



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF A 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 AND LINK-UP SERVICES TO)
QUALIFIED HOUSEHOLDS)

ORDER OF APPROVAL

DOCKET NO. TO09010092

(SERVICE LIST ATTACHED)

BY THE BOARD:¹

By petition dated January 29, 2009, TracFone Wireless, Inc. ("TracFone"), a reseller of underlying wireless carrier services, petitioned the New Jersey Board of Public Utilities ("Board" or "BPU") seeking approval to be designated as an Eligible Telecommunications Carrier ("ETC") solely to provide Lifeline and Link-Up services to qualified New Jersey consumers, pursuant to Section 214(e) (2) of the Communications Act, as amended by the Telecommunications Act of 1996.² Designation as an ETC would permit TracFone to receive universal service support for these services. TracFone requests the ETC designation for the entire state of New Jersey.

TracFone has provided commercial mobile radio service ("CMRS") in New Jersey for 10 years through resale arrangements with the following facilities-based wireless providers: AT&T Mobility, T-Mobile, and Verizon Wireless. TracFone has over ten million customers nationwide and claims to be the leading provider of prepaid wireless service in the United States. Furthermore, TracFone provides service to every zip code in the State. TracFone asserts that it will provide Lifeline-eligible customers 68 minutes of free monthly service valued at \$13.60 and unused minutes will roll over from month-to-month. Additionally, Lifeline-eligible customers will be permitted to purchase low volume usage cards at a rate of \$.20 per minute. The cards will be sold in denominations of \$3.00, \$5.00 and \$10.00. Moreover, TracFone will provide Lifeline customers an Enhanced 911 ("E911") compatible handset at no cost. Moreover, asserts TracFone, customers will always be able to contact 911 or E911 from their wireless handset, regardless of whether they have depleted their free Lifeline minutes or additional airtime.

¹ Commissioner Frederick Butler did not participate in this matter.
² P.L. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 et seq.).

Furthermore, TracFone asserts that it meets all the requirements of the Federal Communications Commission ("FCC") for designation as an ETC. 47 C.F.R. § 54.101(a) requires the following services and functionality: (1) Voice grade access to the public switched telephone network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to 911 or E911 emergency service; (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualified low-income customers.

BACKGROUND

On September 8, 2005, the FCC issued an Order³ granting TracFone's request for forbearance from the requirement that a carrier designated as an ETC for purposes of federal universal service support provide services, at least in part, over its own facilities.⁴ The FCC's grant of forbearance was limited to Lifeline services only and was conditioned upon 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 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 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.

[I/M/O the Federal State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214 (e)(1)(A) and 47 C.F.R. § 54.201(i), FCC Docket No. 96-45, 20 FCC Rcd 15095 (Rel. September 8, 2005) (Forbearance Order).]

TracFone filed its Compliance Plan, based upon the Forbearance Order, with the FCC on October 11, 2005.

On April 11, 2008, the FCC issued a further order in which it designated TracFone as an ETC eligible for Lifeline support only in the states of New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia.⁵ In that order, the FCC concluded that, with TracFone's grant of forbearance from the facilities requirement, it had satisfied the remaining statutory and regulatory requirements to be designated as a limited ETC for Lifeline service only. The FCC found that, pursuant to 47

³ Order, In the Matter of the Federal State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214 (e)(1)(A) and 47 C.F.R. § 54.201(i), FCC Docket No. 96-45, 20 FCC Rcd 15095 (Rel. September 8, 2005) (Forbearance Order).

⁴ 47 U.S.C. § 214 (e).

⁵ Order, 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., CC Docket No. 96-45, 23 FCC Rcd 6206 (Rel. April 11, 2008).(TracFone ETC Order)

U.S.C. § 214 (e), TracFone offered designated services for support and advertised the supported services using general media of distribution. Additionally, the FCC found that TracFone met the following additional eligibility requirements outlined in its Forbearance Order:

- (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.

[ETC Order, at 5.]

The FCC also concluded that TracFone's designation as an ETC met the criteria for determining whether it was in the public interest, having considered "the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering,"⁶ but added an additional condition requiring "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."⁷ In addition, the state commissions of Georgia, Florida, Michigan and West Virginia have designated TracFone as an ETC.

The FCC also approved TracFone's Compliance Plan outlining how it will meet the conditions imposed in the Forbearance Order.⁸ However, on March 5, 2009, the FCC issued an Order granting TracFone's request to modify the forbearance conditions regarding certification from PSAPs.⁹ Specifically, although TracFone must still request a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service, 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.

DISCUSSION

To qualify as an ETC, a carrier must provide nine services identified in 47 C.F.R. §54.101. The Board FINDS that the services TracFone states that it will provide to Lifeline-eligible customers satisfies the requirements of Section 214(e) and 47 C.F.R. § 54.101. The services required to be provided under the law and those to be provided by TracFone are:

- 1) Voice grade access to the public switched network - Voice grade access enables a user of telecommunications services to transmit voice 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. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz.

⁶ ETC Order at ¶ 6

⁷ ETC Order at ¶ 16

⁸ ETC Order at ¶ 1.

⁹ Order, 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., FCC Docket No. 96-45, (Rel. March 5, 2009).(TracFone PSAP Order)

TracFone states that it complies with this requirement by enabling customers to transmit voice communications, including signaling to the network that a caller wishes to place a call, and enabling customers to receive voice communications, including receiving a signal indicating there is an incoming call;

- 2) Local Usage - Local usage means an amount of minutes of use of exchange service, prescribed by the FCC, provided free of charge to end users. Under TracFone's proposal, customers can send and receive local calls wherever TracFone provides service. TracFone includes local usage in all of its calling plans, including those that will be available for Lifeline discounts. While the FCC has not mandated minimum local usage requirements, TracFone states it will comply with any applicable requirements that may be established;
- 3) Dual tone multi-frequency signaling or its functional equivalent - Dual tone multi-Frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, which shortens call set-up time. According to TracFone, all handsets provided by TracFone are DTMF capable;
- 4) Single-party service - Single-party service permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission. TracFone provides customers with single-party access for the duration of every call, and it does not provide "multi-party" or "party-line" services;
- 5) Access to emergency services - Access to emergency services includes access to services, such as 911 or E911 provided by local governments or other public safety organizations. 911 or E911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a PSAP operated by the local government. E911 is defined as a 911 service that includes the ability to provide automatic numbering information ("ANI"), which enables the PSAP to call back if the call is disconnected, and automatic location information ("ALI"), which permits emergency service providers to identify the geographic location of the calling party. Access to emergency services includes access to 911 and E911 services to the extent the local government in an eligible carrier's service area has implemented 911 or E911 systems. TracFone provides access to the 911 or E911 system for its customers through its underlying carriers, and TracFone will continue to do so;
- 6) Access to operator services - Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion of a telephone call. TracFone contends that its customers have access to operator services;
- 7) Access to interexchange service - Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network. TracFone states that its customers are able to complete toll calls and are not charged separately for interexchange calls. Long distance calling is included in TracFone's service, with no additional charge to the customer;

- 8) Access to directory assistance - Access to directory assistance is a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. According to TracFone, its customers have access to directory assistance provided through any of the vendors being used by TracFone; and
- 9) Toll limitation for qualifying low-income consumers - Toll limitation or blocking restricts all direct dial toll access. There will be no toll limitation because TracFone is a prepaid service, which means that there will be no disconnect for non-payment.

The Board has reviewed TracFone's petition for designation as an ETC in New Jersey, as well as additional documents filed with this Board and with the FCC. The Board is satisfied that TracFone has complied with the above requirements to be eligible as an ETC in New Jersey and TracFone has demonstrated its ability to provide the nine services identified in 47 C.F.R. §54.101.

TracFone has provided an initial plan outlining their combined mass market and grass roots media advertising in order to advertise the offered Lifeline services, as required in 47 C.F.R. § 214(e)(1). TracFone will use retail outlets and other methods for Lifeline advertising and for customers to purchase its prepaid cards. As a safeguard to prevent more than one Lifeline supported service per household, customers will not be able to receive Lifeline certification through a retail provider. Customers will have to contact TracFone directly to self-certify for Lifeline. Customers must self-certify, under penalty of perjury, that they qualify for Lifeline service either by being a participant of one of New Jersey's eligible programs, or because they are within the relevant threshold of income level.

Upon thorough review of the pertinent FCC orders and the orders granting ETC status for TracFone in the states of Georgia, Florida, Michigan and West Virginia, the Board is satisfied that TracFone's petition for designation as an ETC for the limited purpose of Lifeline support eligibility should be approved subject to several conditions, as described below. These conditions, combined with TracFone's commitment to provide Lifeline service in New Jersey in accordance with its FCC-approved compliance plan, convinces the Board that this optional service will be of value to eligible New Jersey consumers.

In a letter dated April 16, 2009, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") recommends that the Board approve the ETC petition.

The FCC granted TracFone a forbearance of the requirements under 47 C.F.R. § 214(e)(1)(a) with regard to Lifeline services only; the FCC did not grant a forbearance of those requirements for the Link-Up services.¹⁰ A state's ability to designate a carrier as an ETC is limited by 47 C.F.R. § 214(e)(1), which provides that the carrier must offer services by using its own facilities or a combination of its own facilities and the resale of another carrier's services. TracFone is a reseller of wireless services, and, as a result, is unable to provide services using its own facilities. Therefore, because the FCC did not grant TracFone a forbearance of this requirement with regard to Link-Up services, TracFone's proposed Link-Up services cannot be designated as an ETC at this time.

The Board FINDS that TracFone has met all statutory and regulatory requirements for designation as an ETC. The Board concludes that it has the authority to grant ETC status to wireless carriers. Although the Board has previously not exerted authority over wireless ETC

¹⁰ See Forbearance Order at ¶ 6; TracFone ETC Order at ¶ 17, n. 48.

applications, federal and state law allow the Board to do so. Section 214(e)(2) provides that a state commission shall designate as an ETC a carrier that meets the requirements of 47 C.F.R. §214(e)(1).

The Board HEREBY APPROVES the petition and ORDERS that TracFone be designated an ETC and approved to offer Lifeline services only. TracFone's request to offer Link-Up services is HEREBY DENIED, without prejudice. Should TracFone provide sufficient evidence that they have been granted authority to offer Link Up service by the FCC, the matter will be reviewed by the Board, upon petition.

The request for ETC designation to offer Lifeline service is HEREBY APPROVED, subject to:

Certification from each PSAP where TracFone provides Lifeline service, or from the state Office of Emergency Telecommunications Services on behalf of each PSAP in New Jersey, confirming that TracFone provides its customers with access to basic and E911 regardless of activation status and the availability of prepaid minutes. These certifications must be filed with the Board in this proceeding. Service shall not be provided to any Lifeline customer in an area where such certification has not been granted or received, in accordance with the provisions set forth the FCC's TracFone Orders;

TracFone will provide E911 compliant handsets to all Lifeline customers free of charge and non-compliant handsets in the possession of existing TracFone customers will be replaced with E911 compliant handsets at no charge to the customers upon their enrollment in the Lifeline program;

Each of TracFone's Lifeline customers in New Jersey will receive 68 minutes of airtime each month for all months in which the customers are enrolled in the program and any unused minutes will roll over to the following month;

Eligibility for participation in TracFone's Lifeline program will be based upon customer enrollment in one of the eight qualifying New Jersey public assistance programs. The eight qualifying programs are: Medicaid; Food Stamp Program; General Assistance ("GA"); Supplemental Security Income ("SSI"); Home Energy Assistance Program ("HEAP"); Lifeline Utility Credit/Tenants Lifeline Assistance; Pharmaceutical Assistance to the Aged and Disable ("PAAD"); and Temporary Assistance to Needy Families/Work First New Jersey ("TANF/WF NJ"). Additionally those persons 65 or older whose household incomes are at or below 150% of the federal poverty level are also eligible.¹¹ The eligibility requirements are subject to modification by the Board, and applicants will be required to self-certify under penalty of perjury that they are enrolled in one of those qualifying public assistance programs;

¹¹ See I/M/O/ Petition by Warwick Valley Telephone Company for Approval to Provide Lifeline Services, BPU Dkt. No.: TT97080605 (Nov. 18, 1997); and I/M/O/ Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing, BPU Dkt. No.: TO01020095 (Aug. 19, 2003), Attachment A.

- Self-certification of TracFone customers under penalty of perjury that they meet the eligibility requirements prior to service being activated and also annual certification that the customer is the head of household and is only receiving a Lifeline discount from TracFone and from no other carrier;

Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Lifeline at each residential address;

TracFone must deal directly with its customers to certify and verify Lifeline eligibility;

TracFone shall ensure that 100% of federal universal service funds flow through directly to Lifeline customers. The Board reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes;

TracFone's ETC designation may, at any time, be suspended or revoked by order of the Board;

- TracFone shall make all service offerings, including Lifeline, available on its Web site;

TracFone shall file, within 30 days of approval of its ETC application, its terms and conditions of service, and rate plans including its Lifeline discounts available to qualifying low-income customers. Further, TracFone shall have the ongoing obligation to notify the Board of any future changes to its rates, terms, or conditions;

TracFone shall file, within 30 days of approval of its ETC application, proposed language to be used in all advertising of Lifeline service and on its Web site. The language should include information directing customers to the Board's Customer Assistance Division for complaints regarding any service issues. The Staff shall have the right to review and make changes to any proposed language;

TracFone shall file the following information on April 30, 2010 (and updated information every April 30 thereafter), unless otherwise ordered by the Board:

- 1 TracFone shall report all instances in which it receives customer complaints. TracFone shall be required to provide the nature and number of customer complaints, and their resolution annually on April 30, 2010, and updated every April 30 thereafter.
2. Actual total federal funds received in 2008, and estimated total funds to be received in 2009.

TracFone must reach satisfactory resolution of complaints filed with the Board's Customer Assistance Division on a timely basis.

Based upon the above, the Board HEREBY DESIGNATES TracFone as an ETC solely to provide Lifeline service to all qualifying customers who request such service in New Jersey.

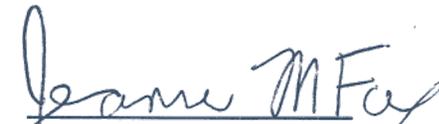
TracFone shall not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas.

This ETC Designation is issued on the representation that the statements contained in the Petitioner's applications are true, and the undertakings therein contained shall be adhered to and be enforceable unless specific waiver is granted by the Board pursuant to the authority contained in N.J.S.A. 48:1-1 et seq.

DATED: 4/27/09

BOARD OF PUBLIC UTILITIES
BY:

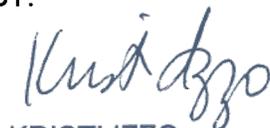

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JEANNE M. FOX
PRESIDENT

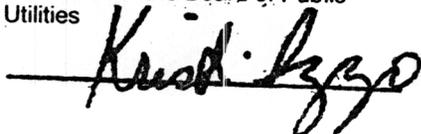

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**TracFone Wireless Inc. Designation as
Eligible Telecom Carrier in New Jersey**

BPU Dkt. No. TO09010092

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