

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
TRACFONE WIRELESS, INC.	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
In the State of New Hampshire	)	
_____	)	

**PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS  
CARRIER IN THE STATE OF NEW HAMPSHIRE FOR THE LIMITED PURPOSE OF  
OFFERING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS**

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## **EXHIBITS**

1. Declaration of TracFone President and Chief Executive Officer
2. Letter from New Hampshire Public Utilities Commission Declining Jurisdiction
3. Letter from Consumer Action and National Grange of the Order of Patrons of Husbandry to Commission, August 14, 2007

## 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 New Hampshire, 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 New Hampshire. Through its resale agreements with three 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)(1). TracFone meets the requirements for ETC designation pursuant to Section 214(e)(1). 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 requested that the Commission exercise its forbearance authority with respect to the facilities-based requirement. The Commission granted TracFone's Petition for Forbearance subject to certain conditions. As the Commission noted, grant of TracFone's petition for forbearance should expand participation by qualified consumers in the Lifeline program. TracFone subsequently filed a plan with the Commission in which it described how it would comply with each of the Commission's stated conditions. TracFone commits to providing Lifeline service in New Hampshire in accordance with the compliance plan.

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 New Hampshire 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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CARRIER IN THE STATE OF NEW HAMPSHIRE FOR THE LIMITED PURPOSE OF  
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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 New Hampshire. TracFone seeks ETC designation solely to provide Lifeline service to qualifying New Hampshire consumers; it will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high cost areas.<sup>1</sup> As demonstrated herein, and as certified in Exhibit 1 to this Petition, TracFone meets all the statutory and regulatory requirements for designation as an ETC in the State of New Hampshire. TracFone respectfully requests that the Commission grant this Petition and that it do so expeditiously so that TracFone may provide Lifeline service to low income households at the earliest practicable time.

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<sup>1</sup> Given that TracFone only seeks Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to TracFone.

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

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

TracFone, through its arrangements 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 New Hampshire. Upon designation as an ETC, TracFone will make available to consumers Lifeline offerings which will provide consumers with all of the functionalities and features currently provided by TracFone to existing customers. TracFone will provide Lifeline service to qualifying customers requesting this service throughout New Hampshire pursuant to the universal service program.

TracFone's Lifeline offerings will differ from other ETCs' Lifeline programs in several very important respects. For one thing, TracFone will offer low income consumers the convenience and portability of wireless service. TracFone believes that many Lifeline-eligible consumers not currently enrolled in Lifeline will enroll when afforded the opportunity to obtain

subsidized wireless service. In addition, unlike any other ETC's Lifeline program, TracFone's Lifeline service will provide quantities of wireless usage at no charge to the consumer. Stated simply, TracFone's Lifeline service will be free! Typically, Lifeline programs provide discounts below standard rates. However, participating customers still must pay the discounted rates and face service disconnection if they fail to pay the amounts owed. For example, if a provider's standard monthly charge is \$30.00 and the Lifeline customer receives a \$10.00 discount funded by the USF, the customer still receives an invoice for \$20.00, plus additional charges incurred during the billing period. With TracFone's Lifeline plans, customers will be able to initiate and receive calls from their wireless phones at no charge. Those plans are described at Section II.3 of this Petition.

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

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

Section 254(e) of the Communications Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support." Section 214(e)(2) of the Communications Act authorizes state commissions, such as the Commission, to designate ETC status for federal universal service

purposes and authorizes the Commission to designate wireless ETCs.<sup>2</sup> TracFone is permitted to seek designation as an ETC.

As demonstrated below, and as set forth in the Declaration of F.J. Pollak, President and Chief Executive Officer of TracFone, Exhibit 1, TracFone meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(6) of the Communications Act. In addition, TracFone complies with the standards established by the Commission for determining whether applicants for ETC status to serve areas served by rural local exchange carriers would serve the public interest.<sup>3</sup> TracFone recognizes that Section 214(e)(1)(A) of the Communications Act states that ETCs shall offer services, at least in part, over their own facilities. However, as described at Section II.B of this Petition, on June 8, 2004, TracFone filed a petition requesting that the Commission exercise its forbearance authority under Section 10 of the Communications Act (47 U.S.C. § 160) with respect to the facilities-based service requirement.<sup>4</sup> The Commission granted the petition for forbearance in an Order dated September 8, 2005.<sup>5</sup> The TracFone Forbearance Order is no longer subject to appeal and is a final order. Therefore, TracFone is eligible to be designated as an ETC.

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<sup>2</sup> See Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) (“USF Order”).

<sup>3</sup> See Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 6422 (2004); Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 1563 (2004).

<sup>4</sup> See TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004, as amended by TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004 (“Petition for Forbearance”).

<sup>5</sup> Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd 15095 (2005) (“TracFone Forbearance Order”).

**A. The New Hampshire Public Utilities Commission Does Not Regulate CMRS Carriers.**

A carrier seeking designation as an ETC must typically request such a designation from the applicable state regulatory commission. However, the New Hampshire Public Utilities Commission does not regulate CMRS carriers such as TracFone for the purpose of making ETC determinations. A letter to this effect dated October 25, 2007, was provided by the General Counsel of the New Hampshire Public Utilities Commission, 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 New Hampshire Public Utilities Commission's jurisdiction for the purpose of ETC status.

TracFone accordingly requests that the Commission 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**

In the TracFone Forbearance Order, the Commission granted TracFone's Petition for Forbearance subject to certain conditions. The Commission explained that requiring "TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live."<sup>6</sup> The Commission also stated that grant of TracFone's petition for forbearance "serves the public interest in that it should expand participation of qualifying consumers" in the under-utilized low-income Lifeline program.<sup>7</sup>

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<sup>6</sup> TracFone Forbearance Order, ¶ 23.

<sup>7</sup> Id. ¶ 24.

The Commission's grant of forbearance is subject to the following conditions: (a) TracFone providing Lifeline customers with basic 911 and enhanced 911 ("E911") access regardless of activation status and availability of prepaid minutes; (b) TracFone providing its new Lifeline customers with E911-compliant handsets and replacing any existing customers' non-compliant handsets at no additional charge; (c) TracFone complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) TracFone obtaining a certification from each Public Service Answering Point ("PSAP") where TracFone provides service confirming that TracFone complies with condition (a); (e) TracFone requiring its customers to self-certify at the time of service activation and annually thereafter that they are the heads of the households and receive Lifeline-supported service only from TracFone; and (f) TracFone establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address. The Commission required TracFone to submit a plan describing the measures it would take to implement each of these conditions.<sup>8</sup> In accordance with the TracFone Forbearance Order, TracFone filed its compliance plan with the Commission on October 11, 2005. In that compliance plan, TracFone described how it would comply with each of the Commission's stated conditions. TracFone commits to providing Lifeline service in New Hampshire in accordance with the compliance plan.

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

TracFone offers, or will offer upon designation as an ETC in New Hampshire, 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:

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<sup>8</sup> Id. ¶ 6.

**1. Voice Grade Access to the Public Switched Network.** Voice grade access to the public switched telecommunications network (“PSTN”) means the ability to make and receive traditional voice phone calls between the approximately 500 Hertz and 4,000 Hertz for a bandwidth of approximately 3500 Hertz.<sup>9</sup> 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, including those plans which will comprise its Lifeline offerings. Commission Rule 54.202(a)(4) requires an ETC applicant to “demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.” The Commission has explained that an ETC applicant’s local usage plans should be reviewed on a case-by-case basis to ensure that each ETC provides a local usage component in its universal service offering that is comparable to the plan offered by the incumbent LEC in the area.<sup>10</sup> The Commission has not adopted any minimum local usage requirements.<sup>11</sup> As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the Commission. More importantly, as will be described below, TracFone’s Lifeline offerings will go beyond those of other ETCs in a very important respect: TracFone’s Lifeline customers will receive as part of

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<sup>9</sup> See USF Order, at 8810-11.

<sup>10</sup> Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005).

<sup>11</sup> Id. ¶ 32.

Lifeline service specified amounts of free wireless service. That is, Lifeline customers will be able to use TracFone's service to initiate and receive specified amounts of wireless calling -- local and long distance -- with no charge to the customers.

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

DTMF signaling allows carriers to provide expeditious call set-up and call detail information and enables modem usage.<sup>12</sup> The Commission permits carriers to provide signaling that is functionally equivalent to DTMF to satisfy the DTMF requirement. All telephone handsets provided by TracFone are DTMF-capable.

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

Single-party service means that only one party will be served by a subscriber line or access loop in contrast to a multi-party line.<sup>13</sup> 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 E911 Emergency Service.** The Commission has declared that access to emergency services is essential.<sup>14</sup> TracFone provides universal access to the 911 system for its customers. TracFone has implemented and will continue to implement enhanced 911 ("E911") services consistent with the 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 E911 requirements applicable to

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

<sup>13</sup> Id. at 8810.

<sup>14</sup> Id. at 8815.

wireless resellers.<sup>15</sup> Pursuant to the Commission's E911 Order, providers that use other carriers' facilities to provide wireless voice service to customers have an obligation to comply with the Commission's E911 rules "to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP [public service answering point]."<sup>16</sup> 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.**

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 New Hampshire, 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

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<sup>15</sup> See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340 (2003) ("E911 Order").

<sup>16</sup> Id. ¶ 91.

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 already have paid for or what service quantities they have been provided under the Lifeline program. Thus, TracFone’s prepaid services are especially beneficial to lower income users since the consumers enjoy the ability to control or limit their charges for toll service (as well as local service) in a manner that customers of traditional post-paid (billed in arrears services) do not.

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

TracFone will advertise the availability of its Lifeline services and the associated charges 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 plans to utilize such marketing and outreach efforts as necessary and appropriate to ensure that as many eligible consumers as possible avail themselves of TracFone’s prepaid wireless Lifeline offering. TracFone understands that it will be competing with other ETCs in New Hampshire, including the incumbent local exchange carriers, to be chosen by consumers to be their Lifeline service provider. TracFone will utilize traditional means for promoting the availability of its Lifeline program. These means will include print and radio advertising in media outlets most likely to reach consumers eligible for Lifeline. These would include national publications as well as local and community newspapers, and commercial radio stations, especially those stations whose programming is targeted to significant lower income communities including, for example, Spanish language radio stations.

In addition, TracFone will utilize its network of retail outlets to help promote the availability of its Lifeline plans, especially those retail outlets which are frequented by lower income consumers. Retail vendors such as Rent-a-Center, Dollar General Stores, Walgreen's, CVS, and even Wal-Mart are important shopping venues for many Lifeline-eligible consumers. Retailers will be provided with signage to be displayed where TracFone products are sold, and with printed materials describing TracFone's Lifeline program and will be encouraged to assist consumers in applying for Lifeline service if qualified. Given the relationship which exists between TracFone, lower income consumers, and retail outlets which are often visited by lower income consumers, TracFone expects to be able to inform consumers of the availability of Lifeline service in a manner which will result in significantly higher participation in the Lifeline program by qualified consumers than has been the case in the past.

TracFone has had previous experience marketing Lifeline service and was profoundly successful. In October 2005, following the devastation caused by Hurricane Katrina, the Commission established a special Lifeline program which enabled wireless providers to be designated as ETCs to offer a one-time Lifeline service to persons in the states of Louisiana, Mississippi, and Alabama who had been displaced by the hurricane.<sup>17</sup> TracFone was one of the first providers to be designated as an ETC under the Commission's Hurricane Katrina program.<sup>18</sup> Within a period of several months, TracFone was able to enroll nearly 30,000 hurricane victims in its Lifeline program using marketing efforts similar to those proposed herein as well as other methods intended to address the special challenges of reaching out to potential Lifeline customers who had lost their homes, and were residing in temporary locations -- often far away

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<sup>17</sup> Federal-State Joint Board on Universal Service, 20 FCC Rcd 16883 (2005).

<sup>18</sup> Public Notice - The Wireline Competition Bureau Announces the Designation of a Temporary Eligible Telecommunications Carrier for the Purpose of Providing Hurricane Katrina Lifeline Assistance, DA 05-2976, released November 16, 2005.

from their home communities. TracFone believes that its advertising and outreach efforts detailed above will result in increased participation in the Lifeline program.

**E. TracFone Will Comply with the Lifeline Certification and Verification Requirements in 47 C.F.R. § 54.410**

Section 54.410 of the Commission's Rules requires ETCs to comply with certification of eligibility and verification of continued eligibility requirements for Lifeline participation. TracFone will certify and verify consumer eligibility in accordance with the Commission's requirements and with applicable Commission rules governing certification and verification of Lifeline eligibility. TracFone provided a copy of its certification and verification compliance policy to the Commission on July 13, 2005.<sup>19</sup> TracFone will implement the certification and verification procedures described in that statement of compliance policy upon designation as an ETC in New Hampshire.

**F. TracFone Requests Designation Throughout Its Licensed Service Area in New Hampshire**

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 New Hampshire. TracFone, through its resale of wireless services provided by its underlying vendors in New Hampshire, provides service in every zip code in New Hampshire. Accordingly, TracFone seeks ETC status throughout the entire State of New Hampshire. However, TracFone reiterates the fact that it is applying for ETC designation solely to utilize USF funding to provide Lifeline service to qualified low

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<sup>19</sup> TracFone's Plans for Compliance with the Lifeline Certification and Verification Requirements Codified at Section 54.410 of the Commission's Rules, CC Docket No. 96-45, filed July 13, 2005.

income consumers. It does not seek and will not accept high-cost support. Therefore, its designation as an ETC will cause no growth in the high-cost portions of the USF and will not erode high cost support from any rural telephone company.

### **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:

- Verizon

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:

- Bretton Woods Telephone Co.
- Dixville Telephone Co.
- Dunbarton Telephone Co.
- Granite State Telephone Inc.
- Hollis Telephone Co. d/b/a TDS Telecom
- Kearsarge Telephone Co. d/b/a TDS Telecom
- Merrimack County Telephone Co. d/b/a TDS Telecom
- Northland Telephone Co. Union Telephone Co Verizon
- Wilton Telephone Co. d/b/a TDS Telecom

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.<sup>20</sup>

### **III. Designation of TracFone as an ETC for the Designated Areas in the State of New Hampshire Would Serve the Public Interest**

As noted above, TracFone seeks certification as an ETC in areas served by rural telephone companies, as well as in areas served by non-rural telephone companies. Consequently, the Communications Act requires that the Commission determine that TracFone's designation as an ETC would serve the public interest.<sup>21</sup>

The Commission has determined that “[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”<sup>22</sup> This is particularly applicable in the rural areas served by TracFone within the State of New Hampshire -- areas that in most cases are not presently served by competitive wireline carriers that could provide an alternative to the incumbent LECs. Designation of TracFone as an ETC will provide a valuable alternative to the existing telecommunications services available in these areas. Those public interest benefits include larger local calling areas, the convenience and security afforded by mobile telephone service, the opportunity for customers to control their costs by purchasing in advance only the volumes of service which they need and supplementing those quantities on an “as needed” basis after exhausting their monthly supply of free service, and, availability of E-911 service in accordance with the Commission's E-911 requirements. In addition, TracFone's inclusion of toll calling within its calling plans will enable consumers to avoid the risk of becoming burdened with large and unanticipated charges for toll calling.

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<sup>20</sup> See 47 C.F.R. § 54.207(c).

<sup>21</sup> 47 U.S.C. § 214(e)(2).

<sup>22</sup> See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, *Memorandum Opinion and Order*, 16 FCC Rcd 48, 55 (2000).

Designation of TracFone as an ETC will also provide an incentive to the incumbent LECs in the designated rural areas to improve their existing networks to remain competitive, resulting in improved services to consumers. Designation of TracFone as an ETC will also benefit consumers because support to services provided by TracFone will help assure that quality services are available at “just, reasonable, and affordable rates” as envisioned in the Communications Act.<sup>23</sup>

In its 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.<sup>24</sup> As described in the following paragraphs, TracFone meets each of those criteria.<sup>25</sup>

### **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

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<sup>23</sup> See 47 U.S.C. § 254(b)(1).

<sup>24</sup> Highland Cellular, ¶ 22.

<sup>25</sup> In light of the fact that TracFone seeks ETC designation only for the purpose of offering Lifeline service and does not seek high-cost support, it is questionable whether the factors listed by the Commission in Highland Cellular are relevant to TracFone’s application. Notwithstanding their questionable utility in evaluating this application, TracFone will address those factors.

than three decades.<sup>26</sup> However, the benefits of competitive choice are especially valuable in situations in which wireless providers like TracFone seek to provide service to rural communities and elsewhere. As the Commission recognized in Highland Cellular, some households 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 rural consumers who often must drive significant distances to work, schools, stores, and other community locations.<sup>27</sup> TracFone's prepaid wireless service alternative will provide consumers with convenient and affordable service, both from their residences and when they are away from their homes.

TracFone believes that many consumers, including qualified Lifeline customers, view the portability and convenience of wireless service as a modern necessity, not a luxury. Parents need to be able to reach their children wherever they may be (and vice versa); persons seeking work need to be reachable by potential employers; persons need to call for emergency assistance while away from home. With the statewide Lifeline participation rate below 11.3 percent of eligible households,<sup>28</sup> TracFone expects that many such consumers will elect to participate in Lifeline if a wireless option is available.

## **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. 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. As noted

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<sup>26</sup> See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

<sup>27</sup> Highland Cellular, ¶ 23.

<sup>28</sup> 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.

in the TracFone Forbearance Order, “the potential growth of the fund associated with high-cost support distributed to competitive ETCs” is not relevant to carriers seeking support associated with the Lifeline low-income program.<sup>29</sup> In 2005, low-income support accounted for only 12.4 percent of the distribution of the total universal service fund, while high-cost support accounted for 58.7 percent.<sup>30</sup> “Any increase in the size of the fund [associated with granting TracFone’s ETC petition] would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”<sup>31</sup>

In this regard, it is important to recognize the differences between Lifeline funding and high-cost funding. With Lifeline, ETCs only receive USF support for those Lifeline customers they obtain. If TracFone acquires Lifeline customers currently served by other ETCs, TracFone will gain the Lifeline support for those customers, but the ETCs losing the customers will lose the support. TracFone will only increase the amount of USF Lifeline funding in situations where it obtains new Lifeline customers, *i.e.*, customers not currently enrolled in other ETCs’ Lifeline programs. This is consistent with the specific intent of those funds. In contrast, with high cost support, when new ETCs enter the market and capture customers from the existing ETCs, both the incumbent ETC and the new ETC receive high-cost support -- based on the incumbent LECs’ costs, thereby increasing the size of the USF.

### **3. Unique Advantages of TracFone’s Service Offerings**

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

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<sup>29</sup> TracFone Forbearance Order, ¶ 17.

<sup>30</sup> Wireline Competition Bureau, Federal Communications Commission, Trends in Telephone Service, Table 19.1 and Chart 19.1 (2007).

<sup>31</sup> TracFone Forbearance Order, ¶ 17.

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 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. As noted by Consumer Action, an organization that advocates for consumer rights, consumers "are concerned with access, quality and price", not whether service is offered by a reseller or facilities-based provider. TracFone's prepaid service "offers Lifeline-qualified customers all three."<sup>32</sup> None of the incumbent providers nor those other non-incumbent ETCs serving the areas covered by TracFone in New Hampshire offer service to consumers under comparable conditions.

TracFone will offer two Lifeline plans to its customers. Under both plans, TracFone's customers receive free monthly service, including 50 or 100 minutes per month of airtime, depending on the plan. A description of the two available Lifeline plans is as follows:

a) TracFone Pay-As-You-Go Wireless

New handsets may be purchased from retail vendors for as little as \$15.00 depending on vendor's retail price. Refurbished handsets will be provided to eligible Lifeline customers without charge, depending upon availability. TracFone offers a Value Plan for \$9.99 per month. That plan entitles customers to 50 minutes per month of airtime. Unused minutes purchased

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<sup>32</sup> See Letter from Consumer Action and National Grange of the Order of Patrons of Husbandry to Commission, August 14, 2007 (attached as Exhibit 3).

under this plan do not expire at the end of the month, and are “carried over” to the following month. Lifeline customers who enroll in this plan would not be required to pay the \$9.99 monthly charge. That is, Lifeline customers will receive 50 minutes of airtime per month free! Lifeline customers who desire additional minutes of use above the 50 minute monthly allotment would be allowed to purchase such minutes at the standard rate of \$0.20 per minute. The TracFone plan includes calling to more than 60 countries with no additional charges.

b) NET10 Pay-As-You-Go Wireless

Lifeline customers who enroll in this plan will receive 100 minutes of service per month at no charge. Since the standard rate for NET10 service is \$0.10 per minute, that will be \$10.00 of service per month free to the Lifeline customer. Lifeline customers will be entitled to purchase additional minutes at the standard NET10 rate of \$0.10 per minute. Handsets will be available to NET10 customers for prices starting at \$30.00, depending on the retail vendor from whom the handset is purchased.

Lifeline customers with lower volume calling requirements are likely to select the TracFone plan with its generous handset subsidy; Lifeline customers with higher volume calling requirements may prefer the NET10 plan with its lower per minute rate. Both plans will offer text messaging. The TracFone text messaging rate is \$0.06 per message; the NET10 text message rate is \$0.05 per message. Under both plans, the per minute rate will be the same for local, long distance and roaming calling. The NET10 plan contains an additional charge of \$0.05 per minute for international calling.

**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 wireless provider serving the New Hampshire market. To demonstrate its commitment to high service quality, TracFone will comply with the CTIA - The Wireless Association® Consumer Code for Wireless Service. In addition, it is willing to report to the Commission information regarding the number of consumer complaints per 1,000 handsets on an annual basis.

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

TracFone provides service in New Hampshire by reselling service which it obtains from underlying facilities-based providers. Each of those providers' networks are operational and are largely built out. Thus, TracFone will be able to provide service to all locations served by any of those underlying carriers immediately upon grant of this application. Indeed, it already serves those areas.

**6. Designation of TracFone as an ETC Will Benefit the Public Interest of Consumers Throughout New Hampshire**

In addition to meeting the public interest factors relevant to rural areas, designation of TracFone as an ETC in New Hampshire will also serve the overall public interest because TracFone will participate in the Lifeline program as required by the Commission's Rules and will otherwise comply with all Commission Rules governing universal service programs, which are designed to ensure that the public interest standards of the Communications Act are achieved. As a national leader in prepaid wireless services, TracFone throughout its history has done much to advance the availability of wireless service to 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 and lower volume users, transient users, as well as other consumers who either choose not to enter into long-term service commitments or who are unable to meet the credit requirements necessary to obtain service from other wireline or wireless carriers. TracFone's "pay-as-you-go" wireless plans enable consumers to enjoy the convenience and security of wireless telecommunications 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 end users in New Hampshire. For all the reasons described herein, 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.<sup>33</sup>

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<sup>33</sup> See Declaration of F.J. Pollak, attached hereto as Exhibit 1.

**Conclusion**

Based on the foregoing, the requirements for eligibility for designation as an ETC have been met. Accordingly, TracFone requests that the Commission promptly grant its Petition.

Respectfully submitted,



Mitchell F. Brecher  
Debra McGuire Mercer

GREENBERG TRAUIG, LLP  
2101 L Street, NW  
Suite 1000  
Washington, D.C. 20037  
(202) 331-3100

*Counsel for TracFone Wireless, Inc.*

November 28, 2007

# Exhibit 1

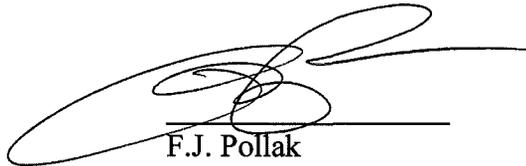
## DECLARATION OF TRACFONE WIRELESS, INC.

In accordance with 47 C.F.R. § 1.16, F.J. Pollak states as follows:

1. I am President and Chief Executive Officer of TracFone Wireless, Inc. ("TracFone"). My business address is 9700 N.W. 112<sup>th</sup> Avenue, Miami, FL 33178.
2. In my capacity as President and Chief Executive Officer of TracFone, I am an authorized representative of TracFone. I have read TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households. I confirm that the information contained therein is true and correct to the best of my knowledge.
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 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 certify under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2007



F.J. Pollak  
President and Chief Executive Officer

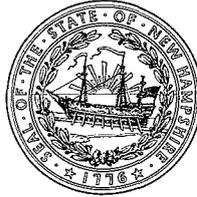
# Exhibit 2

THE STATE OF NEW HAMPSHIRE

CHAIRMAN  
Thomas B. Getz

COMMISSIONERS  
Graham J. Morrison  
Clifton C. Below

EXECUTIVE DIRECTOR  
AND SECRETARY  
Debra A. Howland



PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10  
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH  
1-800-735-2964

Website:  
[www.puc.nh.gov](http://www.puc.nh.gov)

October 25, 2007

Debra McGuire Mercer, Esq.  
Greenberg Traurig, LLP  
800 Connecticut Avenue, NW  
Washington, D.C. 20006

Re: TracFone Wireless, Inc.

Dear Ms. Mercer:

This is in response to your letter to the Commission, received on September 26, 2007, concerning the above-referenced telecommunications carrier. You requested a statement from the Commission that TracFone is not subject to the jurisdiction of the Commission, inasmuch as this will affect how TracFone proceeds with efforts to become designated as an Eligible Telecommunications Carrier (ETC) for purposes of receiving universal service support pursuant to the federal Telecommunications Act.

Your attention is directed to a published order of the Commission, *RCC Minnesota, Inc.*, 88 NH PUC 611 (2003) (Order No. 24,245). In that order, the Commission acknowledged that it lacks state-law authority to regulate wireless carriers, *id.* at 615, citing Section 362:6 of the New Hampshire Revised Statutes Annotated, and therefore the Commission concluded that the agency is likewise devoid of jurisdiction to consider a request for ETC designation from the carrier. In my judgment, TracFone, as a user of both cellular and PCS (personal communications service) spectrum to provide commercial mobile radio service, may rely on the *RCC Minnesota* decision for the proposition that the Federal Communications Commission, as opposed to the New Hampshire Public Utilities Commission, is the appropriate agency to consider TracFone's bid for ETC status.

Please feel free to call me at 603.271.6006 if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald M. Kreis".

Donald M. Kreis  
General Counsel

# Exhibit 3

# Consumer Action

Education and Advocacy Since 1971



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

August 14, 2007

**Re: Federal Communications Commission [CC Docket No. 96-45]  
*Support for the petition by TracFone Wireless, Inc. for Designation as an Eligible  
Telecommunications Carrier (ETC) in the states of VA, FL, MA and NY***

Dear Ms. Dortch:

Telecommunications services have a profound impact on modern living. From connecting us to family and friends, to helping us obtain work, manage daily routines or call for emergency assistance, it is clear that these services are a necessity in everyday life. Given the importance of phone service, it's astonishing that FCC data reveals that approximately two-thirds of all eligible Lifeline households in the U.S. do not participate in the Lifeline support program. Only 6.8 million out of 21 million eligible Americans currently receive Lifeline support for their telephone service, based on 2005 forecasts.

As organizations dedicated to protecting and helping consumers, Consumer Action<sup>1</sup> and the National Grange of the Order of Patrons of Husbandry<sup>2</sup> believe that all carriers able to meet the service obligations of Lifeline should be permitted to serve Lifeline customers so that low-income Americans have the same access to wireless and competitive services as do other consumers. That is why we are writing today to support the petition by TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) in the states of Virginia, Florida, Massachusetts and New York (FCC Docket 96-45).

Wireless telephone service has become an essential for most Americans as well as their families and friends overseas. However, for low-income Americans struggling to pay their monthly bills for landline service, wireless service may be unaffordable. In addition, a negative credit history

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<sup>1</sup> Consumer Action ([www.consumer-action.org](http://www.consumer-action.org)) is a national non-profit consumer education and advocacy organization founded in San Francisco in 1971. Consumer Action serves consumers, community-based agencies and its members nationwide by advancing consumer rights, referring consumers to complaint-handling agencies and training community group staff on the effective use of its educational materials. Consumer Action also advocates for consumers in the media and before lawmakers and compares prices on telephone services, credit cards and bank accounts.

<sup>2</sup> The National Grange of the Order of Patrons of Husbandry (National Grange) is the oldest general farm and rural public interest organization in the United States. Founded in 1867, today the Grange represents nearly individual members affiliated with 2800 local, county and state Grange chapters across rural America. More than 70 percent of all local Grange chapters are located in communities of 5,000 persons or less.

or no fixed address can make even traditional land line service hard to obtain. In many instances, a wireless phone would be more practical—and appropriate—than a wire line phone, allowing for the freedom of mobility and convenience of modern day calling features.

As the future of communications moves to wireless, the disadvantaged members of our society should not be left behind. Payphones are almost extinct—and the ones that are available to consumers do not offer features that so many of us rely on today, voice and text messaging. Low-income consumers are experiencing not just a digital divide, but also a telephone fracture—without access to prevalent wireless technologies, they are not able to participate fully in society.

The FCC has stated that TracFone's request for ETC designation for "Lifeline-only services... would not affect the high-cost fund support." The FCC has said, "**Any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.**"

In this filing, Consumer Action and the National Grange strongly reiterate this FCC statement, offer our support for this concept and urge that the FCC not only approve the petition for regulatory forbearance and ETC designation, but also establish separate eligibility requirements and procedures for ETC designation for those carriers seeking to participate only in Lifeline. Low-income Americans deserve to have the same access to wireless and competitive services as do other consumers.

Prepaid wireless service is a good option for low-income consumers because there are no long-term contracts, no credit checks and no early termination penalties or late payment fees. With prepaid service, people pay only for the services they can afford. The proposal by TracFone Wireless, Inc. to offer Lifeline prepaid service would allow more low-income people to afford wireless service. Low-income consumers could enjoy the same services that other consumers currently receive with cell phones, including voice mail and other essential features.

This proposal would help to fulfill an important social imperative—ensuring that all Americans are able to communicate by telephone with family, support networks, employers and emergency services. From our viewpoint, consumers are not concerned with whether the telephone service they receive is through resellers or facilities-based providers. They are concerned with access, quality and price. The TracFone proposal offers Lifeline-qualified customers all three. We hope that your action in the near future to approve the pending TracFone ETC lifeline-only application will be approved quickly and that it will encourage other prepaid wireless providers to take the same initiative to pursue Lifeline ETC applications.

Sincerely,

Linda Sherry  
Director, National Priorities  
**Consumer Action**  
(202) 544-3088

Leroy Watson  
Legislative Director  
**National Grange of the Order of Patrons of Husbandry**  
(202) 628-3507 x114