned about double recovery of universal service support.<sup>34</sup> In making this decision, however, the Commission considered the issue in the context of wireline resellers and without differentiating among the types of universal service support and the basis of distribution. Lifeline support, designed to reduce the monthly cost of telecommunications services for eligible consumers, is distributed on a per-customer basis and is directly reflected in the price that the eligible customer pays.<sup>35</sup> Because it is customer-specific, a carrier who loses a Lifeline customer to a reseller would no longer receive the Lifeline support to pass through to that customer. Thus, a wireless reseller who serves a Lifeline-eligible customer and receives Lifeline support directly from the fund does not receive a double recovery. By comparison, where the wholesale carrier is an incumbent LEC subject to price-regulated resale under section 251(c)(4), the rate at which the reseller obtains the wholesale service is based on a state-mandated percentage

<sup>29</sup> 47 U.S.C. § 254(b)(3).

<sup>30</sup> 47 U.S.C. § 151 ("to make available, so far as possible, to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and communication service with adequate facilities at reasonable rates") (emphasis added).

<sup>31</sup> 47 U.S.C. § 254(b); see 1997 Universal Service Order, 12 FCC Rcd at 8789, para. 21 and 8793, para. 27.

<sup>32</sup> 47 U.S.C. § 254(b)(3) (emphasis added).

<sup>33</sup> See *CTIA v. FCC*, 330 F.3d 502, 512 (2003).

<sup>34</sup> 1997 Universal Service Order, 12 FCC Rcd at 8861, 8873, 8875, paras. 151-152, 174, and 178.

<sup>35</sup> 47 C.F.R. §§ 54.401, 54.504.

discount off of the incumbent LEC's retail rate for the service, and any Lifeline support received by the incumbent LEC would therefore be reflected in the price charged to the reseller.<sup>36</sup> In this scenario, a reseller that also received Lifeline support could recover twice: first because the benefit of the Lifeline support is reflected in the wholesale price and second because the reseller also receives payment directly from the fund for the Lifeline customer. That, however, is not the case before us. TracFone, as a CMRS provider, does not purchase Lifeline-supported services from incumbent LEC providers. Because TracFone's CMRS wholesale providers are not subject to section 251(c)(4) resale obligations, the resold services do not reflect a reduction in price due to Lifeline support. Therefore, we find that allowing TracFone to receive Lifeline support directly from the fund would not result in double recovery to TracFone and that the logic of the *1997 Universal Service Order* does not apply here.

13. We agree with TracFone that, as a reseller, it is by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory.<sup>37</sup> We note that TracFone's Lifeline offering will compete with at least one other Lifeline offering whether from the underlying CMRS provider, if an ETC, or from the incumbent wireline carrier.<sup>38</sup> We also believe that this competition will spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. We note that TracFone has created a wireless prepaid product that is neither dependent upon the retail service offerings of its underlying carriers nor simply a rebranding of the underlying carrier's retail service offering which may provide a valuable alternative to eligible consumers.<sup>39</sup>

14. For the reasons provided above, we find that the requirements of the first prong of section 10(a) are met. Where, as here, the wireless reseller is forgoing all universal service support but Lifeline, which is customer-specific and is designed to make telecommunication service affordable to eligible consumers, the facilities requirement is unnecessary to preserve the integrity of the universal service program or the fund. By limiting TracFone's eligibility to Lifeline support, the facilities requirement is not necessary to ensure that TracFone's charges, practices, and classifications are just and reasonable.

15. Consumer Protection: Section 10(a)(2) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation only for Lifeline support is necessary for the protection of consumers. We find that imposing a facilities requirement on a pure wireless reseller is not necessary for the protection of consumers subject to the conditions described below. Specifically, we conclude that forbearance from this provision will actually benefit consumers. Indeed, if TracFone is ultimately granted limited ETC status, it would be offering Lifeline-eligible consumers a choice of providers not available to such consumers today for accessing telecommunications services. The prepaid feature may be an attractive alternative for such consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts. We also note that TracFone has committed to ensuring that all of its consumers will be able to place enhanced 911 (E911) calls from their handsets even if the consumer's service is not active or does not have prepaid minutes available.<sup>40</sup>

<sup>36</sup> See 47 C.F.R. § 251(c)(4).

<sup>37</sup> Forbearance Petition at 5.

<sup>38</sup> See 47 C.F.R. § 54.405(a) (requiring ETCs to offer Lifeline service).

<sup>39</sup> TracFone states that its customers pay in advance for minutes of use, without term contracts or termination fees, other extraneous or pass-through fees, credit checks, or deposits. TracFone also states that its pricing is uniform across its service areas despite the costs associated with any particular underlying carrier. Forbearance Petition at 3-4.

<sup>40</sup> August Reply Comments at 10.

16. Given the importance of public safety, we condition this grant of forbearance on TracFone's compliance with the E911 requirements applicable to wireless resellers, as modified below, for all Lifeline customers. In light of the condition discussed below, that TracFone ensure its customers receive only one Lifeline-supported service, we find it essential that TracFone's Lifeline-supported service be capable of providing emergency access. Given the possibility that this Lifeline-supported service will be the customers' only means of accessing emergency personnel, we require that TracFone provide its Lifeline customers with access to basic and E911 service immediately upon activation of service.<sup>41</sup> We note that this condition is consistent with TracFone's representation that its Lifeline customers will be able to make emergency calls at any time.<sup>42</sup> To demonstrate compliance with this condition, TracFone must obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service. TracFone must furnish copies of these certifications to the Commission upon request.<sup>43</sup> As an additional condition, TracFone must provide only E911-compliant handsets to its Lifeline customers, and must replace any non-compliant handset of an existing customer that obtains Lifeline-supported service with an E911-compliant handset, at no charge to the customer. The Commission has an obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety.<sup>44</sup> The provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises, and this Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers.<sup>45</sup> We believe that these conditions are necessary to ensure that TracFone's Lifeline customers have meaningful access to emergency services. We reiterate that, with the possibility that the Lifeline service will be the customer's only access to emergency services and given the potential gravity of harm if such Lifeline customers cannot obtain such access, we believe that these conditions will further the protection of such Lifeline customers.

17. We are not persuaded by some commenters' concerns regarding the impact on the size of the universal service fund and the associated contribution obligation if we grant this Petition.<sup>46</sup> Because section 10(a)(2) requires that we consider the welfare of all "consumers," we must consider the effect a grant of this Petition will have on consumers who will likely shoulder the effects of any increased contribution obligation since carriers are permitted to recover their contribution obligations from

<sup>41</sup> Under section 20.18(m) of our rules, wireless resellers have an independent obligation, beginning December 31, 2006, to provide access to basic and E911 service, to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver E911 information to the appropriate PSAP. 47 C.F.R. § 20.18(m). Section 20.18(m) further provides that resellers have an independent obligation to ensure that all handsets or other devices offered to their customers for voice communications are location-capable. *Id.* Under our rules, this obligation applies only to new handsets sold after December 31, 2006. *Id.* As a condition of this grant of forbearance, however, we require that TracFone, if granted ETC status, meet the requirements of section 20.18(m) for all of its Lifeline customers as of the date it provides such Lifeline service.

<sup>42</sup> August Reply Comments at 10 (given E911 capabilities of its service and handsets, TracFone envisions that its service "really will serve as a 'lifeline' for those eligible customers participating in the program").

<sup>43</sup> We recognize that, as a practical matter, if TracFone's underlying facilities-based licensee has not deployed the facilities necessary to deliver E911 information to the appropriate PSAP, TracFone will not be able to offer Lifeline-supported service to customers residing in that area.

<sup>44</sup> *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum and Order, FCC 05-148, para. 144 (rel. August 8, 2005).

<sup>45</sup> *Id.*

<sup>46</sup> See, e.g., Comments of TDS Telecommunications Corp., filed September 20, 2004, at 5-6 (TDS Comments).

customers.<sup>47</sup> If TracFone is able to obtain ETC designation for Lifeline-only services, we do not expect this to significantly burden the universal service fund and thus negatively affect consumers through increased pass-through charges of the carriers' contribution obligations. The Commission has recognized the potential growth of the fund associated with high-cost support distributed to competitive ETCs.<sup>48</sup> TracFone, however, would not be eligible for high-cost support. In 2004, low-income support accounted for only 14 percent of the distribution of the total universal service fund; whereas, high-cost support accounted for 64.2 percent.<sup>49</sup> Any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers. Significantly, granting TracFone's Petition will not have any effect on the number of persons eligible for Lifeline support.

18. We further safeguard the fund by imposing additional conditions on this grant of forbearance. Specifically, as a further condition of this grant of forbearance and in addition to all other required certifications under the program, we require that TracFone require its Lifeline customers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are the head of household and only receive Lifeline-supported service from TracFone.<sup>50</sup> The penalties for perjury must be clearly stated on the certification form. Additionally, in order to further strengthen the head of household requirement, we require that TracFone track its Lifeline customer's primary residential address and prohibit more than one supported TracFone service at each residential address.<sup>51</sup> These conditions are consistent with TracFone's representations in the record.<sup>52</sup> In light of these safeguards, we are not dissuaded from granting forbearance by concerns of double recovery relating to customers receiving Lifeline support for more than one service.<sup>53</sup> We recognize, however, that the potential for more than one

<sup>47</sup> See 47 C.F.R. § 54.712.

<sup>48</sup> See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1577, para. 31 (2004); see also *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6433-4, para. 25 (2004).

<sup>49</sup> Wireline Competition Bureau, Federal Communications Commission, *Trends in Telephone Service*, Table 19.1 and Chart 19.1 (June 2005). As of March 2004, the average monthly federal support per non-tribal Lifeline customer was \$8.55. *Id.* at Table 19.7. See 47 C.F.R. § 54.403. Tribal customers are eligible for up to an additional \$25 per month in Lifeline support. 47 C.F.R. § 54.403(a)(4).

<sup>50</sup> October Reply Comments at 3-4 (commitment to require Lifeline customers to self-certify that they do not receive support from any other carrier). To monitor compliance, we require that TracFone maintain the self-certifications and provide such documentation to the Commission upon request.

<sup>51</sup> See Reply Comments of TracFone Wireless, Inc. to Petition for ETC Designation in Virginia, filed September 7, 2004, at 7-8 (fully capable of fulfilling all record keeping requirements and has the ability to track each consumer's primary residence). See also Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, CC Docket No. 96-45, filed July 13, 2005 (capable of fulfilling certification and verification requirements) (TracFone July 13 *Ex Parte*).

<sup>52</sup> See n.56 and n.57 above. We point out that these conditions are in addition to, and do not supplant, the certification and verification eligibility already required by our rules for federal default states and any similar state rules for the non-federal default states. See, e.g., 47 C.F.R. § 54.410 (requiring initial certification and annual verification of eligibility).

<sup>53</sup> See TDS Comments at 5-6; Reply Comments of the United State Telecom Association, filed October 4, 2004, at 6 and n.18; letter from Katherine O'Hara, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 1, filed August 9, 2005 (Verizon *Ex Parte*); USTelecom August 17 *Ex Parte* at 4.

Lifeline-supported service per eligible consumer is an industry-wide problem.<sup>54</sup> We are confident that these conditions of this grant of forbearance will eliminate this concern with respect to TracFone's customers. Additionally, we encourage comment on this issue in the *Comprehensive Universal Services Program Management* proceeding to address the potential for abuse throughout the industry.<sup>55</sup>

19. USTelecom raised concerns about the fact that TracFone distributes its service through retail outlets.<sup>56</sup> USTelecom argues that TracFone will not have the requisite control over the retailer's employees to ensure compliance with Lifeline rules and certifications. We recognize that this may be a problem and thus require that TracFone distribute its Lifeline service directly to its Lifeline customers. Specifically, customers may purchase handsets at TracFone's retail outlets, however, we require that TracFone deal directly with the customer to certify and verify the customer's Lifeline eligibility. Of the two methods for certifying and verifying customer eligibility offered by TracFone, we reject the point of sale procedures that would allow TracFone Lifeline customers to submit qualifying information to the retail vendor.<sup>57</sup> TracFone must have direct contact with the customer, whether by telephone, fax, Internet, in-person consultation or otherwise, when establishing initial and continued eligibility.

20. Certain commenters argue that the prepaid, resold nature of TracFone's proposed service offering will facilitate fraud, waste, and abuse in the Lifeline program.<sup>58</sup> We find that this concern is more properly addressed in any order resolving TracFone's petitions for designation as an ETC. In the ETC designation proceedings, if TracFone's petitions are granted, we will address how Lifeline support will be calculated and distributed if the prepaid nature of TracFone's service offering requires such clarification.

21. In light of the conditions we have outlined here, we believe that appropriate safeguards are in place to deter waste, fraud, and abuse. We strive to balance our objective of increasing participation in the low-income program with our objective of preventing and deterring waste, fraud, and abuse. We find that we have struck the appropriate balance here. We are also mindful of the fact that other prepaid pure wireless carriers may similarly seek eligibility for Lifeline-only support. Given the safeguards we put in place aimed at ensuring that only eligible consumers receive such support and that they receive such support only once, we do not believe that similar requests will have a detrimental impact on the fund. We note that to the extent any similarly situated prepaid wireless reseller seeks forbearance from these requirements for the purpose of providing only Lifeline support, it will be expected to comply with all the conditions we impose upon TracFone herein.

22. Accordingly, we find that, subject to the 911 and E911 conditions and the self-certification and address limitation conditions set out above, the ETC facilities-based requirement is not necessary for consumer protection. We thus conclude that the second prong of section 10(a) is satisfied.

23. Public Interest: Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline

<sup>54</sup> See Verizon *Ex Parte* at 1; USTelecom August 17 *Ex Parte* at 2, 4.

<sup>55</sup> See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109 and CC Docket Nos. 96-45, 97-21, FCC 05-124, para. 22 (rel. June 14, 2005) (*Comprehensive Universal Services Program Management*).

<sup>56</sup> See USTelecom August 17 *Ex Parte* at 4.

<sup>57</sup> TracFone July 13 *Ex Parte* at 2-3.

<sup>58</sup> Letter from Jeffrey S. Lanning, USTelecom, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 3-5, filed August 26, 2005; Reply Comments of Verizon, filed October 4, 2004, at 3.

support only is in the public interest. In this instance, based on the record before us, we find that the statutory goal of providing telecommunications access to low-income consumers outweighs the requirement that TracFone own facilities, where TracFone, should it be designated an ETC, will be eligible only for Lifeline support. Thus, we find that requiring TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live.

24. The Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying low-income consumers.<sup>59</sup> Presently only about one-third of households eligible for low-income assistance actually subscribe to the program.<sup>60</sup> We recently expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.<sup>61</sup> On July 26, 2005, we launched a joint initiative with the National Association of Regulatory Utility Commissioners to raise awareness of our Lifeline and Link-Up programs among low-income consumers.<sup>62</sup> We believe even more can be done to further expand participation to those subscribers that qualify and thus further the statutory goal of section 254(b). Therefore, consistent with the Commission's assertion in the 1997 *Universal Service Order* concerning under-utilization of the program, we conclude it is appropriate to consider the relief requested with the goal of expanding eligible participation in the program.<sup>63</sup> With only about one-third of Lifeline-eligible households actually subscribing, we believe that granting TracFone's Petition serves the public interest in that it should expand participation of qualifying consumers. Accordingly, we conclude that forbearing from the facilities requirement for Lifeline support only, subject to the conditions set forth above satisfies the requirements of section 10(a)(3).

25. Within thirty days of this release of this Order, we require that TracFone file with the Commission a plan outlining the measures it will take to implement the conditions outlined in this Order. This plan will be placed on public notice and will be considered by the Commission in TracFone's ETC designation proceedings. For the foregoing reasons and subject to the conditions above, we find that the third prong of section 10(a) is satisfied.

26. Finally, we reject USTelecom's argument that TracFone has not requested forbearance from the facilities requirement in section 254(e) and that without such forbearance TracFone cannot fulfill the obligations of an ETC. Specifically, section 254(e) requires that "a carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>64</sup> USTelecom emphasizes that the words "facilities" and "services" are joined by the conjunctive article "and" and therefore an ETC must use any universal support received for facilities as well as services.<sup>65</sup> We disagree with USTelecom's interpretation. First, we read this provision together with the sentence that precedes it. The preceding sentence states that only an ETC "shall be eligible to receive *specific* Federal universal service support."<sup>66</sup> The next sentence, which USTelecom quotes, then

<sup>59</sup> 47 C.F.R. § 54.401.

<sup>60</sup> *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305, para. 1 and Appendix K at Table I.B.

<sup>61</sup> *Id.* at 8305, para. 1.

<sup>62</sup> *FCC and NARUC Launch "Lifeline Across America" to Raise Awareness of Lifeline and Link-Up Programs*, News Release, July 26, 2005.

<sup>63</sup> 1997 *Universal Service Order*, 12 FCC Rcd at 8972, para. 370.

<sup>64</sup> 47 U.S.C. § 254(e).

<sup>65</sup> USTelecom August 17 *Ex Parte* at 5 n.1.

<sup>66</sup> 47 U.S.C. § 254(e) (emphasis added).

requires that “*such service*”, which we find refers to the specific universal support from the previous sentence, be used only for purposes “for which the support is intended.” Reading these sentences together in their entirety, we find that Congress intended that a carrier must use the universal support received to meet the goals of the specific support mechanism under which it was distributed. For example, a carrier who receives specific Lifeline support must use that support to reduce the price of access to telecommunications services for the eligible customer. Second, we note that not all the nominalized verbs in the sentence quoted by USTelecom, “provision,” “maintenance,” and “upgrading,” can be read to apply to both facilities and services. What for example would it mean to “maintain” a “service” apart from the “facilities”? We also note that the nominalized verbs themselves are joined by the conjunctive article “and”. Therefore, extending USTelecom’s logic, any universal support received by a carrier must always be used for the provision, maintenance, *and* upgrading of *both* facilities and services. The terms maintenance and upgrading as generally associated with a carrier’s network and not with service itself. Thus, USTelecom’s reading of section 254(e) would require us to interpret the term “service” as surplusage – a result that must be avoided when the statute admits to other interpretations.<sup>67</sup> We find the more appropriate reading is to consider these terms in the disjunctive. Thus, we conclude that an ETC receiving Lifeline support uses this specific universal service support for the purposes for which it was intended when it reduces the price of the Lifeline service by the amount of the support.

#### IV. ORDERING CLAUSE

27. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 160, 214, and 254, the Petition for Forbearance filed by TracFone Wireless, Inc. on June 8, 2004, and amended on August 9, 2004 and September 24, 2004, IS GRANTED subject to the conditions set forth above and, on our own motion, we forbear from enforcing 47 C.F.R. § 54.201(1)(d).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>67</sup> See, e.g., *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001); *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

# Exhibit 3

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45  
TracFone Wireless, Inc. )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of New )  
York )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of Florida )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the )  
Commonwealth of Virginia )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of )  
Connecticut )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the )  
Commonwealth of Massachusetts )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of )  
Alabama )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of North )  
Carolina )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of )  
Tennessee )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of )  
Delaware for the Limited Purpose of Offering )  
Lifeline Service to Qualified Households )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of New )  
Hampshire for the Limited Purpose of Offering )  
Lifeline Service to Qualified Households )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the )  
Commonwealth of Pennsylvania for the Limited )

Purpose of Offering Lifeline Service to Qualified )  
 Households )  
 )  
 Petition for Designation as an Eligible )  
 Telecommunications Carrier in the District of )  
 Columbia for the Limited Purpose of Offering )  
 Lifeline Service to Qualified Households )

## ORDER

Adopted: April 9, 2008

Released: April 11, 2008

By the Commission: Commissioners Copps, Adelstein and Tate issuing separate statements.

## I. INTRODUCTION

1. In this Order, we conditionally grant the petitions of TracFone Wireless, Inc. (TracFone) to be designated as an eligible telecommunications carrier (ETC), eligible only to receive universal service Lifeline support, in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).<sup>1</sup> Due

<sup>1</sup> TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 8, 2004) (New York Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45 (filed July 21, 2004) (Virginia Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45 (filed Nov. 9, 2004) (Connecticut Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45 (filed Nov. 9, 2004) (Massachusetts Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (filed Nov. 9, 2004) (Alabama Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45 (filed Nov. 9, 2004) (North Carolina Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45 (filed Nov. 9, 2004) (Tennessee Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Nov. 28, 2007) (Delaware Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Nov. 28, 2007) (New Hampshire Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Dec. 11, 2007) (Pennsylvania Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Jan. 18, 2008) (District of Columbia Petition). TracFone filed an erratum to its New York Petition correcting, from four to five, the number of underlying carriers it uses to serve subscribers in that state. Erratum to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 14, 2004). TracFone later amended its request for ETC designation in New York and Virginia to limit its eligibility for federal universal service support to the Lifeline program only. Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, 2 (filed Aug. 16, 2004); Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, 2 (filed Aug. 16, 2004). TracFone's petitions for ETC designation in the remaining states, other than Florida, as discussed below, were limited to eligibility for Lifeline support as originally filed. TracFone does not seek eligibility for high-cost support.

to the Florida Public Service Commission's assertion of jurisdiction over wireless ETC designations, we dismiss without prejudice TracFone's petition for designation as an eligible telecommunications carrier in Florida.<sup>2</sup> On September 8, 2005, the Commission conditionally granted TracFone's petition for forbearance from the facilities requirement of section 214(e)(1).<sup>3</sup> As discussed below, we now conclude that TracFone has satisfied the remaining eligibility requirements of section 214(e)(1) and the Commission's rules to be designated as an ETC eligible only for Lifeline support (limited ETC).<sup>4</sup> We also approve TracFone's plan for complying with the conditions imposed in the *Forbearance Order*.<sup>5</sup>

## II. BACKGROUND

### A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>6</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>7</sup>

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.<sup>8</sup> Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>9</sup> Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>10</sup> Before

<sup>2</sup> TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed July 21, 2004) (Florida Petition). TracFone later amended its request for ETC designation in Florida to limit its eligibility for federal universal service support to the Lifeline program only. Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, 2 (filed Aug. 16, 2004); see para. 10 *infra* (discussing jurisdiction of the Florida Public Service Commission).

<sup>3</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Red 15095 (2005) (*Forbearance Order*). Under section 214(e)(1)(A) of the Act, an ETC must offer service using its own facilities or a combination of its own facilities and resale of another carrier's service. 47 U.S.C. § 214(e)(1)(A).

<sup>4</sup> Lifeline is the universal service low-income program that provides discounts to qualified low-income consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409.

<sup>5</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Compliance Plan (filed Oct. 11, 2005) (TracFone Compliance Plan); *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Erratum to Compliance Plan (filed Oct. 17, 2005) (Erratum to Compliance Plan) (correcting its characterization of Florida to identify it as a state with state-imposed certification and verification requirements for Lifeline eligibility).

<sup>6</sup> 47 U.S.C. § 254(e).

<sup>7</sup> 47 U.S.C. § 214(e)(1); see also 47 C.F.R. § 54.201(d).

<sup>8</sup> 47 U.S.C. § 214(e)(2); see *Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Red 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

<sup>9</sup> 47 U.S.C. § 214(e)(6).

<sup>10</sup> *Id.*

designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>11</sup>

**B. Commission Requirements for ETC Designation**

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of the [supported] services and the charges therefore using media of general distribution;" and (5) if the petitioner meets the definition of a "rural telephone company" under section 3(37) of the Act, the identity of its study area, or, if the petitioner is not a "rural telephone company," a detailed description of the geographic service area for which it requests an ETC designation from the Commission.<sup>12</sup>

5. In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.<sup>13</sup> Specifically, consistent with the recommendation of the Federal-State Joint Board on Universal Service, the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.<sup>14</sup> These additional requirements are mandatory for all ETCs designated by the Commission.<sup>15</sup> ETCs already designated by the Commission or ETC applicants that submitted applications prior to the effective date of the *ETC Designation Order* must make such showings in their annual certification filings.<sup>16</sup>

<sup>11</sup> *Id.*

<sup>12</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*).

<sup>13</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*); see also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438, paras. 1, 33 (2004) (*Highland Cellular Order*).

<sup>14</sup> See *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, para. 5 (Fed-State Jt. Bd. 2004)).

<sup>15</sup> 47 C.F.R. § 54.202(a). Because TracFone is a pure reseller eligible for Lifeline support only, we do not require TracFone to demonstrate that it satisfies the network build-out and improvement requirements or to provide a certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

<sup>16</sup> 47 C.F.R. §§ 54.202(b); 54.209.

6. In addition, prior to designating an ETC pursuant to section 214(e)(6) of the Act, the Commission determines whether such designation is in the public interest.<sup>17</sup> In the *ETC Designation Order*, the Commission adopted one set of criteria for evaluating the public interest for ETC designations for both rural and non-rural areas.<sup>18</sup> Specifically, in determining the public interest, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering are considered.<sup>19</sup> As the Commission noted in the *ETC Designation Order*, however, the same factors may be analyzed differently or may warrant a different outcome depending on the specifics of the proposed service area and whether it is rural or non-rural.<sup>20</sup>

### C. TracFone's Petitions

7. TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider that offers prepaid wireless telecommunications services.<sup>21</sup> On June 8, 2004, TracFone filed a petition seeking forbearance from section 214(e)(1) of the Act, which requires that an ETC be facilities-based, at least in part.<sup>22</sup> Beginning on that date, TracFone filed with the Commission petitions seeking designation as an ETC only for the purpose of being eligible to receive universal service Lifeline support in its licensed service areas in New York, Virginia, Florida, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.<sup>23</sup>

8. In the *Forbearance Order*, the Commission conditionally granted TracFone's request for forbearance from the facilities-based requirements of section 214(e)(1)(A) of the Act and section 54.201(i) of its rules for the purpose of considering TracFone's petitions for limited ETC designation.<sup>24</sup> The *Forbearance Order* required that TracFone file a compliance plan with the Commission explaining how TracFone will implement the conditions imposed by the *Forbearance Order*.<sup>25</sup> TracFone filed its compliance plan on October 11, 2005.<sup>26</sup>

<sup>17</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c). See also *ETC Designation Order*, 20 FCC Red at 6388-96, paras. 40-57; *Virginia Cellular Order*, 19 FCC Red at 1575, para. 27; *Highland Cellular Order*, 19 FCC Red at 6431-32, para. 21. The Commission places the burden on the ETC applicant to demonstrate that the public interest is served. *ETC Designation Order*, 20 FCC Red at 6390, para. 44.

<sup>18</sup> *ETC Designation Order*, 20 FCC Red at 6389-90, paras. 42-43.

<sup>19</sup> 47 C.F.R. § 54.202(c).

<sup>20</sup> *ETC Designation Order*, 20 FCC Red at 6390, para. 43. In analyzing the public interest factors in this instance, there is no rural/non-rural distinction because Lifeline support, unlike high-cost support, is not determined based on whether the service area is rural or non-rural. See 47 C.F.R. § 54.403.

<sup>21</sup> See, e.g., Massachusetts Petition at 2, 3.

<sup>22</sup> 47 U.S.C. § 214(e)(1).

<sup>23</sup> See *supra* notes 1 and 2.

<sup>24</sup> *Forbearance Order*, 20 FCC Red at 15098-99, para. 6. Additionally, on its own motion, the Commission forbore from section 54.201(d)(1) of its rules, which mirrors section 214(e) of the Act, requiring that ETCs be facilities-based, at least in part. *Id.* at 15098, n.23.

<sup>25</sup> *Id.* at 15105, para. 25.

<sup>26</sup> See generally TracFone Compliance Plan; Erratum to Compliance Plan.

### III. DISCUSSION

#### A. Commission Authority to Perform the ETC Designation

9. TracFone has demonstrated that, except for the Florida Public Service Commission, the relevant state commissions lack authority to perform the requested limited ETC designations, and the Commission has authority to consider TracFone's petitions under section 214(e)(6) of the Act. Each petition includes an affirmative statement from the relevant state commission providing that ETC designation should be sought from the Commission.<sup>27</sup> Accordingly, we find the relevant state commissions lack jurisdiction to designate TracFone as an ETC and that this Commission therefore has authority to perform the requested limited ETC designations under section 214(e)(6).<sup>28</sup>

10. In April of this year, the Florida Public Service Commission found that, due to a change in Florida state law, it "now ha[s] jurisdiction to consider CMRS applications for ETC designation."<sup>29</sup> In light of this development, and because section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations, we dismiss without prejudice the petition filed by TracFone seeking designation as an ETC in Florida. TracFone may re-file its petition with the Florida Public Service Commission. Should the Florida Public Service Commission consider granting a petition by TracFone for designation as a limited ETC in Florida, we would encourage it to require TracFone to adhere to the compliance plan we approve herein.

#### B. Analysis of the Eligibility Requirements

11. Offering the Services Designated for Support. TracFone has demonstrated, through the required certifications and related filings, that it now offers or will offer upon designation as a limited ETC the services supported by the Lifeline program.<sup>30</sup>

12. Offering the Supported Services Using a Carrier's Own Facilities. The Commission previously granted TracFone forbearance from the facilities requirement for purposes of this limited ETC designation, permitting TracFone to offer the supported services via resale only.<sup>31</sup>

13. Advertising the Supported Services. TracFone has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the related charges "using media of general distribution."<sup>32</sup> TracFone has also stated that, in compliance with the

<sup>27</sup> E.g., New York Petition at 4 and Exhibit 2.

<sup>28</sup> 47 U.S.C. § 214(e)(6).

<sup>29</sup> *Petition of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier (ETC) in Certain Rural Telephone Company Study Areas Located Partially in Alltel's Licensed Area and for Redefinition of those Study Areas*, PSC-07-0288-PAA-TP, Notice of Proposed Agency Action Order Finding Authority to Consider Applications By CMRS Providers For ETC Designation, 2007 WL 1029436 (Fla. P.S.C. Apr. 3, 2007). The April order was a proposed agency action, which was made final by a consummating order on June 7, 2007. See *Petition of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier (ETC) in Certain Rural Telephone Company Study Areas Located Partially in Alltel's Licensed Area and for Redefinition of those Study Areas*, PSC-07-0481A-CO-TP, Amending Order, 2007 WL 1774614 (Fla. P.S.C. June 7, 2007).

<sup>30</sup> 47 C.F.R. §§ 54.410(a), 54.101(a)(1)-(a)(9); see, e.g., New York Petition at 5-8. In particular, we disagree with commenters who argued that TracFone cannot offer toll limitation service. See, e.g., TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, Comments of TDS Telecommunications Corp., at 9-11 (filed July 26, 2004). We find that the prepaid nature of TracFone's service offering works as an effective toll control. See *infra* para. 15.

<sup>31</sup> *Forbearance Order*, 20 FCC Rcd at 15098, para. 6.

<sup>32</sup> 47 U.S.C. § 214(e)(1)(B); see, e.g., New York Petition at 8.

Commission's Lifeline rules, it will advertise the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for those services.<sup>33</sup>

14. Additional Eligibility Requirements. TracFone either satisfies the applicable eligibility requirements set forth in the *ETC Designation Order*, described above,<sup>34</sup> or must make such showings in its first annual report under section 54.209 of the Commission's rules.<sup>35</sup>

### C. Public Interest Analysis

15. We find that TracFone's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers including increased consumer choice,<sup>36</sup> high-quality service offerings,<sup>37</sup> and mobility.<sup>38</sup> In addition, the prepaid feature, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts. The Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association Keystone Chapter assert, however, that TracFone is not complying with Pennsylvania's Public Safety Emergency Telephone Act (the Pennsylvania Act), which requires that wireless providers collect a wireless E911 surcharge and remit the money to Pennsylvania's Wireless E-911 Emergency Fund.<sup>39</sup> The National Emergency Numbers Association (NENA) further asserts that TracFone's actions in Pennsylvania reflect "patterns of behavior" evidenced "in several other states."<sup>40</sup> TracFone's reply asserts, *inter alia*, that the allegations set forth in the NENA Keystone/PAOCA Joint Comments are not relevant to TracFone's qualifications to be designated as an ETC and are a question of

<sup>33</sup> 47 C.F.R. § 54.405(b); *see, e.g.*, Petitions for Designation as an Eligible Telecommunications Carrier in the State of Connecticut and the Commonwealth of Massachusetts, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at 10 (filed Dec. 29, 2004).

<sup>34</sup> *See supra* para. 5.

<sup>35</sup> *ETC Designation Order*, 20 FCC Red at 6380, para. 20; 47 C.F.R. §§ 54.202(a), 54.209. For example, TracFone has committed to provide high-quality service, as demonstrated by committing to comply with the Consumer Code for Wireless Service of the Cellular Telecommunications Industry Association (CTIA), and to serve the designated areas within a reasonable time. *See, e.g.*, New York Petition at 13-14. Because TracFone is a pure reseller, eligible for universal service Lifeline support only, we do not require it to demonstrate that it satisfies the network build-out and improvement requirements, or to provide a certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

<sup>36</sup> For example, TracFone's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. *See, e.g.*, New York Petition at 12, 14.

<sup>37</sup> For example, TracFone committed that it will comply with the Consumer Code for Wireless Service of the CTIA. *See, e.g.*, New York Petition at 13.

<sup>38</sup> *See e.g.*, New York Petition at 10-14. As noted in the *PSC Alabama Order*, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. *Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, CC Docket No. 96-45, Order, 20 FCC Red 6854, 6861, para. 25 (Wireline Comp. Bur. 2005) (*PSC Alabama Order*). Moreover, the availability of a wireless universal service offering also provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. *Id.*

<sup>39</sup> TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Joint Comments of the Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association, Keystone Chapter, CC Docket No. 96-45, 5-6 (filed Feb. 8, 2008) (NENA Keystone/PAOCA Joint Comments).

<sup>40</sup> *See* Letter from James R. Hobson, Counsel for the National Emergency Numbers Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, 1-3 (filed Apr. 3, 2007) (NENA Apr. 3, 2008 *Ex-Parte* Letter).

state law, not commission regulation.<sup>41</sup> TracFone further denies that it is in violation of the Pennsylvania Act, and asserts that the larger question of state 911 funding requirements is more appropriately addressed "at the national level."<sup>42</sup>

16. We disagree with TracFone and find compliance with 911/E911 requirements relevant to the public interest in this instance. In the *Forbearance Order*, the Commission expressly conditioned its grant of forbearance from the facilities requirement of section 214(e) of the Act on TracFone's compliance with E911 requirements applicable to wireless resellers.<sup>43</sup> The Commission adopted these conditions because of the unique circumstances presented by TracFone's petitions for limited ETC designation for Lifeline support.<sup>44</sup> The Commission further required TracFone to submit a plan outlining measures to implement the conditions imposed in the *Forbearance Order*, and stated the Commission would consider the plan in deciding whether to grant TracFone's petitions for limited ETC designation.<sup>45</sup> Given these circumstances, and in light of the concerns raised by NENA and the Pennsylvania Office of Consumer Advocate, we condition TracFone's designation as an ETC eligible for Lifeline support in each state on TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support, of 911 and E911 service.<sup>46</sup> Subject to this condition, we find, on balance, that the advantages of designating TracFone as a limited ETC in the designated service areas outweigh any potential disadvantages.<sup>47</sup>

#### D. Designated Service Areas

17. Based on the foregoing, we hereby designate TracFone as a limited ETC, eligible only for Lifeline support, in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.<sup>48</sup> In designating TracFone as a limited ETC, we clarify that TracFone's designated service areas do not encompass federally-recognized tribally-owned lands.<sup>49</sup>

<sup>41</sup> Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Reply Comments of TracFone Wireless, Inc., CC Docket No. 96-45, 2-5 (filed Feb. 25, 2008).

<sup>42</sup> *Id.* at 5-9.

<sup>43</sup> See *Forbearance Order*, 20 FCC Rcd at 15102, para 16; *infra* at paras. 20-22.

<sup>44</sup> See *Forbearance Order*, 20 FCC Rcd at 15102, para 16. The Commission noted that TracFone's Lifeline-supported service may well be the customers' only means of accessing emergency personnel. *Id.* Given the potential gravity of the harm if TracFone's Lifeline customers cannot obtain access to emergency services, the Commission adopted the conditions to protect Lifeline customers. *Id.*

<sup>45</sup> *Id.* at 15105, para. 25.

<sup>46</sup> See NENA Keystone/PAOCA Joint Comments; NENA Apr. 3, 2008 *Ex Parte* Letter.

<sup>47</sup> The Commission has already found that any effect on the universal service fund would be minimal, limited to the Lifeline program, and outweighed by the benefit of increasing eligible participation in the Lifeline program. *Forbearance Order*, 20 FCC Rcd 15103-04, para. 17. In addition, we need not perform a creamskimming analysis because TracFone is seeking to be eligible for Lifeline support only.

<sup>48</sup> Under this limited ETC designation, TracFone will not be eligible for support for Link Up or toll-limitation service under the low-income program, nor will it be eligible for high-cost support, or for schools and libraries and rural health care support as an ETC. Non-ETCs, however, may participate in certain aspects of the schools and libraries or rural health care programs. See *Forbearance Order*, 20 FCC Rcd at 15097, para. 3 & n.12.

<sup>49</sup> TracFone expressly states that it does not request ETC designation for tribal lands. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, North Carolina, and Tennessee, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at n.22 (filed Feb. 2, 2005).

### E. Regulatory Oversight and Compliance Plan

18. Under section 254(e) of the Act, TracFone is required to use the specific universal service support it receives "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>50</sup> An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.<sup>51</sup> Lifeline assistance shall be made available to qualifying low-income consumers as soon as the universal service fund Administrator certifies that TracFone's Lifeline service offering satisfies the criteria in our rules and complies with the conditions imposed under the *Forbearance Order*.<sup>52</sup> In addition, TracFone must report certain information to the Commission and the Universal Service Administrative Company (USAC) pursuant to section 54.209 of the Commission's rules.<sup>53</sup>

19. We find that reliance on TracFone's commitments to meet these requirements is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.<sup>54</sup> These requirements will further the Commission's goal of ensuring that TracFone satisfies its obligation under section 214(e) of the Act to provide the services supported by the Lifeline program throughout its designated service areas.

20. In addition, we note that, in the *Forbearance Order*, the Commission imposed additional requirements on TracFone, and ordered that TracFone file a compliance plan detailing how it will adhere to these requirements. The additional requirements obligate TracFone to implement certain 911 and E911 requirements and to establish certain administrative procedures to safeguard against waste, fraud, and abuse in the Lifeline program.

21. Specifically, the Commission conditioned forbearance from the facilities requirement for limited ETC designation upon TracFone: (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtaining a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) requiring its customers to self-certify at time of service

<sup>50</sup> 47 U.S.C. § 254(e). Because TracFone is not eligible to receive high-cost support, we do not require it to provide high-cost certifications under §§ 54.313 and 54.314 of our rules. See 47 C.F.R. §§ 54.313, 54.314.

<sup>51</sup> See *Forbearance Order*, 20 FCC Rcd at 15105-06, para. 26.

<sup>52</sup> See 47 C.F.R. § 54.401(d). As noted above, we find that TracFone's service offering meets the criteria for service and functionality contained in our rules. See *supra* para. 11 & n.29. We also approve TracFone's compliance plan, finding that it is adequate to implement the conditions of the *Forbearance Order*. See *infra* para. 21.

<sup>53</sup> See 47 C.F.R. § 54.209(a) (specifying the information to be included in the annual reports submitted by ETCs); *ETC Designation Order*, 20 FCC Rcd at 6400-6402, paras. 68-69; see also *Virginia Cellular Order*, 19 FCC Rcd at 1584, para. 46 & n.140 (anticipating that annual submissions will encompass only the ETC's designated service areas). As noted above, as a pure reseller eligible for Lifeline support only, we do not require TracFone to report on network build-out and improvements or to certify that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. See *supra* note 15.

<sup>54</sup> In *TOPUC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5<sup>th</sup> Cir. 1999) (*TOPUC*). Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.<sup>55</sup>

22. The Commission carefully crafted the conditions of the *Forbearance Order* to meet important regulatory goals. We decline, therefore, to modify these conditions as requested by TracFone in granting the ETC designation requests at issue herein.<sup>56</sup> Consequently, TracFone must obtain the required certification from each PSAP where it will provide Lifeline service.<sup>57</sup> Moreover, TracFone must continue to provide access to “basic and enhanced 911 service” as described in section 20.18(m) of our rules.<sup>58</sup> Finally, TracFone must “distribute its Lifeline service directly to its Lifeline customers.”<sup>59</sup>

23. After careful review of the compliance plan and the record, we find the compliance plan adequate to implement the original and unmodified conditions of the *Forbearance Order*.<sup>60</sup> We, therefore, approve the compliance plan as discussed in this Order.

<sup>55</sup> *Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6.

<sup>56</sup> In its compliance plan, TracFone requests two modifications to the public safety conditions. First, TracFone requests that, in lieu of obtaining certification from each PSAP confirming access to 911 and E911, that it be permitted to rely on the underlying carrier's current quarterly E911 report filed with the Commission together with a certification from TracFone that its Lifeline customers in the relevant market will be served only by such carrier(s). TracFone Compliance Plan at 7-10. Second, TracFone requests that it be allowed to offer Lifeline service where either 911 or E911 service is available. *Id.* at 11-14. Further, TracFone states in its applications that it will implement, upon designation as an ETC, the Lifeline certification and verification procedures set forth in an *ex parte* presentation dated July 13, 2005. See, e.g., Delaware Petition at 12; District of Columbia Petition at 12-13; Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, WC Docket 96-45, Attach. (July 13, 2005). TracFone does not explicitly note, however, that the procedures set forth in that document were rejected, in part, in the *Forbearance Order*. See *Forbearance Order*, 20 FCC Rcd at 15104, para. 19; District of Columbia Public Service Commission Reply Comments, CC Docket No. 96-45, at 4-5 (filed Mar. 13, 2008) (District of Columbia Reply). Out of an abundance of caution, we treat this omission as a request for modification of the conditions of the *Forbearance Order*.

<sup>57</sup> See *Forbearance Order*, 20 FCC Rcd at 15102, para. 16. We believe this requirement is sufficient to address the District of Columbia Public Service Commission's concern that the District of Columbia Office of Unified Communications be notified that TracFone is providing Lifeline service in the District of Columbia. See District of Columbia Reply at 4.

<sup>58</sup> 47 U.S.C. § 20.18(m) (emphasis added). We also note that CMRS providers are required to “transmit all wireless 911 calls without respect to their call validation process. . . .” See 47 C.F.R. § 20.18(b). This rule addresses the concerns of the District of Columbia Public Service Commission regarding the 911 capability of TracFone handsets “regardless of activation status or minute availability.” See District of Columbia Reply at 3; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18691-99, paras. 29-46 (1996).

<sup>59</sup> *Forbearance Order*, 20 FCC Rcd at 15104, para. 19.

<sup>60</sup> In particular, we disagree with USTelecom, who questions whether TracFone will receive 12 months of Lifeline support if a subscriber who chooses the annual prepaid plan uses all of the initial minutes in the first month or if a subscriber under the “NET10” plan redeems fewer than 12 monthly coupons. See Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Comments of the United States Telecom Association, at 3, 4 (filed Nov. 28, 2005) (USTelecom Compliance Plan Comments). We find that TracFone's plans for seeking reimbursement are consistent with our Lifeline rules and procedures. Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at 6, 7 (filed Dec. 12, 2005). Moreover, despite comments to the contrary, we are satisfied that TracFone will pass through all Lifeline support as required by our rules. See USTelecom Compliance Plan Comments at 1-2. Finally, we find that we do not need to clarify how Lifeline support

(continued...)

24. Finally, we note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support an ETC receives is being used for the purpose for which it was intended.<sup>61</sup> TracFone will be required to provide such records and documentation to the Commission and USAC upon request. If TracFone fails to fulfill the requirements of the Act, our rules, the terms of this Order, or the conditions imposed under the *Forbearance Order* after it begins receiving universal service Lifeline support, the Commission may revoke its limited ETC designation.<sup>62</sup> The Commission may also assess forfeitures for violations of its rules and orders.<sup>63</sup>

#### IV. ANTI-DRUG ABUSE ACT CERTIFICATION

25. Under section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued under section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.<sup>64</sup> TracFone has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>65</sup> We find that TracFone has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.<sup>66</sup>

#### V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), TracFone Wireless, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER eligible only for Lifeline support in its licensed

(...continued from previous page)

will be calculated and distributed because we are confident that USAC is capable of handling any administrative issues presented by TracFone's Lifeline offering. See *Forbearance Order*, 20 FCC Rcd at 15104, para. 20 (stating that the ETC designation order would address how Lifeline support will be calculated and distributed if the prepaid nature of the offering requires such clarification). The *Forbearance Order* also addressed the issue of double recovery, noting that, although the Commission has in the past declined to extend ETC status to pure resellers due to concerns about double recovery of universal service support, TracFone's CMRS wholesale providers are not subject to section 251(c)(4) wholesale obligations and so the resold services presumably do not reflect a reduction in price due to Lifeline support. See *id.* at 15100-01, para. 12. We, therefore, dismiss comments to the contrary. See, e.g., Comments of Verizon, Federal-State Joint Board on Universal Service, TracFone Wireless Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, Petition for Forbearance from Application of Section 214, CC Docket No. 96-45 at 9 (filed July 26, 2004).

<sup>61</sup> 47 U.S.C. §§ 220, 403.

<sup>62</sup> See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); 47 U.S.C. § 254(e); see also *Forbearance Order*, 20 FCC Rcd at 15099, para. 6, n.25.

<sup>63</sup> See 47 U.S.C. § 503(b).

<sup>64</sup> 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)-(b). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of the petitioner; and (3) If the application is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b). See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

<sup>65</sup> See e.g., New York Petition at Exhibit 1.

<sup>66</sup> 47 C.F.R. §§ 1.2001-2003.

service areas in New York, Virginia, Connecticut, Massachusetts, North Carolina, Alabama, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia to the extent described in this Order and subject to the conditions set forth herein.

27. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), TracFone Wireless, Inc.'s petition for eligible telecommunications carrier designation in the state of Florida IS DISMISSED WITHOUT PREJUDICE to the extent described herein.

28. IT IS FURTHER ORDERED that TracFone Wireless, Inc. WILL SUBMIT additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2008, as part of its annual reporting requirements.

29. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

# **Exhibit 4**

**State Utility Commission Decisions Designating TracFone Wireless, Inc.  
as an Eligible Telecommunications Carrier**

STATE	DECISION
Florida	<u>Application for designation as an eligible telecommunications carrier (ETC) by TracFone Wireless, Inc. for limited purpose of offering lifeline service to qualified households</u> , Order No. PSC-08-0418-PAA-TP, Docket No. 070586-TP (Florida Pub. Serv. Comm'n: June 23, 2008)
Georgia	<u>Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households</u> , Order, Docket No. 26282 (Georgia Pub. Serv. Comm'n: May 6, 2008)
Illinois	<u>TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Illinois for the Limited Purpose of Offering Lifeline Service to Qualified Households</u> , Order, Docket No. 09-0213 (Illinois Commerce Comm'n: September 10, 2009)
Louisiana	<u>Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Louisiana for the Limited Purpose of Offering Lifeline Service to Qualified Households</u> , Order, Docket No. S-31097 (Louisiana Pub. Serv. Comm'n: December 22, 2009)
Maine	<u>TracFone Wireless Inc. Request for Designation as an Eligible Telecommunications Carrier</u> , Order, Docket No. 2009-263 (Maine Pub. Utilities Comm'n: February 9, 2010)
Maryland	Letter from Terry J. Romine (Executive Secretary, Maryland Public Service Commission) to Debra McGuire Mercer, Greenberg Traurig, LLP) noting that the Commission approved TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier, August 19, 2009.
Michigan	<u>Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996</u> , Order, Case No. U-15625 (Michigan Pub. Serv. Comm'n: October 21, 2008)
Missouri	<u>Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Missouri for the Limited Purpose of Offering Lifeline Services to Qualified Households</u> , Order, Case No. TA-2009-0327 (Missouri Pub. Serv. Comm'n: August 26, 2009)
New Jersey	<u>Petition by TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New Jersey for the Limited Purpose of Offering Lifeline Services to Qualified Households</u> , Order of Approval, Docket No. TO09010092 (New Jersey Board of Pub. Utilities: April 27, 2009)
Ohio	In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts, Supplemental Finding and Order, Case No. 97-632-TP-COI (Ohio Pub. Utilities Comm'n: May 21, 2009), as modified by Entry on Rehearing (July 8, 2009)
Texas	<u>Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline Service to Qualified Households</u> , Order on Rehearing, Docket No. 36646 (Texas Pub. Utility Comm'n: June 18, 2009)

West Virginia	<u>TracFone Wireless, Inc. Petition for consent and approval to be designated an eligible telecommunications carrier</u> , Recommended Decision, Case No. 08-1605-C-PC (West Virginia Pub. Serv. Comm'n: Feb. 25, 2009) (Final on March 17, 2009)
Wisconsin	<u>Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Wisconsin</u> , Final Decision, Docket No. 9385-TI-100 (Wisconsin Pub. Serv. Comm'n: May 20, 2009)

# Exhibit 5

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45  
TracFone Wireless, Inc. )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of New )  
York )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of Florida )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the )  
Commonwealth of Virginia )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of )  
Connecticut )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the )  
Commonwealth of Massachusetts )  

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Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of )  
Alabama )  

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Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of North )  
Carolina )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of )  
Tennessee )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of )  
Delaware for the Limited Purpose of Offering )  
Lifeline Service to Qualified Households )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the State of New )  
Hampshire for the Limited Purpose of Offering )  
Lifeline Service to Qualified Households )  
Petition for Designation as an Eligible )  
Telecommunications Carrier in the )  
Commonwealth of Pennsylvania for the Limited )

Purpose of Offering Lifeline Service to Qualified )  
 Households )  
 )  
 Petition for Designation as an Eligible )  
 Telecommunications Carrier in the District of )  
 Columbia for the Limited Purpose of Offering )  
 Lifeline Service to Qualified Households )

## ORDER

Adopted: March 4, 2009

Released: March 5, 2009

By the Commission:

## I. INTRODUCTION

1. In this order, we grant a petition for modification filed by TracFone Wireless, Inc. (TracFone). TracFone seeks modification of a condition imposed as part of the Commission's grant of TracFone's request for forbearance allowing it to be designated as an eligible telecommunications carrier (ETC) for the purposes of providing low-income universal service support to its customers under the Lifeline program.<sup>1</sup> Specifically, we grant TracFone's request to modify the requirement that TracFone obtain a certification from each public safety answering point (PSAP) where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service.<sup>2</sup> TracFone must still request such certification from each PSAP within its service area; however, if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements. Grant of this request will allow TracFone to provide Lifeline service to low-income consumers within its service areas in a timely manner, while also ensuring that TracFone's Lifeline customers have access to necessary 911 services.

<sup>1</sup> See Petition for Modification of Public Safety Answering Point Certification Condition by TracFone Wireless, Inc., CC Docket No. 96-45 (filed Nov. 21, 2008) (TracFone Petition); see also *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*); *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*) (designating TracFone as an ETC for Lifeline support only in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia). Under the Lifeline program, low-income consumers receive discounts on their monthly charges for local phone service. 47 C.F.R. § 54.401. In its initial comments on the petition, the Pennsylvania Public Utility Commission (Pennsylvania Commission) sought an extension of the pleading cycle, seeking four additional weeks for comments and two more weeks for reply comments. Pennsylvania Commission Comments at 2. The Pennsylvania Commission filed comments and reply comments, as well as an *ex parte* filing in response to the TracFone Petition. See *infra* note 10; Letter from Joseph K. Witmer, Assistant Counsel, Pennsylvania Commission Law Bureau, to Marlene Dortch, Office of the Secretary, Federal Communications Commission, CC Docket No. 96-45 (dated Jan. 29, 2009) (Pennsylvania Commission January 29<sup>th</sup> *Ex Parte* Letter). We find that the Pennsylvania Commission was able to provide comment on the TracFone Petition without the need for an extension of the pleading cycle. We therefore deny the Pennsylvania Commission's request.

<sup>2</sup> *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16; see also *TracFone ETC Designation Order*, 23 FCC Rcd at 6215, para. 22 (declining TracFone's request to modify the forbearance condition requiring TracFone to obtain the required certification from each PSAP).

## II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended, (the Act) provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>3</sup> Pursuant to section 214(e)(1) of the Act, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms either using its own facilities, or a combination of its own facilities and resale of another carrier’s services.<sup>4</sup>

3. TracFone provides prepaid wireless services on a resale basis only, rather than providing service over its own facilities.<sup>5</sup> On September 8, 2005, the Commission conditionally granted TracFone’s request for forbearance from the facilities-based requirement of section 214(e)(1) of the Act.<sup>6</sup> Among other things, the forbearance grant was conditioned on the requirement that TracFone obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service.<sup>7</sup> On April 11, 2008, the Commission conditionally designated TracFone an ETC for the purpose of receiving Lifeline support only in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania,<sup>8</sup> and the District of Columbia.<sup>9</sup> In the *TracFone ETC*

<sup>3</sup> 47 U.S.C. § 254(e).

<sup>4</sup> 47 U.S.C. § 214(e)(1)(A); *see also* 47 C.F.R. § 54.201(d)(1).

<sup>5</sup> TracFone Petition at 3-4.

<sup>6</sup> *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16.

<sup>7</sup> *Id.* at 15098, para. 6. Grant of forbearance was conditioned on TracFone: (a) providing its Lifeline customers with 911 and E911 access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the consumer, non-compliant handsets of customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtaining a certification from each PSAP where TracFone provides Lifeline service confirming that TracFone provides its customers with 911 and E911 access; (e) requiring its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address. *Id.*

<sup>8</sup> At the time the Commission designated TracFone an ETC in Pennsylvania, the Pennsylvania Commission had not exerted jurisdiction over wireless providers for purposes of ETC designation; therefore the Commission granted TracFone ETC designation pursuant to section 214(e)(6) of the Act. *TracFone ETC Designation Order*, 23 FCC Rcd at 6207, 6211, paras. 1, 9; 47 U.S.C. § 214(e)(6). On February 26, 2009, the Pennsylvania Commission announced that it will exert its jurisdiction, effective as of that date, to designate wireless carrier ETCs pursuant to section 214(e)(2) of the Act. *See* Letter from Joseph K. Witmer, Assistant Counsel, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Feb. 26, 2009) (attaching February 26, 2009 Pennsylvania Commission decision); 47 U.S.C. § 214(e)(2).

<sup>9</sup> *See TracFone ETC Designation Order*, 23 FCC Rcd at 6207-08, para. 1. The Commission conditioned grant of TracFone’s ETC designations on TracFone’s certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision and support of 911 and E911 service. *Id.* at 6213, para. 16. The TracFone Petition and this order are limited to the PSAP certification requirement regarding TracFone’s provision of access to 911 and E911 service to its customers. This condition is separate from the certification regarding TracFone’s compliance with any state 911/E911 obligations, including payment of fees into state 911/E911 funds. *See* Pennsylvania Commission January 29<sup>th</sup> *Ex Parte* Letter at 2 (expressing concern about TracFone’s compliance with the separate condition to certify compliance with Pennsylvania law); Pennsylvania Emergency Management Agency Petition to Reject, CC Docket No. 96-45 (filed Jan. 29, 2009) (asking the Commission to reject TracFone’s certification for compliance with Pennsylvania 911/E911 obligations due to TracFone’s failure to contribute to Pennsylvania’s Wireless E911 Emergency Services Fund).

*Designation Order*, the Commission declined TracFone's request to eliminate the condition that TracFone obtain the required certification from each PSAP where it will provide Lifeline service.<sup>10</sup>

4. On November 21, 2008, TracFone filed the instant petition seeking to modify the PSAP certification requirements. Specifically, TracFone requests that, if a PSAP does not provide the requisite certification within 90 days of a request for such certification from TracFone, TracFone would be allowed to self-certify that its customers will have access to 911 and E911 without regard to activation status or availability of prepaid minutes.<sup>11</sup>

### III. DISCUSSION

5. As the Commission found in the *TracFone ETC Designation Order*, TracFone's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, high-quality service offerings, and mobility.<sup>12</sup> In addition, the prepaid feature of TracFone's service, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts. Therefore, we find that the public interest is served by allowing TracFone to offer its Lifeline service to consumers as quickly as possible, while also ensuring that its consumers have access to necessary emergency services.

6. The Commission has twice stressed the importance of ensuring that TracFone's Lifeline customers have access to 911 and E911 services through the PSAP certification process.<sup>13</sup> We affirm that TracFone must continue to comply with this requirement and seek certification from the PSAPs within its service area. To ensure that the benefits of Lifeline service are made available to TracFone's customers in a timely manner, however, we grant TracFone's request to allow it to self-certify compliance with the 911 and E911 availability condition if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area.<sup>14</sup> In making a request for certification, TracFone must notify the PSAP that TracFone has the option to self-certify within 90 days of the request if the PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service. TracFone may not self-certify compliance until 90 days after it has provided a PSAP with notification of the 90-day self-certification period adopted in this order. TracFone also may not make such a self-certification until it has provided a PSAP with all of the information and/or equipment requested by the PSAP in analyzing

<sup>10</sup> *Id.* at 6213, para. 16.

<sup>11</sup> TracFone Petition at 1. On December 23, 2008, the Wireline Competition Bureau sought comment on TracFone's petition. See *Comment Sought on TracFone Wireless Inc. Petition for Modification of Public Safety Answering Point Certification Condition*, CC Docket No. 96-45, Public Notice, DA 08-2779 (Wireline Comp. Bur., rel. Dec. 23, 2008). Comments on the petition were due January 6, 2009, and reply comments were due January 13, 2009. Comments were filed by Consumer Action, the National Emergency Number Association, and the Pennsylvania Commission. TracFone and the Pennsylvania Commission filed reply comments.

<sup>12</sup> See *TracFone ETC Designation Order*, 23 FCC Rcd at 6212, para. 15.

<sup>13</sup> *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16; see also *TracFone ETC Designation Order*, 23 FCC Rcd at 6215, para. 22.

<sup>14</sup> If a PSAP has conducted testing and notified TracFone within the 90-day period of concerns regarding the ability of TracFone customers to access 911 and E911 services, TracFone may not self-certify compliance until it has addressed the PSAP's concerns (for example, issues with TracFone's underlying wireless provider concerning access to 911 and E911 services), such that the PSAP can provide the required certification. In this circumstance, TracFone may self-certify 180 days after requesting certification from the PSAP if the PSAP does not approve or deny the certification within that period.

TracFone's ability to provide 911 and E911 service to its customers. If TracFone makes such a self-certification, TracFone must obtain from each of its underlying carriers that provide service to TracFone in the area served by that PSAP certification that the carriers route 911 and E911 calls from TracFone customers to the PSAP in the same manner that they route 911 and E911 calls from their own customers. TracFone is required to retain such underlying carrier certifications and provide them to the Commission upon request. TracFone must provide PSAPs with copies of any self-certifications at the time they are filed. If after TracFone makes a self-certification a PSAP finds that TracFone does not provide its customers with 911 and E911 access, upon receiving notice of this finding TracFone must immediately notify the Commission of this finding and explain how it plans to come into compliance with this condition.

7. The Pennsylvania Commission opposed TracFone's request for a modification of the PSAP certification requirement, stating that TracFone has refused to comply with the "drive testing" requirements included as part of Pennsylvania's Phase II 911 compliance.<sup>15</sup> It is unclear from the Pennsylvania Commission's filing whether such state "drive testing" requirements apply to resale services, such as those provided by TracFone, or whether a demonstration of successful "drive testing" of the underlying wireless provider's service would comply with the state requirement. As this Commission stated in the *TracFone ETC Designation Order*, TracFone's designation as an ETC eligible for Lifeline support in each state is conditioned upon TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision and support of 911 and E911 service.<sup>16</sup> Therefore, TracFone must comply with any state requirements that are applicable to carriers providing service on a purely-resale basis. We do not find that the Pennsylvania Commission's claim of TracFone's non-compliance with the state "drive testing" requirement warrants denial of TracFone's request for a 90-day PSAP certification period. As discussed above, TracFone's customers should not be denied the benefits of access to Lifeline support for a prolonged period of time pending PSAP action on TracFone's certification requests. We therefore grant TracFone's request and allow it to self-certify its provision of 911 and E911 services to its customers, and also require it to obtain certification from its underlying carriers, if, within 90 days of TracFone's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area. To the extent an entity disagrees with TracFone's self-certification, it may file a request asking the Commission to examine the issue pursuant to section 1.41 of the Commission's rules.<sup>17</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 214(e) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214 and 254, the petition for modification filed by TracFone Wireless, Inc. IS GRANTED as discussed herein.

<sup>15</sup> Pennsylvania Commission Reply Comments at 7-8. The Pennsylvania Commission also requests that the Commission revisit the decisions granting TracFone's forbearance request and ETC designation in Pennsylvania. *Id.* at 9, 12-17. Pursuant to section 1.106(f) of the Commission's rules, petitions for reconsideration of Commission actions must be filed within 30 days from the date of public notice of the final Commission action. 47 C.F.R. § 1.106(f). The public notice dates of both the *TracFone Forbearance Order* and the *TracFone ETC Designation Order* were their release dates pursuant to section 1.4(b)(2) of the Commission's rules. 47 C.F.R. § 1.4(b)(2). Those dates were September 8, 2005, and April 11, 2008, respectively. The Pennsylvania Commission's reply comments were filed on January 13, 2009, well outside of the 30-day reconsideration deadlines for both orders. The Pennsylvania Commission's oppositions to those decisions are therefore untimely and will not be considered here.

<sup>16</sup> *TracFone ETC Designation Order*, 23 FCC Rcd at 6213, para. 16.

<sup>17</sup> 47 C.F.R. § 1.41.

9. IT IS FURTHER ORDERED that the Pennsylvania Public Utility Commission's request for an extension of the pleading cycle IS DENIED.

10. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

# Exhibit 6

## Privacy Policy

SAFELINK WIRELESS® service is U.S. government supported program for Income eligible households provided by TracFone Wireless.

Please read the TRACFONE Privacy Policy.

TRACFONE Wireless has instituted a comprehensive set of privacy policies and procedures to ensure that its Web site visitors' privacy is never compromised. The purpose of this privacy notice is to inform our Web site visitors of the type of information that TRACFONE, or a credit card processing partner acting on its behalf, collects from the Web site, how the information is gathered, how it is utilized, how long it is retained and how visitors can restrict its use or disclosure.

The primary focus of TRACFONE's privacy policy is to ensure that all Web site visitors' customer identification, which we term "customer identifiable information," is kept private at all times. As the term suggests, "customer identifiable information" is information which can be associated with a specific individual or entity, including, for example, a customer's name, address, or telephone number, e-mail address and information about online activities that are directly linked to them.

The collection of customer identifiable information is a critical element in the day-to-day operation of the Web site to allow TRACFONE to maintain the highest level of customer service for all Web site visitors. It is a common practice and often a necessity for companies, governments, or other organizations to collect customer identifiable information in order to conduct business and offer services.

TRACFONE always strives to safeguard the customer identifiable information obtained from its Web site users and visitors (collectively, "customers") from any unauthorized intrusions.

TRACFONE may contact people on the home phone number they enter on our website, input into our automated phone system or give to an agent in case of technical difficulties, promotions and/or reminders.

### General

TRACFONE will not sell, trade, or disclose to third parties any customer identifiable information derived from the registration for, or use of, a TRACFONE product or service -- including customer names and addresses -- without the consent of the customer. TRACFONE will, however, disclose customer identifiable information as required by subpoena, search warrant, or other legal process or in the event that such customer is engaging in unlawful use of our Web site.

When TRACFONE uses third parties to perform services on its behalf, TRACFONE will request that such third parties protect your customer identifiable information consistently with this privacy policy. However, we cannot ensure that all of your customer identifiable information will never be disclosed, as regulatory and/or other requirements may make disclosure necessary.

### Collection and Use:

In some instances, TRACFONE may collect information that is not "customer identifiable information." Some examples of this type of information include the type of Internet browser you are using, the type of operating

system you have configured on your computer, and the domain name of the Web site and/or Internet Service Provider from which you are linked to our Web site. TRACFONE primarily uses this information for market research and optimizing its systems in order to deliver the best customer experience possible.

TRACFONE may collect and use customer identifiable information for various purposes, including but not limited to, billing purposes, to provide or change service, to anticipate and resolve problems with your service, or to inform you of products and services that better meet your needs. This means that TRACFONE may use your customer identifiable information, in conjunction with information available from other sources, to market new services that may be of interest to you, but TRACFONE will not disclose your customer identifiable information to third parties who want to market products to you.

**Declining e-mail offers:**

TRACFONE will only send our customers e-mail regarding promotional offers or other news if a customer specifically grants us permission. A customer has the right to choose not to receive TRACFONE e-mail direct marketing communications by simply notifying us of their preference. This process is commonly termed opting-out or unsubscribing. At any time, a customer can unsubscribe from our e-mail list by clicking on the unsubscribe link found at the bottom of every message or promotion delivered electronically to our customers. Upon such choice, TRACFONE (a) will not contact that customer directly with TRACFONE promotional messages, and (b) will not use customer identifiable information obtained from that customer's registration to contact that customer with TRACFONE product or service messages. A customer may also choose not to receive such messages by notifying TRACFONE via fax or mail.

**Security:**

TRACFONE has gone to great lengths to implement technology and security features to safeguard the privacy of your customer identifiable information from unauthorized access or improper use, and TRACFONE, based on its judgment, will continue to enhance its security procedures as new technology becomes readily available. However, since there is no such thing as "perfect Internet security", TRACFONE cannot provide any guarantees of 100% security compliance.

**E-mail Contents:**

TRACFONE will not read or disclose to third parties private e-mail communications that are transmitted using TRACFONE services except as required to operate the service or as otherwise authorized by law.

**Improper Conduct:**

TRACFONE may also use customer identifiable information to investigate and help prevent potentially unlawful activity or activity that threatens the network or otherwise violates the customer agreement for that service.

#### Account Information:

TRACFONE honors requests from customers for account information and will correct any such information, which may be inaccurate. Customers may contact TRACFONE to verify that appropriate corrections have been made.

#### Cookies

When you visit our Web site, we may store information on your computer that allows us to identify you immediately. This process is often referred to as "cookie" technology. More specifically, a cookie is a commonly used Internet standard which stores, in a very small text file on the customer's hard disk, information specific to the customer. Our Web site makes limited use of cookies in an effort to improve our level of service to our Web site visitors. Cookies cannot be accessed by any other Web site other than the Web site issuing the cookie. The private features of our Web site are only accessible when cookies are enabled in the customer's browser. If a customer does not wish to utilize cookies, this feature may be disabled within the customer's Web browser. However, by disabling cookies, a customer will not have access to private areas of our Web site through that browser.

#### Other Web sites

Since TRACFONE's Web site contains links to other Web sites, we are not responsible for the content or privacy practices employed by these other Web sites. It is possible that on some occasions, these third party Web sites may in fact collect personal information from our customers. We recommend that you examine the privacy policies of such third party Web sites prior to submitting any personal information, as they may differ from ours.

In some instances, our Web site content is also featured on other Web sites with differing or non-existent privacy policies. These Web sites may collect personal information from their customers that may or may not be used in conjunction with our Web site information. Prior to supplying any personal information to any third party company linking to our Web site, please read and understand their privacy policy.

#### Advertisements

Advertisements may appear on pages throughout our Web site. Some advertisements may request information directly from our customers or take our customers to Web sites that may request personal information. TRACFONE has no control over its advertisers' privacy policies, so please examine the privacy policy of any company advertising on our Web site prior to submitting any personal information.

#### Third Party Advertising Companies

We may use third-party advertising companies to serve ads on our behalf. These companies may employ cookies and action tags (also known as single pixel gifs or web beacons) to measure advertising effectiveness. Any information that these third parties collect via cookies and action tags is completely anonymous. If you would like more information about this practice and your choices, [click here](#). You may also visit the Advertising.com Privacy Policy, [click here](#).

### Surveys

Occasionally, we may conduct surveys on our Web site. Surveys are conducted at random and are completely voluntary to our Web site visitors. The survey may require a customer to provide customer identifiable information in exchange for the information or services provided by the survey. We may use this information in an aggregate manner to better tailor the type of services, information, and advertising that are provided on our Web site.

### Policy Changes

TRACFONE reserves the right to change its privacy policy by publishing new terms on its Web site at any time and your access and use of the TRACFONE Web site thereafter constitutes your acknowledgment and acceptance of such amended policy. This privacy policy does not create any legal right for you or any third parties.

### Children

TRACFONE Web sites are not structured to attract children under the age of 13. TRACFONE believes there is no information on its Web site, which is inappropriate or objectionable for viewing by children.

TRACFONE does not knowingly, directly or passively, collect information from children under the age of 13. If we create offers and products that make it appropriate to collect information from children under the age of 13, we will notify you of the change in this Policy. We also will ask a parent to confirm his/her consent in advance of any collection, use or disclosure of that information. We do not collect any information that is not submitted to us. We only use personally identifiable information so that we may better understand our users' needs and send information to users regarding new services or offerings, including but not limited to any sweepstakes or other offering. We do not sell any personally identifiable information or disclose any personally identifiable information to third parties.

Ordering online products and services from TRACFONE is limited to adults (ages 18+). However you should be aware that wireless devices and services purchased for family use may be used by minors without the knowledge of TRACFONE. If that happens, any information collected from the usage will appear to be the personal information of the actual adult subscriber and treated as such under this Policy.

### Questions?

Please direct any questions or comments regarding our privacy policy to [information@tracfone.com](mailto:information@tracfone.com).

# Exhibit 7

**30-Sheets**

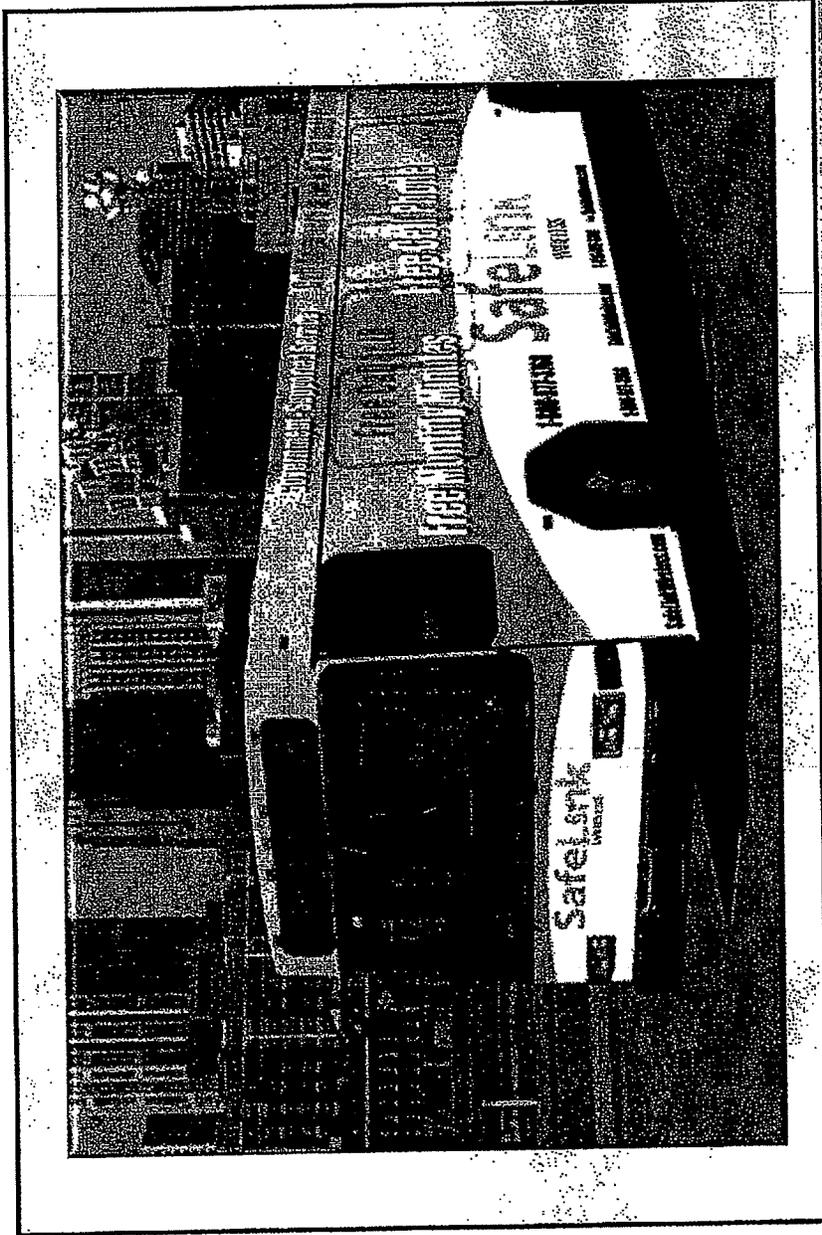
**FREE government-supported cell phone**  
**FREE monthly minutes.**  
**1-800-977-3768**  
SafeLink  
SafeLinkWireless.com

ESCAPE

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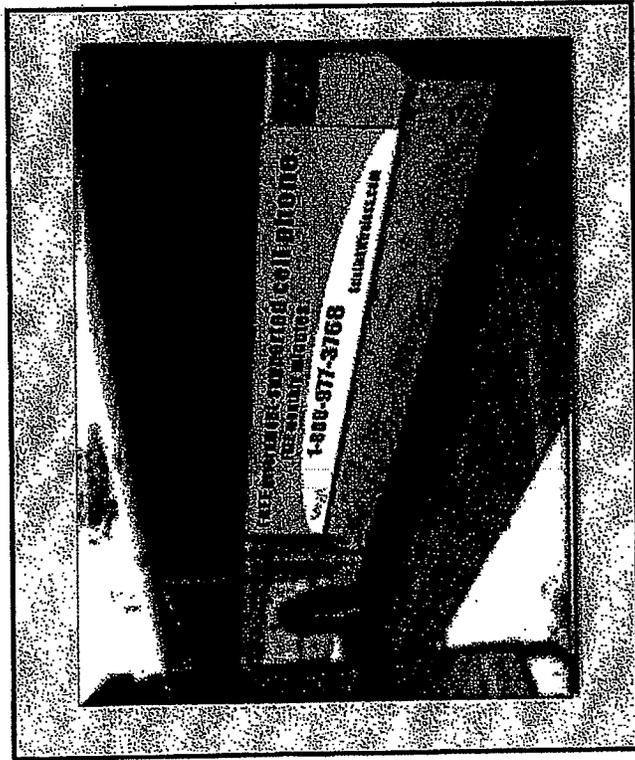
**SafeLink**  
WIRELESS

# Bus Wraps



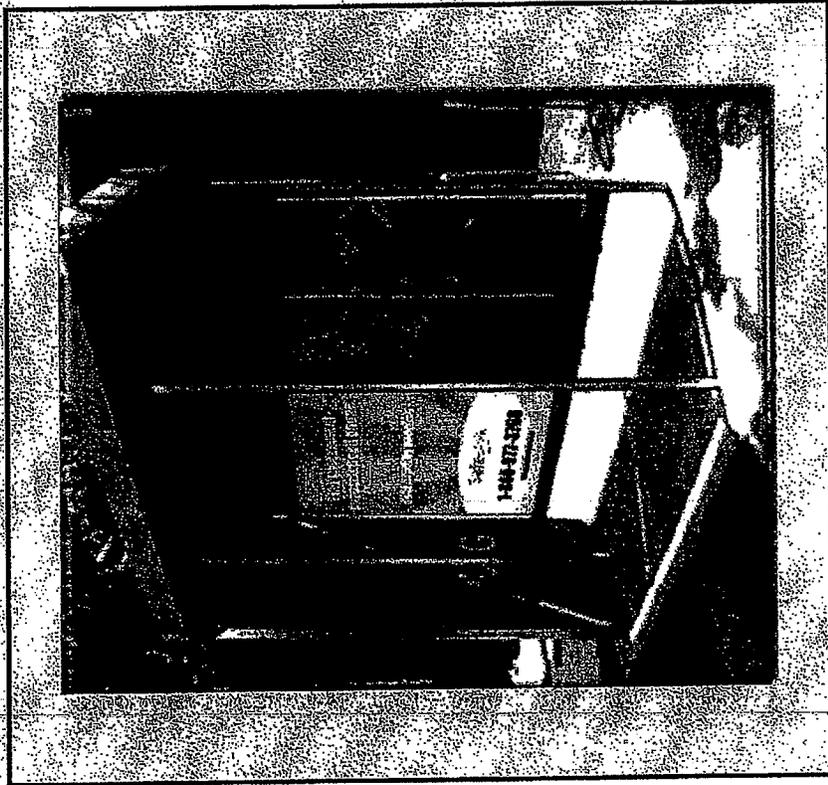
**SafeLink**  
WIRELESS

# Bus King Posters



**Safelink**  
WIRELESS

**Bus Shelters**



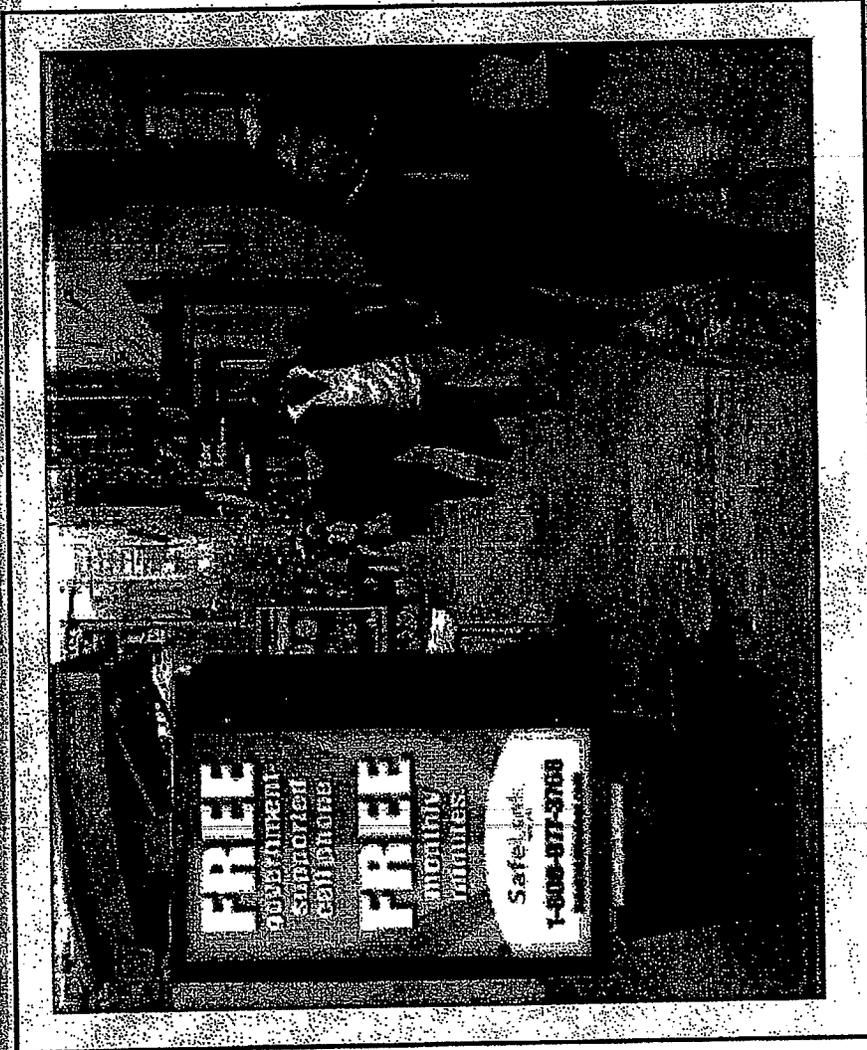
**safelink**  
WIRELESS

# Bus Interior Cards



**SafeLink**  
WIRELESS

# Pay Phone Kiosks



**Safelink**  
WIRELESS

**SAFELINK WIRELESS COMMERCIAL SPOT**



**Safelink**  
WIRELESS

# Web Page

The screenshot shows a web browser window with the following content:

- Navigation Links:** Learn PROGRAM FOR ORPHANS, Enroll JOB SAFELINK WIRELESS, Airtime ADD UP TO \$100 AIRTIME.
- Header:** Safelink WIRELESS logo.
- Main Content:** Safelink Wireless is a government supported program that provides free cell phones and airtime to eligible low-income eligible income. To be in the program, start your application.
- Image:** A mobile phone with the Safelink logo on the screen.
- Call to Action:** "Am I eligible for Safelink?" and "Is this really free?" with a question mark icon.
- Footer:** Home, About Us, Contact Us, Privacy Policy, Terms of Service, Site Map.

# Safelink

WIRELESS

# Exhibit 8

## SAFELINK WIRELESS™ Terms and Conditions of Service

Please read these SAFELINK WIRELESS Terms and Conditions of Service carefully. SAFELINK WIRELESS is a service of TracFone Wireless, Inc. ("TracFone Wireless"). These SAFELINK WIRELESS Terms and Conditions of Service are a legally binding agreement between you and TracFone Wireless. They contain important information about your legal rights, and require that certain disputes be resolved through Arbitration instead of a court trial. TracFone Wireless reserves the right to change or modify any of these SAFELINK WIRELESS Terms and Conditions of Service at any time and at its sole discretion. Any changes or modifications to these SAFELINK WIRELESS Terms and Conditions of Service will be binding once posted on the SAFELINK WIRELESS website found at [www.safelink.com](http://www.safelink.com).

By qualifying and enrolling in the SAFELINK WIRELESS service ("Service") and by using the Service, you ("You"), the participant, acknowledge and agree to the following terms and conditions:

### SAFELINK WIRELESS SERVICE DESCRIPTION

SAFELINK WIRELESS Service is funded by the Lifeline program (part of the Universal Service Fund) and administered by the Universal Service Administrative Company. In order to participate in the SAFELINK WIRELESS Service, a person must meet certain eligibility requirements set by each state where the Service is to be provided. These requirements are based on a person's participation in a state or federal support program(s) or by meeting certain income requirements based upon the Income Poverty Guidelines as defined by the US Government. Federal law limits the availability of SAFELINK WIRELESS Service to one (1) per "household" and only the "head of household" is permitted to apply for the Service. Applicants for the SAFELINK WIRELESS Service must complete an application form, provide supporting documentation that he/she meets the eligibility requirements and agree, under penalty of perjury, to the following terms:

HE/SHE IS ELIGIBLE FOR AND CURRENTLY RECEIVES BENEFITS FROM THE PUBLIC ASSISTANCE PROGRAM(S) IDENTIFIED IN THE APPLICATION FORM, HE/SHE IS A "HEAD OF HOUSEHOLD." HE/SHE DOES NOT CURRENTLY RECEIVE LIFELINE SUPPORT FOR A TELEPHONE LINE SERVING HIS/HER RESIDENTIAL ADDRESS AND NO OTHER RESIDENT IN HIS/HER HOUSEHOLD PARTICIPATES IN THE LIFELINE PROGRAM. IF HE/SHE IS ALREADY PARTICIPATING IN ANOTHER LIFELINE PROGRAM, THEN HE/SHE AGREES TO CANCEL HIS/HER CURRENT HOUSEHOLD LIFELINE SUPPORT PROVIDER IN FAVOR OF SAFELINK WIRELESS. HE/SHE IS NOT CLAIMED AS A DEPENDENT ON ANOTHER PERSON'S FEDERAL OR STATE INCOME TAX RETURN. HE/SHE WILL NOTIFY SAFELINK WIRELESS WHEN HE/SHE NO LONGER QUALIFIES FOR ANY OF THE PUBLIC ASSISTANCE PROGRAMS IDENTIFIED IN HIS/HER APPLICATION FORM BY CALLING 1-800-SAFELINK. HE/SHE WILL NOTIFY SAFELINK WIRELESS OF ANY CHANGE OF ADDRESS BY CALLING 1- 800-SAFELINK. THAT THE INFORMATION CONTAINED IN HIS/HER APPLICATION IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF.

A person who submits a SAFELINK WIRELESS application, together with supporting documentation (when required), and who meets the eligibility requirements, will receive a free cellular phone provided by TracFone Wireless together with a free allotment of airtime minutes each month for up to one year. TracFone Wireless will determine at its sole discretion whether or not an applicant meets the eligibility requirements to participate in the SAFELINK WIRELESS Service. The airtime minutes you will receive on a monthly basis will vary from state to state. Please call SAFELINK WIRELESS at 1-800-SAFELINK or visit our website at [www.SafelinkWireless.com](http://www.SafelinkWireless.com), for further information on the number of minutes qualified applicants will receive each month. Persons who do not meet the eligibility requirements will be notified by US Mail and the reason for the non-eligibility will be provided. To continue qualifying each year for SAFELINK WIRELESS™ Service, each customer will be required and is responsible to re-qualify on an annual basis or as dictated by their state Public Service Commission. For annual re-qualification

requirements, TracFone Wireless will also conduct verification drives for each state according to its rules. If TracFone Wireless determines during its verification drive that a customer fails to re-qualify for SAFELINK WIRELESS Service, such customer will immediately be deemed ineligible to participate in the SAFELINK WIRELESS Service and will no longer receive the free monthly minutes. Once a customer no longer participates in the SAFELINK WIRELESS Service (either by choice, disqualification, cancellation or termination), such customer may retain the SAFELINK WIRELESS phone, as well as any remaining service days and minutes for their use. Such person may remain as a TracFone Wireless customer as long as he/she complies with the TracFone Wireless Terms and Conditions of Service available at [www.tracfone.com](http://www.tracfone.com). A SAFELINK WIRELESS customer's enrollment may also be cancelled upon the request of a state and/or federal authority. TracFone Wireless and SAFELINK WIRELESS reserve the right to cancel the enrollment of any customer and/or ban the SAFELINK WIRELESS phone from being reactivated for any fraud related issues as determined solely by TracFone Wireless. While participating in the SAFELINK WIRELESS Service, a customer shall not be permitted to sell, rent, give away or in any way allow another person to use the cellular phone or Service provided to him/her by SAFELINK WIRELESS. IT IS A VIOLATION OF FEDERAL AND STATE LAW TO SELL OR GIVE AWAY THE SAFELINK CELLULAR PHONE OR SAFELINK SERVICE PROVIDED TO YOU BY SAFELINK WIRELESS. Any violation of this prohibition will be reported to the appropriate legal authorities for prosecution. In addition, if TracFone determines, in its sole discretion, that a SAFELINK WIRELESS participant has violated these requirements and/or this Agreement, then such person may be de-enrolled from the Service, the person's handset may be permanently deactivated and the person's personal information may be permanently flagged so that such person may not qualify in the future for the SAFELINK WIRELESS Service. If you have any questions, concerns, comments or complaints regarding SAFELINK WIRELESS Service, offerings or products, please call SAFELINK WIRELESS Customer Care at 1-800-SafeLink. You may also contact your state's Public Service Commission/Public Utility Commission.

#### ACTIVATING AND USING YOUR SAFELINK WIRELESS HANDSET.

If your SAFELINK WIRELESS application is accepted, you will receive a pre-activated SAFELINK WIRELESS phone delivered to your home address noted in the application. You must accept the SAFELINK WIRELESS telephone number assigned to your SAFELINK WIRELESS phone at the time of activation and you will acquire no proprietary interest in any number assigned to you. The number assigned to your SAFELINK WIRELESS phone at the time of activation will not be changed for any reason, unless required by a Carrier, nor may a SAFELINK WIRELESS customer select a number to be assigned to his/her phone. The wireless telecommunications networks used to transmit calls for the SAFELINK WIRELESS Service are owned and operated by various licensed commercial mobile radio service providers ("Carriers"), not SAFELINK WIRELESS, nor TracFone Wireless. Your SAFELINK WIRELESS phone can only be used through TracFone Wireless, and cannot be activated with any other wireless or cellular service. SAFELINK WIRELESS Services are provided at TracFone Wireless™ discretion. Some functions and features referenced in the Manufacturer's manual provided with your SAFELINK WIRELESS phone may not be available on your SAFELINK WIRELESS handset. TracFone Wireless may modify or cancel any Service or take corrective action at any time without prior notice and for any reason, including but not limited to your violation of this agreement. While you are eligible and participating in the SAFELINK WIRELESS Service, you will receive your free monthly allotment of airtime minutes. However, in order to receive the monthly allotment you will need to turn on and leave on your SAFELINK WIRELESS handset the first few days of each month.

#### SELF-RETRIEVE AIRTIME MINUTES

If you DO not receive your monthly allotment of minutes because your phone was not on at the beginning of the month or your phone does not automatically retrieve minutes when turned on, your minutes may be self-retrieved by following the instructions below. If for any reason these instructions do not work on your handset, please call us at 1-800-SafeLink.

1. 1) Turn your SafeLink Wireless phone ON.
2. 2) From the Main screen, press the MENU key. Select "Prepaid."
3. 3) From the menu select, "Add Airtime/ Redeem Airtime."
4. 4) Dial 5 5 5 and press OK. If you are prompted for a promotional code, press "No."

5) Make sure to keep your SAFELINK WIRELESS phone ON to receive your Minutes!

If your phone does not allow you to self-retrieve or your phone does not automatically retrieve or if you are having difficulty receiving your monthly allotment of minutes, then call SAFELINK WIRELESS Customer Care at 800-SafeLink.

#### AIRTIME RATES.

SAFELINK WIRELESS airtime is issued in minute/unit-increments. "Units" are the same as minutes. Minutes/units are deducted from the SAFELINK WIRELESS phone at a rate of one (1) unit per minute and/or partial minute of use. There is no additional charge for nationwide long distance or for international long distance to countries designated at [www.tracfone.com](http://www.tracfone.com).

#### TEXT MESSAGING.

The rates to send or receive a text message to another person's phone using your SAFELINK WIRELESS phone are 0.3 minutes/units per text message, for sending and 0.3 minutes/units per text for receiving. If you do not want minutes/units deducted from your SAFELINK WIRELESS phone, then do not send a text message and/or do not open any incoming text messages. SAFELINK WIRELESS Service does not allow international text messages. Attempting to send international messages could result in service deactivation. Please note that SAFELINK WIRELESS does not generally participate in Premium SMS services or campaigns. Premium SMS refers to activities that usually involve sending a text message to a designated "short code" or buying or attempting to buy SMS services from anyone other than SAFELINK WIRELESS. Premium SMS campaigns include activities such as casting a vote, expressing your opinion, playing a game, subscribing to a service, or interactive television programs. You should not attempt to participate in Premium SMS campaigns, unless it is a SAFELINK WIRELESS authorized campaign. Any text message you send to a "short code" will in all likelihood not go through. Any charges you may incur as a result of any attempts to participate in Premium SMS services or campaigns not authorized by SAFELINK WIRELESS whether you incur charges as deductions from your SAFELINK WIRELESS phone or from your credit card, are not refundable. You may purchase from SAFELINK WIRELESS ring tones, graphics and certain information services and utilize multi-media services with certain SAFELINK WIRELESS models. See SAFELINK WIRELESS Data Services below.

#### INTERNATIONAL CALLING.

You may now use your SAFELINK WIRELESS phone to make international calls to landlines (including some cellular phones in some countries) at no additional charge (See [www.tracfone.com](http://www.tracfone.com) for available countries and details). The available countries are subject to change without prior notice. In order to place an international call, you will need to dial the international long distance access number 1-800-706-3839 and follow the instructions. From Alaska, Hawaii and the U.S. Virgin Islands you will need to dial 305-938-5673 as the international long distance access number. Airtime deductions for international calls begin the moment the International Long Distance ("ILD") access number is dialed and apply to dropped calls, misdialed numbers and busy destination numbers. When making international calls, you may experience connection failures more frequently than calls made within the United States. SAFELINK WIRELESS will not credit airtime minutes deducted for unsuccessful calls. You will not be able to make or receive calls on your SAFELINK WIRELESS phone when you are located outside of the United States, Puerto Rico or the U.S. Virgin Islands (the "Coverage Area"). Any attempt to make or receive calls when you are located outside of the Coverage Area could result in service deactivation.

#### ADDING AIRTIME.

Your SAFELINK WIRELESS phone will only operate when you have airtime minutes/units available on the SAFELINK WIRELESS phone. If you run out of your free monthly allotment of airtime, you may purchase and add airtime to your phone. You add airtime by entering the PIN (obtained from either a SAFELINK WIRELESS or TracFone Wireless airtime card). You must add your airtime to your SAFELINK WIRELESS phone within one year from the date of purchase; otherwise the card/PIN expires and you will not be able to add those minutes to your SAFELINK WIRELESS phone; nor receive a refund for any unused minutes.

#### AIRTIME CARDS.

SAFELINK WIRELESS customers may purchase and use for their SAFELINK WIRELESS handset any TracFone Wireless airtime cards, including Double Minute Airtime cards. Each TracFone Wireless airtime card comes with a number of minutes and a service period that begins to run from the day you add airtime to your SAFELINK WIRELESS phone.

The free monthly allotment of minutes received by the SAFELINK WIRELESS customer while enrolled in the Double Minutes for Life program will not double with the purchase and addition of any airtime cards. NOTE: On the 60, 90 and 120 minute TracFone Wireless airtime cards, Safelink Wireless customers will receive an additional 40, 35 and 30 minutes respectively, and these minutes do not double with any TracFone Wireless Double Minute airtime cards.

For each TracFone Wireless airtime card purchased and used on a SAFELINK WIRELESS handset, the SAFELINK WIRELESS customer will receive the following:

Card	Minutes	Service Days	Other
60	100	90	N/A
90	125	90	N/A
120	150	90	N/A
200	200	90	N/A
450	450	90	N/A
One Year Service Card	250 or 400	365	N/A
One Year plus Double Minute	800	365	Double minutes for life of single handset after you purchase and add this card; not transferable to another handset even if phone is damaged, lost or stolen. The minutes that come with this card will not double. Free monthly minutes to SAFELINK WIRELESS customers do not double.
Double Minute	0	0	Double minutes for life of single handset after you purchase and add this card; not transferable to

Card			another handset even if phone is damaged, lost or stolen. The minutes that come with this card will not double. Free monthly minutes to SAFELINK WIRELESS customers do not double.
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You may also purchase SAFELINK WIRELESS airtime cards at selected retail stores. SAFELINK WIRELESS customers will receive the following:

Card	Minutes	Service Days	Other
15	15	0	N/A
25	25	0	N/A
50	50	0	N/A

For each additional TracFone airtime card that you add to your phone, your Service End Date will be extended by the number of days specified on the card or cash register receipt, without limitation. "Service End Date" is the last day of your service period. Airtime minutes added to your SAFELINK WIRELESS phone do not expire with active service and at least one Transaction during a consecutive sixty day period. A "Transaction" shall be defined as any one of the following (i) your phone's receipt of the monthly allotment of airtime; (ii) the purchase and addition of either a TracFone Wireless or SAFELINK WIRELESS airtime card; or (iii) usage of your phone (making a call, sending or receiving a text message or data usage). Airtime minutes have no cash value and are non-refundable. Promotional, bonus and other non-purchased airtime minutes will not double on phones with the double minute card. The purchase of any airtime card is non-refundable. Airtime cards, airtime rate plans, and card denominations are subject to change at any time without prior notice.

#### SERVICE END DATE AND DEACTIVATION.

SAFELINK WIRELESS enrolled customers will receive 365 days of service upon qualification and enrollment and then another 365 days of service for re-qualification and re-enrollment. If you use your phone regularly and receive your monthly minutes but do not re-qualify or re-enroll or purchase and add airtime prior to the Service End Date (which is the date displayed on your handset screen) your service will be deactivated on the last day of service (your Service End Date). In the event TracFone Wireless requires you to re-qualify and re-enroll in the SAFELINK WIRELESS Service and you fail to do so and you do not purchase a TracFone airtime card providing service days, then your service will be deactivated on your Service End Date and you will lose your handset phone number, even if you have minutes remaining. To prevent this from occurring, please keep your handset service active by both re-qualifying and re-enrolling or by purchasing and adding TracFone airtime cards before the Service End Date. Notwithstanding the Service End Date displayed on your handset, SAFELINK WIRELESS and TracFone Wireless reserve the right to deactivate and cancel the enrollment of any phone from the SAFELINK WIRELESS service in the event of no activity or Transaction for 60 consecutive days. If your SAFELINK WIRELESS Service is deactivated because of no activity or Transaction in 60 consecutive days, your phone may be reactivated by calling 1-800-SafeLink within the twelve month period from the initial enrollment or requalification date. If you re-activate your SAFELINK WIRELESS phone and service within the twelve month period of your enrollment, you will receive the monthly minutes that you were entitled to receive until you were deactivated but you will lose any and all minutes that you would have received during your deactivation period. If you attempt to re-activate after twelve months from the initial enrollment or requalification date, you will need to re-qualify and re-enroll in the SAFELINK WIRELESS Service and no compensation or replacement of unused minutes will be provided.

Once you reactivate, your SAFELINK WIRELESS handset may be assigned a new phone number. Airtime which remained at the time of deactivation will remain on your handset if it is reactivated within 60 days from the deactivation date. However, airtime which remained at the time of deactivation may be lost if your handset service remains deactivated for longer than 60 days.

**AIRTIME USAGE.** Airtime minutes will be deducted for all time during which your SAFELINK WIRELESS phone is connected to, or using, the wireless system of any Carrier. Use of a wireless system typically begins when you press the "send," "call" or other key to initiate or answer a call and does not end until you press the "end" key or the call is otherwise terminated. Airtime minutes are deducted for all incoming and outgoing calls, including incoming call waiting calls, calls to toll free numbers, 411, 611, Customer Care, and to access your voice mail. Airtime minutes are deducted for all text messages sent and all incoming text messages which are opened. Airtime minutes are not deducted for calls to 911. For outbound calls, you may be charged airtime for incomplete and/or busy-no answer calls. Airtime minutes are deducted in full unit increments; partial minutes are rounded up to the next minute. Airtime minutes will also be deducted for use of other services such as text messaging and accessing the TracFone Wireless Mobile Web ("WAP"). No credit or refund is given for dropped calls.

**UNAUTHORIZED USAGE; TAMPERING.** The SAFELINK WIRELESS handset is provided exclusively for use by you, the end consumer with the SAFELINK WIRELESS Service available solely in the United States, Puerto Rico and the U.S. Virgin Islands. Any other use of your SAFELINK WIRELESS handset, including without limitation, any resale, unlocking and/or re-flashing of the handset is unauthorized and constitutes a violation of your agreement with TracFone Wireless. You agree not to unlock, re-flash, tamper with or alter your SAFELINK WIRELESS phone or its software, enter unauthorized PIN's, engage in any other unauthorized or illegal use of your SAFELINK WIRELESS phone or the Service, or assist others in such acts, or to sell and/or export SAFELINK WIRELESS handsets outside of the United States. These acts violate TracFone Wireless' rights and state and federal laws. Improper, illegal or unauthorized use of your SAFELINK WIRELESS phone is a violation of this agreement and may result in immediate discontinuance of Services and legal action against you. TracFone Wireless will prosecute violators to the full extent of the law. You agree that any violation of this agreement through your improper, illegal or unauthorized use or sale of your SAFELINK WIRELESS phone shall entitle TracFone Wireless to recover liquidated damages from you in an amount of not less than \$5,000 per SAFELINK WIRELESS handset purchased, sold, acquired or used in violation of this agreement..

~~Some SAFELINK WIRELESS handsets have SIM cards. If your SAFELINK WIRELESS phone has a SIM card, then you agree to safeguard your SIM card and not to allow any unauthorized person to use your SIM card. You agree not to allow any other person to, directly or indirectly alter, bypass, copy, deactivate, remove, reverse-engineer or otherwise circumvent or reproduce the encoded information stored on, or the encryption mechanisms of, your SIM card. The Carriers, TracFone Wireless, or its service providers, may, from time to time, remotely update or change the encoded information on your SIM card. Your SAFELINK WIRELESS phone is restricted from operating when you are located anywhere outside of the United States, Puerto Rico or the U.S. Virgin Islands, including offshore or in international waters. Any such calls are considered unauthorized usage by TracFone Wireless for which your Service will be immediately suspended. In the event of suspension for this or any other unauthorized usage, you will not be entitled to receive any refunds for unused airtime.~~

**COVERAGE MAPS.** You will find coverage maps on our website, [www.tracfone.com](http://www.tracfone.com). These maps are for general informational purposes only. TracFone Wireless does not guarantee coverage or service availability. Even within a coverage area, factors such as terrain, weather, structures, foliage, signal strength, traffic volumes, service outages, network changes, technical limitations, and your equipment may interfere with actual service, quality and availability. Thus, it is possible your phone will roam even in the area depicted as your home calling area. Actual coverage and service areas may vary from the maps and may change without notice.

**ROAMING.** "Roaming" occurs when a subscriber of one wireless service provider uses the facilities of another wireless service provider. Roaming most often occurs when you make and receive calls outside the home calling area. When your SAFELINK WIRELESS phone is roaming, an indicator light on your handset may display the word "Roam" or "RM" on the screen while the phone is not in use. There are no additional charges for roaming calls for the SAFELINK WIRELESS phone you were provided. Availability, quality of coverage and Services while roaming are not guaranteed.

**LIMITATIONS OF SERVICE AND USE OF EQUIPMENT.** Service is subject to transmission limitations caused by certain equipment and compatibility issues, atmospheric, topographical and other conditions. Further, Service may be temporarily refused, limited, interrupted or curtailed due to system capacity limitations, technology migration or limitations imposed by the Carrier, or because of equipment modifications, upgrades, repairs or relocations or other similar activities necessary or proper for the operation or improvement of the Carrier's radio telephone system. At anytime, TracFone Wireless reserves the right to substitute and/or replace any SAFELINK WIRELESS equipment (including handsets) with other SAFELINK WIRELESS equipment including handsets of comparable quality. Some functions and features referenced in the Manufacturer's manual for a particular SAFELINK WIRELESS handset may not be available on your phone. TracFone Wireless does not warrant or guarantee availability of network or of any Services at any specific time or geographic location or that the Services will be provided without interruption. Neither TracFone Wireless, nor any Carrier, shall have any liability for Service failures, outages or limitations of Service. Because of the risk of being struck by lightning, you should not use your SAFELINK WIRELESS phone outside during a lightning storm. You should also unplug the SAFELINK WIRELESS phone power cord and charger to avoid electrical shock and/or fire during a lightning storm.

#### **WARRANTY EXCHANGE & LOST OR STOLEN PHONE POLICY**

**Warranty Exchange Policy:** SAFELINK WIRELESS customers shall have up to one year from the activation date of their phone to return any defective phone to TracFone Wireless. TracFone Wireless will exchange a defective phone for another phone during this period of time only. For a defective phone replacement, call SAFELINK WIRELESS Customer Care at 1-800-378-1684.

**Exclusions and Conditions.** This limited warranty does not cover damage or failure caused by abuse or misuse of the phone or accessories. TracFone Wireless does not provide refunds. All applicable implied warranties, including the implied warranties of merchantability and fitness for a particular purpose, are limited to the duration of this limited warranty, unless otherwise provided by law. Your limited warranty excludes all incidental or consequential damages, unless otherwise provided by law. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This limited warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

**Lost or Stolen Phone Policy:** For any lost or stolen SAFELINK WIRELESS phone, you may request and receive only one replacement phone per customer (The replacement phone will be a refurbished phone). All reported lost and stolen phones will be permanently deactivated. For the replacement phone resulting from a lost or stolen phone, SAFELINK WIRELESS will only replace 10 minutes of lost time. In the event you lose your replacement phone or it is stolen, you will need to purchase an additional phone. If a phone is lost or stolen in transit to the customer, before the customer receives the phone, then the airtime minutes will be reimbursed and the phone replaced (one time only). TracFone Wireless reserves the right to determine if a phone was lost or stolen in transit and decide whether to provide the customer with a new handset.

## HEARING, VISUAL OR SPEECH IMPAIRED ACCOMMODATIONS

Any hearing, visual or speech impaired persons interested in applying for a specially equipped SAFELINK WIRELESS must specify the need(s) in the application and TracFone Wireless will make every effort to assist such customer in obtaining a handset and at the same time be in compliance with all applicable laws, rules, and regulations.

## EMERGENCY CALLS.

If you are in an area where your SAFELINK WIRELESS phone is searching for a wireless signal or there is no wireless signal or wireless service, it is highly probable that a call to 911 will not go through. Do not rely solely on your SAFELINK WIRELESS in an emergency situation. In an emergency, locate the nearest landline phone and call for help.

## DATA SERVICES.

With certain SAFELINK WIRELESS phone models, you can download ring tones, graphics, access information services such as news, weather and sports ("Information Services") and utilize multi-media services ("MMS") (ringtones, graphics, Information Services and MMS are collectively referred to as "Data Services") through our Wireless Mobile Web ("WAP"). Data Services are additional Services offered by us and there is an additional charge or debit of minutes/units for use of such services.

**Access/Purchase Data Services.** In order to purchase, download or access Data Services, your handset must have active service and sufficient available airtime (minutes). Your handset will not let you open the WAP browser without an airtime balance of at least 10 minutes. Each time you access our Wireless WAP with your handset's browser, 0.5 units per minute will be deducted from your handset ("Access Charges"). Access Charges are deducted in full minute increments. WAP access of less than 60 seconds is rounded up to the next full minute.

Access Charges begin when your handset makes a data connection. This should occur shortly after you open your browser, send or receive a multi-media message (e.g., a picture), initiate a content download, view subscribed Information Services or if WAP access is initiated for any other purpose. Access Charges end when the data connection terminates. This should occur shortly after you close your browser, successfully receive or send a multi-media message (e.g., a picture), after a successful content download or after any other closure of a WAP session. The WAP access duration and the related Access Charges are NOT determined from the exact moment you press a button on your handset to open or close the browser.

In addition to the Access Charges, there will be an additional one-time charge for any content you select to download ("Content Charge") and if you subscribe to an Information Services ("Subscription Charge"). The Content Charges and Subscription Charges vary depending on the type of content and/or subscription. You will be advised of the Content Charges and/or Subscription Charges prior to finalizing your purchase. The Data Services you purchase and download may only be used or viewed on the handset for which they were purchased and cannot be transferred to any other device, including a new or replacement handset. Data Services are non-refundable and non-transferable.

**Purchase Options for Data Services:** You may purchase Data Services either through your handset's WAP browser or through the Internet (with a personal computer) at [www.tracfone.com](http://www.tracfone.com).

When you purchase Data Services from the Internet at [www.tracfone.com](http://www.tracfone.com), the Content Charge will be shown in both U.S. Dollars and in minutes/units. You will have the opportunity to select one of two payment options: (1)

using a credit card to pay the purchase price shown, or (2) a direct deduction of minutes from your SAFELINK WIRELESS handset. If you buy a TracFone card the number of minutes to be charged is based on the last airtime card added to your handset. See Purchasing Data Services With Airtime Minutes below.

How to purchase from the Internet ([www.tracfone.com](http://www.tracfone.com)): Go to "Ringtones and More" at [www.tracfone.com](http://www.tracfone.com) and enter your SAFELINK WIRELESS serial number (ESN /IMEI). This will take you to the Wireless Data Services content catalog where you can browse, sample and purchase ringtones and/or graphics. After you find a title, and select "Buy", you will then be presented with the two purchase options described above.

How to purchase through your handset's WAP browser: Select "BROWSER" on your handset. Then select "Start Browser" and you will be presented with a menu. When you use your handset's WAP browser to purchase Data Services, only the unit charge purchase option is available. Credit card payments are not available when purchasing through your handset. Note: Ringtones can only be sampled at [www.tracfone.com](http://www.tracfone.com).

**Purchasing Data Services With Airtime Minutes:** If you add TracFone airtime cards, the charges for Data Services purchases are determined by the last airtime card added to your handset. The chart below details the number of minutes you will be charged for each dollar you spend for the Data Services you purchase. Your TRACFONE will be assigned the appropriate dollar-to-minute conversion factor each time an airtime card is added to your handset. The charges for Data Services in U.S. Dollars and/or minutes and the dollar-to-minute conversion factor(s) are subject to change without prior notice.

<b>Dollar-To-Minute Conversion Factors for Data Services</b>	
<b>If the last airtime card you added to your handset was:</b>	<b>You will have this number of minutes deducted per dollar you spend on Data Services:</b>
<b>TRACFONE Airtime Cards</b>	
30, 40 or 60 minute cards	3.00
90 minute card	3.60
100 or 120 minute cards	4.00
200, 250 or 400 minute cards	5.00
450 minute card	5.62
200, 250 or 400 minute cards with Double Minutes	3.00
<b>Annual Plan and Double Minute Prepaid Plan Cards</b>	
150 unit Annual Plan card	1.66
250 unit Annual Plan card	2.50
400 minute Annual Plan Card	4.00
800 minute Annual Plan Card	5.71
Double Minute Card without minutes	N/A
300 minute Double Minute Annual Prepaid Plan Card	2.30
400 minute Double Minute Annual Prepaid Plan Card	3.07
<b>Regular Airtime Cards Added to TRACFONE's with active Double Minute Benefit</b>	
30, 40 or 60 minute cards with Double Minutes	6.00
90 minute card with Double Minutes	7.20

100 or 120 minute cards with Double Minutes	8.00
200, 250 or 400 minute cards with Double Minutes	10.00
450 minute card	11.24
Other (not listed above) Airtime cards with Double Minutes	6.00

**Subscription to Information Services.** For Data enabled phones, SAFELINK WIRELESS offers two options for subscription-based Information Services (news, weather and sports): (1) a one-day (24 hour) subscription or (2) a 30-day subscription.

A subscription for Information Services allows you to view the various Information Services during the duration of the subscription. For example, a 30-day subscription allows access to the subscription based Information Service at any time during the 30-day period. In addition to the initial Subscription Charge to purchase the one-day or 30-day subscription, you will also incur Access Charges whenever you open your handset's WAP browser to access and/or view the Information Services. The Access Charge is 0.5 minutes (units) per minute (or partial minute) of use. Subscriptions to Information Services can only be purchased directly from your handset.

Subscriptions to Information Services are only accessible on the handset on which they were purchased and cannot be transferred to any other device, including a new or replacement handset. Information Services are non-refundable and non-transferable.

Your SAFELINK WIRELESS Service must remain active to access your subscription to Information Services. If your service expires, your subscription to Information Services will be terminated. Your Information Services subscription will not be reinstated, even if your handset is reactivated during the original subscription period. There is no pro-rated refund of Subscription Charges as a result of deactivation or expiration of service.

**Charges for MMS (e.g., picture messaging).** You will be charged 1.0 unit to send or receive a multi-media message (the "MMS Charge"). In addition to the 1.0 unit MMS Charge, there will also be an additional WAP Access Charge of 0.5 units per minute for the time it takes to send or receive the multi-media message. The total WAP Access Charge will vary depending on the size of the multi-media message being sent or received.

**Additional Access Charges for Data Services.** In addition to the Content Charges, Subscription Charges and MMS Charges, and regardless of the payment option you use, there is always an additional Access Charge of 0.5 units per minute associated with downloading content, accessing/viewing Information Services or utilizing MMS. Total Access Charges will vary depending on the size of the content and the actual time it takes to download the content, access/view the Information Service or utilize MMS.

**Modifications, Interruptions, or Discontinuation of Data Service.** SAFELINK WIRELESS does not guarantee the availability of Data Services on all of its phone models nor does it guarantee the availability of Data Services at all times. SAFELINK WIRELESS reserves the right to modify, suspend, interrupt, discontinue or permanently cancel Data Services, or portions thereof, without notice. Data Services are not available in analog service areas. SAFELINK WIRELESS is not responsible and will not be liable for any modifications, interruptions or discontinuation of the Data Services or for any failure in receipt of the purchased Data Services. If the Data Services, or any part thereof, for which you subscribe, are modified, interrupted, discontinued or canceled, you will not receive a

refund or credit from SAFELINK WIRELESS for any remaining used or unused subscription time. If you cancel or attempt to cancel a Data Service download, a subscription purchase or a multi-media message in progress, or if this process is otherwise interrupted through no action on your part, you may nevertheless be charged in accordance with the terms and conditions set forth herein.

**Non-Rated Content.** SAFELINK WIRELESS and TracFone Wireless strive to present and offer only generally acceptable content. However, it is impossible to proof all content, titles and news articles for appropriate content. Our wireless content is NOT rated and you are solely responsible for the use of such material, which may be offensive or objectionable to you or to others. You agree not to hold SAFELINK WIRELESS or TracFone Wireless liable for any offensive or objectionable content.

**LIMITATION OF LIABILITY.** TracFone Wireless will not be liable to you for any indirect, special, incidental, consequential, exemplary or punitive damages of any kind, including lost profits (regardless of whether it has been notified such loss may occur) by reason of any act or omission in its provision of equipment and/or Services. TracFone Wireless will not be liable for any act or omission of any other company furnishing a part of our Services or any equipment or for any damages that result from any Service or equipment provided by or manufactured by third parties. When your SAFELINK WIRELESS phone is returned to SAFELINK WIRELESS for any reason, TracFone Wireless is not responsible and shall not be liable to you or anyone else for any personal information such as user names, passwords, contacts, pictures, SMS, MMS and/or additional downloads you may have stored on your phone or which may remain on your phone.

**INDEMINIFICATION.** You agree to indemnify and hold harmless TracFone Wireless from any and all liabilities, penalties, claims, causes of action, and demands brought by third parties (including the costs, expenses, and attorneys' fees on account thereof) resulting from your use of a SAFELINK WIRELESS phone and/or use of the SAFELINK WIRELESS Services, whether based in contract or tort (including strict liability) and regardless of the form of action.

**BINDING ARBITRATION.** PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE, IT PROVIDES FOR RESOLUTION OF ALL DISPUTES AND CLAIMS (INCLUDING ONES THAT ALREADY ARE THE SUBJECT OF LITIGATION); EXCEPT FOR CLAIMS CONCERNING THE UNAUTHORIZED RESALE, EXPORT, ALTERATION, AND/OR TAMPERING OF YOUR SAFELINK WIRELESS PHONE, ITS SOFTWARE, THE SERVICE AND/OR PIN NUMBERS, THROUGH ARBITRATION INSTEAD OF SUING IN COURT IN THE EVENT THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE OR CLAIM. ARBITRATION IS BINDING AND SUBJECT TO ONLY A VERY LIMITED REVIEW BY A COURT. THIS ARBITRATION CLAUSE SHALL SURVIVE TERMINATION OF TRACFONE WIRELESS™ AGREEMENT WITH YOU. This provision is intended to encompass all disputes or claims arising out of your relationship with TracFone Wireless, arising out of or relating to the Service or any equipment used in connection with the Service (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory). Nothing contained in this arbitration provision shall preclude TracFone Wireless from bringing claims concerning the unauthorized resale, export, alteration, and/or tampering of your SAFELINK WIRELESS phone, its software, the Service and/or PIN numbers, in state or federal court. References to you and TracFone Wireless include our respective subsidiaries, affiliates, predecessors in interest, successors, and assigns. All claims, except those excluded above, will be resolved by binding arbitration where permitted by law. You must first present any claim or dispute to TracFone Wireless by contacting Customer Care to allow an opportunity to resolve the dispute prior to initiating arbitration. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") under the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules"), as modified by this agreement. The AAA Rules are available online at [www.tracfone.com](http://www.tracfone.com) or by calling the AAA at 1-800-778-7870. You

and TracFone Wireless agree that use of the Service evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the Federal Arbitration Act and federal arbitration law. All issues are for the arbitrator to decide, including the scope of this arbitration clause, but the arbitrator is bound by the terms of this agreement. You and TracFone Wireless agree that any arbitration will be conducted on an individual basis and not on a consolidated, class wide or representative basis. Further, you agree that the arbitrator may not consolidate proceedings or more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding, and if this preclusion of consolidated, class wide or representative proceedings is found to be unenforceable, then this entire arbitration clause shall be null and void. All fees and expenses of arbitration will be divided between you and TracFone Wireless in accordance with the WIA Rules, except that TracFone Wireless will reimburse you for the amount of the filing fee in the event you prevail in the arbitration. Each party will bear the expenses of its own counsel, experts, witnesses, and preparation and presentation of evidence. If for any reason this arbitration provision is deemed inapplicable or invalid, or to the extent this arbitration provision allows for litigation