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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
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TRACFONE WIRELESS, INC ) Docket No. 11-42  
Petition for Declaratory Ruling )  
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**KENTUCKY OFFICE OF THE 911 COORDINATOR'S  
AMENDED COMMENTS TO  
TRACFONE WIRELESS, INC.'S EMERGENCY PETITION FOR DECLARATORY RULING**

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*Kentucky Office of the 911 Coordinator*

December 10, 2014

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Comes Joe Barrows, the State 911 Coordinator for the Commonwealth of Kentucky, and submits his Amended Comments to TracFone's Emergency Petition for Declaratory Ruling, amending his Comments there were filed on December 8, 2014.

TracFone's Petition, if granted by the FCC, will have negative impact on 911 services in Kentucky and at a time 911 services in Kentucky are at a critical stage.

The current system is a mixture of state and local governance and funding which has evolved over time. Originating in the late 60's as a local service funded typically with a local fee on landline phones, 911 acquired the capacity to receive wireless calls in the 2000's, funded by a state fee of 70¢ per month on cell phones. Today, the system is overworked, underfunded and incapable of handling modern communication technologies.

Funding issues are related to the significant decline in 911 revenues from the local landline fee as the number of landlines in Kentucky has gone from 2.3 million landlines in 2002 to fewer than 1.4 million today. Additionally, revenues from the fee on cell phones have remained essentially the same for the last four years, indicating a Kentucky market saturated at roughly 3.6 million wireless devices.

Local governments have had to make up for the declining revenue base by using local general funds at a time when local budgets were already stretched, exacerbating the funding dilemma. Today, combined local landline 911 fees and state wireless 911 fees pay for less than half the cost of providing 911 service.

Of the three primary sources of funds to pay for 911 services, the largest contribution is local general funds, the second biggest contribution is the local landline fees. Landline fees vary county by county but average \$2-3 a month and though shrinking, still generate more than the state wireless (cell phone) fee of 70¢. Revenues

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from the cell phone service charge pay for less than 25% of the cost to provide 911 service EVEN THOUGH calls from wireless devices account for 75% of the 3.3 million 911 calls made annually in Kentucky. One could argue that wireless providers and users are not paying their share of the cost of providing 911 services.

The Commercial Mobile Radio Services Board of Kentucky (Board) was created by statute in 1998 in direct response to the FCC's Order in Docket No. 94-102. The Board's jurisdiction is over 'wireless 911'; its responsibility is to make 911 work with cell phones (CMRS connection); its resources are raised by a 70¢ per month service charge on every CMRS connection.

The Board has consistently held two principles. The first, that the state's 911 surcharge applies to every CMRS 'connection,' with no distinction based on whether the device is loaded with prepaid, postpaid or free minutes. The second, that each CMRS connection should support the system "the same" at the 70¢ per month per device level.

The first principal was challenged when the providers of prepaid services in Kentucky (and across the country) in the 2004-2005 time frame stopped remitting the state 911 service charge, asserting that the statute did not apply to their business model since they did not "bill" their customers directly and thus could not collect the fee directly from the end user; and that to make them pay from gross receipts was 'unfair' putting them at a competitive disadvantage. TracFone repeats similar arguments in their current Petition.

As a result, Kentucky did two things. In 2006 we amended the CMRS fee statute to reinforce that it applied to prepaid and we sued two prepaid providers in 2008 to collect unremitted 911 fees. The legislation adopted in 2006 specifically identified "prepaid" and provided options for the collection/remittance of the state 911 service

charge (KRS 65.7635).<sup>1</sup> The legislation was brought to Kentucky by TracFone and they lobbied for its passage.

Unfortunately there was an unintended consequence which did violence to the second principle. The revenue option formula used to collect 911 fees on prepaid does not generate the same revenues that collecting 70¢ per prepaid device per month would generate<sup>2</sup>. In fact, it collects revenues that equate to prepaid phones paying on average 30¢ a month –under collecting the state 911 fee by \$4 million annually.

The status of collection of the state 911 surcharge in Kentucky today looks like this:

- The Board collects from postpaid and prepaid (including Lifeline) providers/users.
- The Board collects in total about \$25 million annually in total wireless 911 service charges.
- There are roughly 2.64 million postpaid subscribers generating \$23 million @ 70¢ per phone per month.
- There are roughly 860,000 prepaid subscribers generating approximately \$2.5 million annually. This amount translates to 30¢ per month per device –under collecting the 70¢ service charge by \$4 million annually.
- Kentucky’s wireless Lifeline subscriber count for June 2014 was 231,000. The cumulative total wireless Lifeline subscriber count for FY 2014 was 2,809,994.

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<sup>1</sup> Providers of prepaid service have the option of a) collecting the 911 service charge by decrementing minutes from their customers or b) dividing their total wireless revenue from prepaid customers each month by \$50 and multiplying the quotient by the service charge (70¢) and paying the resulting amount to the CMRS Board.

<sup>2</sup> The reasons that the options in the statute do not generate revenue which would equal the amount that would be generated if providers remitted based on 'subscriber count' times the 911 fee are: 1) For decrementing, while the company collects 70¢ it does so only from those accounts which have at least 70¢ worth of minutes in the account which on "decrement day" is between 50-60% in Kentucky. 2) The revenue formula is fundamentally flawed in using the \$50 figure. The 'correct' figure to use in the formula would be the ARPU for 'prepaid' user. The prepaid ARPU in June of 2012 was \$20 which is significantly lower than \$50 and so this formula generates significantly less revenue than a simple subscriber count multiplied by the 911 fee calculation or a formula using a more appropriate prepaid ARPU.

- Those subscriber counts generated a total of \$33,452,542 in Lifeline reimbursements for Kentucky ETCs; \$25,136,255 from Federal funds, \$8,316,287 from state Lifeline funds.
- When the statutory collection formula is applied, those Lifeline reimbursements (Federal and State) generate \$468,335 in 911 service charges remitted to the Board for the year. (If we could collect the entire 70¢ service charge on Lifeline subscribers we would have collected and estimated \$1.2 million in FY 2014.)

### **The Status of the Lifeline Program in Kentucky**

Kentucky is statistically a low income state with a significant number of citizens eligible for low income services. Kentucky state government supports and promotes the low income Lifeline program and its 'new style' (free phones with free minutes). The Kentucky Public Service Commission (KPSC) provides state reimbursement to the providers of Lifeline service at \$3.50 per subscriber per month in addition to the Federal Lifeline reimbursement of \$9.25 per subscriber per month.

Each September the Governor proclaims Lifeline Awareness Week and the Governor and KPSC issue press releases promoting Lifeline.

The KPSC has approved twenty-two applications for ETC status since 2010, making Kentucky one of the states with the largest number of companies marketing their low income Lifeline services.

The Lifeline program in Kentucky in 2009 (before the 'new style' low income version) had 71,292 subscribers and 35 ETCs; twenty ETCs were wireline and fifteen were wireless. Of the fifteen wireless ETCs in existence then, only three are currently in 'business' receiving reimbursement for the 'old style' low income Lifeline program.

In June of 2014 Kentucky had 255,465 Lifeline subscribers; 24,162 are wireline, 231,303 are wireless. Of the wireless subscribers only 1,930 are receiving old style reimbursement and 229,373 are subscribers of the companies granted ETC status

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since 2010, i.e., those ETCs competing for Lifeline subscribers in the 'new style' Lifeline program.

In 2013 Federal Lifeline reimbursement in Kentucky totaled \$27,939,883; a little over \$4 million went to 'old style' wireline ETCs, about 14%. The balance, \$23,889,538, or 86% of the total, went to wireless ETCs. Only \$318,731, or 1.3%, went to three 'old style' wireless providers. The vast majority of the money, \$23,580,807 (over 98%) went to sixteen wireless providers designated as ETCs since 2010. This is the current state of competition in the low income Lifeline program.

In FY2014 TracFone received \$3,047,919 in Federal Lifeline reimbursement for its Kentucky Lifeline subscribers. Applying the formula (which translates to 1.4%), to that amount generates \$42,971 in 911 service charges.

Since they began receiving 'new style' Lifeline reimbursements in Kentucky (April 2011 through November 2014), TracFone has received \$6.99 million in Federal funds for their Kentucky subscribers. This would generate \$97,871 in 911 service charges. Hardly a "money grab"<sup>3</sup> by the State.

TracFone relies on Section 253 of the Communication Act (47 UCC § 253) in its Petition. TracFone asserts that the collection of a 911 fee on Lifeline service is not competitively neutral. As the previous Kentucky statistics show, the assertion seems ludicrous on the face of it. The competition in the low income Lifeline program is not between ETCs with a billing relationship with their customers and those ETCs like TracFone who provide prepaid (non billed) service, but almost entirely among the

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<sup>3</sup> In its Petition, TracFone's lawyers use an unfortunate, perhaps even offensive, description of the potential state efforts to collect a 911 fee on Lifeline service, calling it a "money grab." Since 2009 over \$9.299 billion in Federal Lifeline payments have been made to ETCs. TracFone has received \$2.156 billion or 23% of all Federal Lifeline payments made in that time period, yet for Kentucky or any state to collect 911 fees on the millions in Lifeline reimbursements is a "money grab?"

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twenty-two ETCs approved for the limited purpose of providing 'new style' low income service – and all these ETCs operate on a similar business model and all receive the same treatment by the collection of a 911 service charge on Lifeline service. This competitive relationship exists among ETCs in the Lifeline program other states as well.

TracFone and its low income Lifeline competitors in Kentucky all are (or should be) including Lifeline reimbursements in the calculation of their 911 fee remittances due to the CMRS Board.

The 'new style' certainly helped the primary goal of the low income Lifeline program (heretofore underutilized) by providing new access to (cell) phone service for those eligible. The 'new style' program was probably profitable from the outset based solely on Lifeline reimbursement only. At the time it started, the reimbursement amount was similar to the ARPU of a company like TracFone. Several ETCs now appear to have a book of business based solely on Lifeline subscribers.

But, of course, the 'new style' is also about recruiting subscribers for continuing purchase of the ETC's brand –certainly these subsequent purchases are a part of the business analysis that inspired the creation of the 'new style' program, spawned the Lifeline cottage industry and fueled the rapid growth in the number of cell phones being distributed. All of which can call 911, few of which pay to support the service.

TracFone as the largest provider of prepaid services and the company with the most Lifeline subscribers<sup>4</sup> nationally is not going to walk away from this customer magnet (particular as the increased usage and increased charges for wireless service

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<sup>4</sup> TracFone (SafeLink) ranks third in the state of Kentucky in its number of Lifeline subscribers behind Telrite (Life Wireless) and Budget Prepay.(November 2014)

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shifts from voice to data) even if they have to pay a state's 911 service charges on behalf of their subscribers from their own resources.

TracFone and other ETCs can afford to pay state 911 service charges on behalf of their Lifeline subscribers. What they can't afford to do is get out of the program or cut back on competitive plan offerings and run the risk of losing customers and the revenue coming from subsequent purchases by their subscribers when their free minutes are used up.

And what's wrong with TracFone and all other ETCs providing Lifeline service in a similar model paying a state 911 fee from their own resources. Some do it now. From the inception of the 'new style' Lifeline program with the Forbearance Orders of 2005 and 2008, the FCC has emphasized that the ability to call 911 was fundamental and had to be "guaranteed" by ETCs giving handsets and minutes to Lifeline eligible individuals. The providers have used that in their marketing of their Lifeline program. They 'sell' their product to eligible citizens based on the 'phone' providing free 911 access and the safety, security and peace of mind that provides.

The providers of prepaid service benefit economically from the Lifeline program partly because of the 911 component. Yet many of those providers are simply middlemen with no responsibility to make 911 work – no infrastructure costs, no R&D, no investment in improving 911. It does not seem to be unreasonable to have them contribute to the support of 911 by paying some 911 fees on behalf of their Lifeline subscribers.

As TracFone notes in its Petition, "TracFone recognizes the importance of funding 911 services in all states in which it provides service" – they just don't want to contribute any of their money to that important service.

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What is at stake financially for state 911 service if TracFone's Petition is granted or alternatively, if every state collected a 911 fee on Lifeline services. Nationally, the most money ETC providers could be 'out' by paying every state's 911 fees on Lifeline subscribers on an annual basis is 'ball park' \$132 million compared to total Lifeline reimbursement for the year of around \$1.7 billion. That figure is based on each state collecting its full 911 fee on Lifeline customers (the same state fee that postpaid cell phones pay). The actual total would be much less because not every state will collect on Lifeline services and in states that have adopted point of sale legislation for prepaid services, the state will 'under collect' the state 911 fee from Lifeline phones.

In conclusion, the FCC needs to consider the following factors when addressing TracFone's petition:

- Wireless devices continue to be the major (and growing) initiators of 911 calls across the country. Lifeline phones (over 13 million nationally) are a part of this phenomena and do impact 911 services.
- In Kentucky, wireless service does not pay its share of the cost to provide 911 services relative to landline funds and general funds. Wireless calls are 75% of 911 calls; 911 fees on wireless service pay less than 25% of costs. The same relative funding relationship probably exists in most states.
- Within the wireless 'world,' the total number of connections exceeds the population of the country (911 revenues won't be growing in this saturated market).
- Within the wireless world the shift is from a postpaid model to a prepaid service – now nearing 25% of the market.
- Prepaid service providers/users do not 'pay' the same 911 fees as postpaid providers/users. In some states prepaid services do not pay a 911 fee at all. In those states that collect 911 fees on prepaid services, the revenues generated by the prepaid collection methodology do not equate to what would be generated if each prepaid phone paid the state 911 fee each month. (Market is shifting to prepaid where 911 fees are under collected.)

- 911 services face funding issues due to lost landline revenues and stagnant or shrinking wireless revenues at a time when new demands to improve and modernize 911 services are being made (NG911, Text to 911).
- Collecting 911 surcharges on any segment of technology, device or service, including Lifeline service, that can initiate a 911 call is reasonable policy decision by a state.
- The total contribution in Kentucky for a wireless phone is 70¢ a month or \$8.40 a year, this amount is collected from postpays. For a prepaid phone (including Lifeline phones) the collection methodology only collects around 30¢ per phone per month or \$3.60 per year. This amount is not a burden on a service provider who pays the amount on behalf of their Lifeline subscribers.

For these and other reasons, the FCC should reject TracFone's petition. The FCC and its members should not on the one hand promote the improvements to 911 service and ask states and local governments to 'step up'<sup>5</sup> on the funding side while on the other hand, deprive states of a reasonable source of revenue by which to maintain and improve 911 services. Alabama and Indiana have 'stepped up'. Their efforts in this regard are being made in the aftermath of legislative changes that have raised revenues for 911 and changed the governance structure of 911 in their respective states. All toward the goal of transforming their 911 systems into the modern Next Generation 911 status that the FCC is encouraging. Their efforts should not be curtailed by the FCC, but left alone to stand as models for other states.

Respectfully submitted,



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<sup>5</sup> "While the FCC and certain parts of the industry are stepping up ... we need more states and local governments to step up and ensure ... PSAPs have the resources they need to stay current." Statement of Chairman Tom Wheeler re: Facilitating the Deployment of Text to 911, Docket No 11-153, August 2014.