

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

In the Matter of)	
)	
911 Governance and Accountability)	PS Docket No. 14-193
)	
Improving 911 Reliability)	PS Docket No. 13-75
)	
_____)	

COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments in response to the Public Notice issued in this proceeding.¹ The Commission’s focus in this proceeding is on ensuring reliable and resilient 911 service, especially in light of recent multi-state 911 outages.² Specifically, the Commission proposes rules to address 911 failures and ensure that the Commission’s 911 governance structure accommodates evolving technologies and obstacles to 911 reliability. In developing its proposed rules, the Commission acknowledges that the federal government and states have shared authority over all components of 911 service.³ TracFone’s comments solely relate to the scope of states’ authority over 911 service, and in particular, states’ authority to fund 911 service.

In the 911 Governance NPRM, the Commission explains that the governance of 911 service is shared among federal, state, and local governments, although states typically have

¹ Public Notice – Public Safety and Homeland Security Bureau Announces Comment and Reply Comment Dates for 911 Governance and Accountability Notice of Proposed Rulemaking, DA 15-93, released January 22, 2015.

² See *In the Matters of 911 Governance and Accountability, et al.*, PS Docket No. 14-193 *et al.*, Policy Statement and Notice of Proposed Rulemaking, FCC 14-186 (released: Nov. 21, 2014) (“911 Governance NPRM”).

³ *Id.* ¶ 7.

authority over the local structure and provision of 911 service.⁴ The Commission acknowledges that “[r]esponsibility for establishing and designating PSAPs or appropriate default answering points, purchasing customer premises equipment, retaining and training PSAP personnel, purchasing 911 network services, and implementing a cost recovery mechanism to fund all of the foregoing, among other things, falls squarely on the shoulders of states and localities.”⁵ In describing states’ authority over 911 service, the Commission “recognize[s] that many decisions regarding 911 deployment, operations, and cost recovery are best made at the state and local level”⁶

TracFone urges the Commission to keep in mind that while states have authority to establish funding mechanisms to support the provision of 911 service, that authority is not unlimited and does not enable states to ignore applicable federal law or to implement 911 tax and fee collection mechanisms which undermine federal programs and federal policies. For example, states may not exercise their authority to fund 911 service in a manner that has the effect of taxing Lifeline services provided to qualifying low-income consumers for no charge. As TracFone explained in detail in its Emergency Petition for Declaratory Ruling and related Reply Comments, states’ imposition of 911 taxes on Lifeline service is (among other reasons) inconsistent with Commission rules that require the full amount of Lifeline benefits to be passed through to Lifeline consumers and with the Commission’s policy of making affordable service available to low-income consumers. Moreover, such state taxation of federal Lifeline funding violates nearly two centuries of constitutional jurisprudence holding that states may not tax the

⁴ *Id.* ¶ 28.

⁵ *Id.* (quoting *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd. 10245, 10249, ¶ 7 (2005)).

⁶ 911 Governance NPRM, ¶ 38.

federal government.⁷ It is important for the Commission to be aware that in the context of 911 service, states do not enjoy unfettered authority to govern all aspects of 911 service. Rather, states must govern 911 service, including the means for funding 911 service, in a manner that is consistent with federal law and policies. As the Commission works to guarantee that the public has the benefit of reliable and technologically advanced 911 service in all states, it must also emphasize that states must exercise their authority over 911 service in a way that is consistent with the standards established by the Commission.

Respectfully submitted,

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⁷ See generally, Emergency Petition for Declaratory Ruling, filed October 23, 2014 and Reply Comments, filed December 23, 2014, Docket No. 11-42. As described in the Reply Comments, the Universal Service Administrative Company – a federal government entity – is the payor of Lifeline support. Accordingly, such state 911 taxation of Lifeline benefits is an unconstitutional tax on the federal government.