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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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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 Tennessee)
_____)

CC Docket No. 96-45

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE STATE OF TENNESSEE**

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1. Declaration of TracFone President
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SUMMARY

TracFone Wireless, Inc. (“TracFone”) is seeking designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the “Act”) throughout the entire State of Tennessee, including both non-rural telephone company service areas and rural telephone company service areas.

TracFone is a reseller of Commercial Mobile Radio Service (“CMRS”) throughout Tennessee. Through its resale agreements with five underlying carriers, TracFone has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Commission’s Rules.

TracFone provides its services only on a prepaid basis. TracFone’s customers tend to be those customers which other wireless carriers do not want to serve – lower income, lower volume users, students, the elderly, and transient consumers; customers who either are unwilling to enter into long-term service contracts with steep early termination penalties or, if they are willing to sign such contracts, do not have credit standings that would be satisfactory to those other carriers. TracFone’s commitment to offering prepaid plans which make wireless service available to low income, low volume users has been a critical component of TracFone’s business strategy since the company’s inception. Now TracFone has determined to offer service specifically targeted at that portion of the consuming public most in need of affordable telecommunications services: those who qualify for assistance under the Commission’s Lifeline program. TracFone seeks ETC designation solely to enable it to offer Lifeline service to eligible low income consumers. TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas.

Under Section 214(e)(6) of the Act, 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, so long as the carrier meets the requirements of Section 214(e)(6). TracFone meets the requirements for ETC designation pursuant to Section 214(e)(6). TracFone recognizes that Section 214(e)(1)(A) states that ETCs shall offer services, at least in part, over their own facilities. Due to the fact that TracFone provides service by reselling the services of its underlying vendors, it has requested that the Commission exercise its forbearance authority with respect to the facilities-based requirement. TracFone meets all the conditions to grant a petition for forbearance. As detailed in the Petition for Forbearance, enforcement of the requirement that an ETC provide service using at least a portion of its own facilities is not necessary to ensure that TracFone's charges and practices are just and reasonable and are not unjustly or unreasonably discriminatory; is not necessary to protect consumers; and is consistent with the public interest.

Finally, designation of TracFone as an ETC in rural telephone company service areas is supported by public interest. The benefits of designating TracFone as an additional ETC in the rural areas of Tennessee outweigh potential harms. If TracFone is designated as an ETC, consumers will benefit from increased competitive choice, the impact of the designation on the universal service fund will be negligible, consumers for whom telephone service is unavailable or impracticable will enjoy pay-as-you-go, affordable and high quality wireless telecommunications service, and such service will be available immediately upon grant of the ETC application.

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**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE STATE OF TENNESSEE**

TracFone Wireless, Inc. (“TracFone”), by its undersigned counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the “Communications Act”), hereby submits this Petition for Designation as an eligible telecommunications carrier (“ETC”) in the State of Tennessee. If designated as an ETC, TracFone will solely use that designation and the accompanying federal universal service funds to offer Lifeline service to customers who are qualified to participate in the Lifeline program. TracFone does not seek access to funds from the universal service fund to support service to high cost areas.

TracFone provides wireless telecommunications services throughout the State of Tennessee. As demonstrated herein, and certified in Exhibit 1 to this Petition, TracFone meets all of the statutory and regulatory requirements for designation as an ETC in the State of Tennessee. TracFone respectfully requests that the Commission promptly grant this Petition.

I. TracFone's Universal Service Offering

A. TracFone's Service

TracFone is a reseller of Commercial Mobile Radio Services ("CMRS") throughout the United States, including the State of Tennessee. TracFone provides service through a "virtual network" consisting of services obtained from more than thirty licensed operators of wireless networks. TracFone has provided CMRS service throughout the State of Tennessee continuously for seven years. In Tennessee, TracFone obtains service from the following underlying carriers: U.S. Cellular, Verizon Wireless, Alltel Corporation, Eloqui Wireless and Cingular Wireless. TracFone's arrangements with these providers enable it to offer services wherever any of those providers offer service in the State of Tennessee.

TracFone, through its resale agreements with the underlying carriers identified in the preceding paragraph, has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Commission's Rules (47 C.F.R. § 54.101(a)) throughout the State of Tennessee. Upon designation as an ETC, TracFone will make available to consumers, who are qualified to participate and are within the designated area, the Lifeline service with all of the functionalities and features currently provided by TracFone to its existing customers.

Even without classification as an ETC, TracFone currently operates in accordance with the spirit of universal service. Because TracFone utilizes the networks of more than thirty licensed CMRS providers, TracFone service is available virtually nationwide, including throughout the State of Tennessee. Moreover, TracFone service is available at nationally uniform rates. TracFone service is priced no higher in Smyrna, Tennessee, than it is in Nashville, Tennessee.

B. TracFone's Proposed Lifeline Service

TracFone is a CMRS provider which provides its services only on a prepaid basis. TracFone considers lower volume, lower income consumers to be the heart of its consumer base, rather than a portion of the consuming public to be avoided. Traditional wireless carriers shun service to such customers. TracFone's commitment to offering prepaid plans which make wireless service available to low income users is not new. It has been a critical component of TracFone's business strategy since the company's inception. TracFone has recently decided to offer services specifically targeted at that portion of the consuming public most in need of affordable telecommunications services: those who qualify for assistance under the Commission's Lifeline program.

TracFone is developing a Lifeline service plan that will be consistent with the goals of universal service and offer significant benefits to consumers who qualify for Lifeline. In previously filed petitions for ETC designation in other states, TracFone proposed a specific Lifeline service plan. However, after reviewing comments filed in response to those previously-filed petitions, discussing its proposal with Commission Staff, and further analyzing the specific details of that plan, TracFone is considering various alternatives. Under all plans being contemplated, TracFone will pass through 100 percent of universal service fund support it receives to consumers. For example, if TracFone receives \$10 in USF support for serving a customer who qualifies for Lifeline service, a plan that currently costs the equivalent of \$15 a month, would now cost not more than \$5 a month. TracFone plans to develop special discounted Lifeline offerings in addition to discounting existing plans by the Lifeline subsidy amount. TracFone will actively promote and advertise all Lifeline service options. Lastly, TracFone will implement procedures to ensure that all consumers receiving Lifeline services from it are qualified to receive such services and continue to be qualified throughout the time they receive

Lifeline service. TracFone's eligibility determination and confirmation procedures will be comply with applicable Commission rules and will be consistent with the procedures used by existing ETCs.

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

Under Section 214(e)(6) of the Act (47 U.S.C. § 214(e)(6)), the Commission, consistent with the public interest, convenience and necessity, 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, so long as the requesting carrier meets the requirements of Section 214(e)(6). As demonstrated below, and as set forth in the Declaration of F.J. Pollak, Exhibit 1, TracFone meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(6) set forth in the Commission's Section 214(e)(6) Public Notice, as demonstrated in this Petition.¹ In addition, TracFone complies with the standards established by the Commission for determining whether applications for ETC status to serve areas served by rural local exchange carriers would serve the public interest.² TracFone recognizes that Section 214(e)(1)(A) states that ETCs shall offer services, at least in part, over their own facilities. However, as described at Section II. B. of this petition, TracFone has requested that the Commission exercise its forbearance authority with respect to that facilities-based service requirement. For the reasons set forth in its petition for forbearance, TracFone meets all of the

¹ See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, *Public Notice*, 12 FCC Rcd 22947 (1997) ("Section 214(e)(6) Public Notice").

² See Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 6422 (2004) ("Highland Cellular"); Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 17 FCC Rcd 9596 (2004).

conditions to grant of a petition for forbearance codified at Section 10 of the Act (47 U.S.C. § 160).

A. The Tennessee Regulatory Authority Does Not Regulate CMRS Service

A carrier seeking designation as an ETC must typically request such a designation from the applicable state regulatory commission. However, the Tennessee Regulatory Authority (the “TRA”) does not regulate CMRS carriers such as TracFone for the purpose of making ETC determinations. A letter to this effect dated September 3, 2003, has been provided by the Telecommunications Chief of the TRA, and is attached to this Petition as Exhibit 2. This letter meets the Commission’s specific requirements for such letters, in that it specifies that CMRS carriers, in general, and TracFone, in particular, are not subject to the jurisdiction of the TRA for the purpose of making ETC designations. TracFone accordingly requests that the FCC designate TracFone as “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission” pursuant to 47 U.S.C. § 214(e)(6).

B. TracFone Will Provide Service Through Resale

Section 214(e)(1)(A) states that a carrier designated as an ETC shall offer services supported by Federal universal service support programs “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” TracFone is a reseller of the following carriers’ services in Tennessee: U.S. Cellular, Verizon Wireless, Alltel Corporation, Eloqui Wireless and Cingular Wireless. Concurrent with the filing of this Petition, TracFone has filed with the Commission a Petition for Forbearance requesting that the Commission forbear from applying Section 214(e)(1)(A) to TracFone. As detailed in the Petition for Forbearance filed on June 8, 2004, in the case of TracFone, enforcement of the requirement that an ETC provide services using at least some of its own facilities is not necessary to ensure that TracFone’s charges and practices are just and reasonable and are not

unjustly or unreasonably discriminatory; is not necessary to protect consumers; and is consistent with the public interest.³

C. TracFone Offers All Required Services and Functionalities

TracFone offers, or will offer upon designation as an ETC in the Designated Areas, all of the services and functionalities required by Section 54.101(a) of the Commission's Rules (47 C.F.R. § 54.101(a)) including the following:

1. Voice grade access to the public switched telephone network.

Voice grade access to the public switched telephone 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.⁴ The voice grade access provided by TracFone 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.

2. Local Usage.

As part of the voice grade access to the PSTN, an ETC must provide local calling. TracFone provides subscribers the ability to send and receive local phone calls wherever it provides service. Moreover, local usage is included in all of TracFone's calling plans. As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the Commission.

3. Dual tone multi-frequency ("DTMF") signaling or its functional equivalent.

DTMF signaling allows carriers to provide expeditious call set-up and call detail

³ See 47 U.S.C. § 160.

⁴ See Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776 at 8810-11 (1997) ("USF Order").

information and enables modem usage.⁵ The Commission permits carriers to provide signaling that is functionally equivalent to DTMF to satisfy the DTMF requirement. All telephone handsets sold by TracFone are DTMF-capable.

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.⁶ TracFone provides customers with single-party access for the duration of every phone call. TracFone does not provide “multi-party” or “party line” services.

5. Access to 911 and E-911 emergency service.

The Commission has declared that access to emergency services is essential.⁷ TracFone provides universal access to the 911 system for its customers. In fact, TracFone handsets will permit E-911 calling irrespective of whether the caller is an active customer and whether the customer has available prepaid minutes. TracFone has implemented and will continue to implement enhanced 911 (“E-911”) services consistent with the Commission’s Rules and Orders when such services are made available by the carriers from whom TracFone purchases services. In particular, TracFone will fully comply with the Commission’s E-911 requirements applicable to wireless resellers.⁸ Pursuant to the Commission’s E-911 Order, resellers that use other carriers’ facilities to provide wireless voice service to customers have an obligation to comply with the Commission’s E-911 rules “to the extent that the underlying facilities-based licensee has

⁵ USF Order at 8814.

⁶ USF Order at 8810.

⁷ Id. at 8815.

⁸ 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, FCC 03-290, 2003 WL 22844386 (released: Dec. 1, 2003) (“E-911 Order”).

deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP [public service answering point].”⁹ TracFone will make available access to E-911 service in accordance with applicable Commission requirements.

6. Access to operator services.

TracFone offers all of its customers access to operator services, in accordance with the Commission’s requirements.

7. Access to interexchange service (“IXC”).

TracFone customers can use TracFone’s services to complete toll calls. In fact, TracFone does not impose separate charges for interexchange calls. Long distance calling is included in TracFone’s service with no additional charge.

8. Access to directory assistance.

All TracFone customers receive access to directory assistance service through the TracFone virtual network. Specifically, all TracFone customers, including those customers located in Tennessee, 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 as any other minutes 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

⁹ Id. ¶ 91.

already have paid for. 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.

D. TracFone Will Advertise the Availability of its Lifeline Services

TracFone will advertise the availability of the Lifeline services and the charges therefore using media of general distribution, in accordance with the requirements of Section 54.201(d)(2) of the Commission's Rules (47 C.F.R. § 54.201(d)(2)). TracFone currently advertises the availability of its services, and will do so for the Lifeline service on a regular basis, in newspapers, and magazines, or on radio and television, that constitute media of general distribution in Designated Areas of the State of Tennessee. In addition, TracFone services are advertised through use of displays at the numerous retail outlets where TracFone service is sold.

E. TracFone Requests Designation Throughout Its Licensed Service Area in Tennessee

TracFone is not a rural telephone company as defined in Section 153(37) of the Communications Act (47 U.S.C. § 153(37)). Accordingly, TracFone is required to describe the geographic area(s) within which it requests designation as an ETC. TracFone requests designation as an ETC for its entire service area in Tennessee. TracFone, through its resale of wireless services provided by its underlying vendors in Tennessee, provides service in every Zip Code in the State of Tennessee. Accordingly, TracFone seeks ETC status throughout the entire State of Tennessee.

1. Non-Rural 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 following non-rural telephone company service areas:

BellSouth Telecommunications, Inc.
Sprint-United

The Commission may designate TracFone as an ETC in areas that TracFone serves without redefining the service areas of the non-rural telephone companies set forth above.

2. Rural Areas

TracFone's authorized service area covers the following rural telephone company service areas in their entirety:

Ardmore Telephone Company, Inc.
CenturyTel of Adamsville
CenturyTel of Claiborne
CenturyTel of Ooltewah-Collegedale, Inc.
Frontier Communications of Tennessee f/k/a Citizens Communications of Tennessee
Frontier Communications of the Volunteer State f/k/a Citizens Communications of the Volunteer State
Loretto Telephone Company, Inc.
Millington Telephone Company, Inc.
TDS Telecom – Concord Telephone Exchange, Inc.
TDS Telecom – Humphrey's County Telephone Company
TDS Telecom – Tellico Telephone Company, Inc.
TDS Telecom – Tennessee Telephone Company, Inc.
TEC – Crockett Telephone Company, Inc.
TEC – People's Telephone Company, Inc.
TEC – West Tennessee Telephone Company, Inc.
United Telephone Company

The Commission may designate TracFone as an ETC in these rural telephone company service areas upon a finding that such designation would serve the public interest.¹⁰

III. Designation of TracFone as an ETC for the Designated Areas In the State of Tennessee Would Serve the Public Interest

As noted above, TracFone seeks certification as an ETC for the Lifeline program in areas served by rural telephone companies, as well as in areas served by non-rural telephone

¹⁰ See 47 C.F.R. § 54.207(c).

companies. Consequently, the Communications Act requires that the Commission determine that TracFone's designation as an ETC would serve the public interest.¹¹

Based upon recent Commission-compiled data, the Federal Lifeline program remains significantly underutilized. According to Commission data, nationally, only 33.7% of eligible households participate in Lifeline.¹² In Tennessee, the percentage of eligible households participating in Lifeline is only 6.4%.¹³ TracFone does not know why a program so important to low income consumers is so underutilized. TracFone is prepared to promote the availability of the Lifeline program upon grant of its petition for forbearance and approval of its petition for ETC designation. By doing so it is expected that the level of participation by eligible households in the Lifeline program will increase, and thus, serve the public interest.

In addition, in regard to the public interest served by wireless providers to low-income consumers, the New York Public Interest Research Group recently has stated in its comments to TracFone's Petition for Forbearance:

While cell phones were once viewed as luxury items, they have become increasingly important for consumers in all income brackets. There are certainly unique services that cell-phone providers can offer low-income consumers. Many low-income consumers commute long distances and/or work several jobs, meaning that they can spend many hours away from home each day. A cellular phone offers mobility, security, and convenience that a traditional wire-line can't offer.¹⁴

Similarly, the Sustainable Markets Foundation has stated in its comments to TracFone's Petition for Forbearance that prepaid wireless service:

¹¹ 47 U.S.C. § 214(e)(6).

¹² See *In the Matter of Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-87 (released April 29, 2004) at Table 1.A.

¹³ *Id.*

¹⁴ Comments of New York Public Interest Research Group to TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and its Petition for Forbearance, Docket No. 96-45, filed July 26, 2002, at 2.

has become an alternative to regular in-home telephone service for many low-income consumers, including migrant workers, working, traveling through, or living in rural areas with little access to regular phone service. It has also become an alternative to regular phone service for consumers who may not stay at one residence long enough to justify service connection fees or consumers with poor credit ratings who would otherwise have trouble obtaining phone service.¹⁵

The above-mentioned data and comments undeniably demonstrate that providing wireless service to low-income consumers who qualify for the Lifeline program will help satisfy the needs of an important segment of our society that is under-served.

In its recent Highland Cellular decision, the Commission identified several factors to be considered in determining whether designation of an additional ETC in a rural area would serve the public interest. These factors require the Commission to weigh whether the benefits of an additional ETC in specific rural areas would outweigh potential harms. The factors to be considered include: 1) the benefits of increased competitive choice; 2) the impact of the designation on the universal service fund; 3) the unique advantages of the applicant company's service offerings; 4) commitments made regarding the quality of services to be provided; and 5) the ETC applicant's ability to satisfy its obligation to serve the designated areas within a reasonable time frame.¹⁶ As described in the following paragraphs, TracFone meets each of those criteria.

1. The Benefits of Competitive Choice

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the Commission for more

¹⁵ Comments of Sustainable Markets Foundation Comments to TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and its Petition for Forbearance, Docket No. 96-45, filed July 26, 2004, at 2.

¹⁶ Highland Cellular, at § 22.

than three decades.¹⁷ However, the benefits of competitive choice are especially valuable in situations in which wireless providers like TracFone seek to provide service to low-income consumers in rural communities. As the Commission recognized in Highland Cellular, some residences located in rural communities do not have access to the public switched network through the incumbent local exchange carrier. Moreover, the availability of a wireless competitive alternative benefits those low-income, rural consumers who often must drive significant distances to work, to schools, to stores, and to other community locations.¹⁸ TracFone's prepaid wireless service alternative will provide low-income consumers with convenient and affordable service, both from their residences and when they are away from their homes.

2. Impact on the Universal Service Fund

Whatever impact classification of TracFone as an ETC will have on the universal service fund will be negligible. As noted by the Commission in Highland Cellular, the total size of the fund as of fourth quarter 2003 was \$857,903.276. As stated earlier, nationally, only 33.7% of eligible households participate in the Lifeline program and in Tennessee only 6.4% of eligible households participate. TracFone does not anticipate that the amount of universal service funding which it might receive for offering Lifeline services would be more than a *de minimis* portion of the fund size.

3. Unique Advantages of TracFone's Service Offerings

As described elsewhere in this petition, TracFone's entire business model is predicated on providing easy to use, pay-as-you-go, affordable wireless telecommunications service to consumers to whom wireless service is otherwise unavailable or impracticable. TracFone offers

¹⁷ See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

¹⁸ Highland Cellular, at § 23.

consumers an opportunity to acquire wireless service using state-of-the-art handsets and such features as caller ID, voice mail, call forwarding, 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, 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. None of the incumbent providers nor those other non-incumbent ETCs serving the areas covered by TracFone in Tennessee offer service to consumers under comparable conditions.

4. Service Quality Commitments Made

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 provider serving the Tennessee market. To demonstrate its commitment to high service quality, TracFone will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service. In addition, it is willing to provide report to the Commission information regarding the number of consumer complaints per 1,000 handsets on an annual basis (the commitment made by Highland Cellular).

5. TracFone Will be Able to Serve the Designated Areas Within a Reasonable Time

TracFone provides service in Tennessee by reselling service which it obtains from five underlying facilities-based providers. Each of those providers' networks are operational and are

largely built out. Thus, TracFone will be able to provide service to all locations served by any of those five underlying carriers immediately upon grant of this application.

Designation of TracFone as an ETC will also serve the public interest because TracFone will provide all of the supported services required by the Commission, will participate in the Lifeline program as required by the Commission's Rules, and will otherwise comply with all FCC Rules governing universal service programs, which are designed to ensure that the public interest standards of the Communications Act are achieved. Allowing TracFone access to universal service support will enable TracFone to continue to enhance and expand its service to better serve low-income consumers in the State of Tennessee. 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 usage and volume commitments which are beyond the means of many consumers.

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 users. TracFone's "pay-as-you-go" wireless plans enable 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 Tennessee residents. Accordingly, designation of TracFone as an ETC will serve the public interest.

IV. Anti-Drug Abuse Certification

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301

of the Anti-Drug Abuse Act of 1998, 21 U.S.C. Section 862.¹⁹

V. High-Cost, Interstate Access, and Interstate Common Line Support Certification

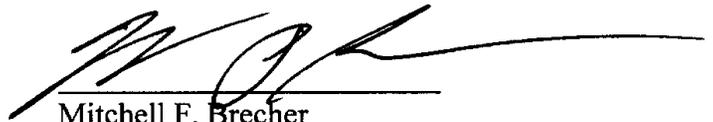
Under Sections 54.313, 54.314 and 54.904 of the Commission's Rules (47 C.F.R. §§ 54.313, 54.314 & 54.904), as well as 47 C.F.R. § 54.809, carriers wishing to obtain universal service support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the Commission and the Universal Service Administrative Company ("USAC") as to their compliance with Section 254(e) of the Communications Act (47 U.S.C. § 254(e)). As explained above, the TRA does not exercise jurisdiction over CMRS carriers such as TracFone. Therefore, TracFone has submitted its high-cost interstate access and interstate common line support certification letter with the Commission and with USAC. A copy of this certification is attached hereto as Exhibit 3. In addition, as explained above, TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. Nevertheless, TracFone includes the attached certification as part of this ETC petition to demonstrate to the Commission that it is fully compliant with all ETC designation requirements.

¹⁹ See Declaration of F.J. Pollak, attached hereto as Exhibit 1.

VI. Conclusion

Based on the foregoing, TracFone contends that the requirements for eligibility for designation as an eligible telecommunications carrier have been met. Therefore, TracFone requests that the Commission promptly grant this Petition for ETC designation to enable it to offer Lifeline service to eligible low income consumers.

Respectfully submitted,



Mitchell F. Brecher
Debra McGuire Mercer

GREENBERG TRAUERIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100

Counsel for TracFone Wireless, Inc.

November 9, 2004

EXHIBIT 1

DECLARATION OF TRACFONE WIRELESS, INC.

F.J. Pollak, after first being sworn on oath, and pursuant to 47 C.F.R. § 1.16, states as follows:

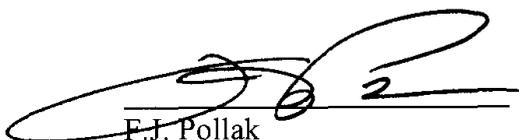
1. I am President and Chief Executive Officer of TracFone Wireless, Inc. My business address is 8930 N.W. 25th Street, Miami, Florida 33122-1902

2. In my capacity as President and Chief Executive Officer of TracFone Wireless, Inc., I am an authorized representative of the Company. I have read TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee ("Petition") and confirm the information contained therein to be true and correct to the best of my present knowledge.

3. To the best of my knowledge, no party to the Petition, nor any of their officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) as specified in Section 1.2002(b) of the Commission's rules, are subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 19, 2004.



F.J. Pollak
President and Chief Executive Officer

Subscribed and sworn to before me
This 19 day of October 2004.

Maria C. Herrera
Notary Public

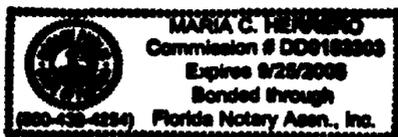


EXHIBIT 2

TENNESSEE REGULATORY AUTHORITY

Pat Miller, Chairman
Deborah Taylor Tate, Director
Sara Kyle, Director
Ron Jones, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

September 3, 2003

Ms. Tracie R. Chesterman
Greenberg Traurig, LLC
Met Life Building, 200 Park Avenue
New York, New York 10166

**Re: Request for Advisory Letter Concerning Jurisdiction for Competitive
Eligible Telecommunications Carrier Status**

Dear Ms. Chesterman:

Your letter of August 27, 2004, requested an affirmative written statement verifying that TracFone Wireless, Inc. ("TracFone"), a Commercial Mobile Radio Service Provider ("CMRS") in Tennessee, is not subject to the jurisdiction of the Tennessee Regulatory Authority ("TRA") for the purposes of determining Eligible Telecommunications Carrier ("ETC") status pursuant to Section 214(e)(6) of the Communications Act of 1934.

Since your letter was not accompanied by the standard filing fee nor is it a request to be granted ETC status in Tennessee, this matter has not been placed on a regularly scheduled Authority Conference agenda to be deliberated by the Directors of the TRA. As a result, no order will be issued by the TRA in this instance. However, your letter requests a letter containing the affirmative statement mentioned above.

In a prior docket, the Authority unanimously ruled that another CMRS provider, Advantage Cellular Systems, Inc., was not subject to the authority of the TRA for purposes of ETC designation for federal universal service support. Lacking the authority to designate the carrier as an ETC in Tennessee, the TRA issued an order dismissing Advantage Cellular System's application for lack of subject matter jurisdiction. A copy of that order is attached.

Based upon the previous ruling, and compliant with state and federal statutes, TracFone is not subject to the authority of the Tennessee Regulatory Authority for the purposes of designation as an Eligible Telecommunications Carrier for federal universal service support. Since the TRA cannot designate TracFone as an ETC in Tennessee, TracFone

should petition the Federal Communications Commission for ETC status pursuant to 47 U.S.C. § 214 (e)(6).

If you have any questions concerning this matter, please call C. D. Mundy at 615-741-2791 ext. 166 or myself at 615-741-2791 ext. 149.

Yours truly,


Darlene Standley
Telecommunications Chief

Attachment: 1

cc: Chairman Pat Miller

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, “[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission.”

The Authority’s lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission’s jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission (“FCC”) to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority’s decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission’s rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. §214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

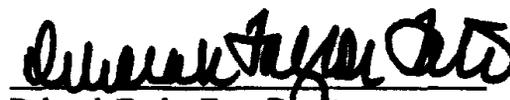
As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴

The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

EXHIBIT 3

TRACFONE
wireless, inc. 8390 NW 25th Street | Miami, FL 33122

June 7, 2004

VIA OVERNIGHT MAIL

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ms. Irene M. Flannery
Vice President – High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street, NW
Suite 200
Washington, DC 20036

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

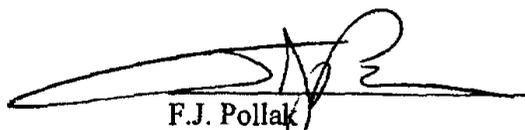
Re: TracFone Wireless, Inc.
Certification for High Cost Loop Support, CC Docket No. 96-45

Dear Ms. Dortch and Ms. Flannery:

This certification is submitted on behalf of TracFone Wireless, Inc. ("TracFone") in accordance with Federal Communications Rules 54.313 and 54.314 (47 C.F.R. §§ 54.313, 54.314). On behalf of TracFone, I hereby certify under penalty of perjury that all high-cost support provided to TracFone will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996 (47 U.S.C. § 254(e)).

Sincerely,

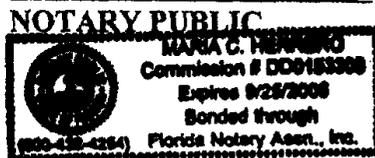
TracFone Wireless, Inc.



F.J. Pollak
President and Chief Executive Officer

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED before me this 7 day of June, 2004.

Maria C. Herrera



My Commission Expires:

9-25-06