

**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 York)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut)	
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Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts)	
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Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama)	
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Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households)	
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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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Petition for Designation as an Eligible)
Telecommunications Carrier in the Commonwealth of)
Pennsylvania for the Limited Purpose of Offering)
Lifeline Service to Qualified Households)
)
Petition for Designation as an Eligible)
Telecommunications Carrier in the District of Columbia)
for the Limited Purpose of Offering Lifeline Service to)
Qualified Households)

**PETITION FOR MODIFICATION OF PUBLIC SAFETY
ANSWERING POINT CERTIFICATION CONDITION**

Mitchell F. Brecher

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

Counsel for TracFone Wireless, Inc.

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Table of Contents

SUMMARY.....	i
INTRODUCTION.....	3
I. TRACFONE HAS EXPENDED SIGNIFICANT EFFORT AND EXPENSE TO OBTAIN PSAP CERTIFICATION	6
II. TRACFONE CAN ASSURE THAT ALL LIFELINE CUSTOMERS WILL HAVE ACCESS TO 911 AND E911 WITHOUT PSAP CERTIFICATION	10
CONCLUSION	13

SUMMARY

TracFone Wireless, Inc. petitions the Commission to modify one of the conditions imposed on the Commission's designation of TracFone as an Eligible Telecommunications Carrier for the limited purpose of offering Lifeline service to low income households. That ETC designation was conditioned upon TracFone obtaining from Public Safety Answering Points where it seeks to offer Lifeline service certification that TracFone customers will have access to 911 and E911 without regard to activation status or availability of prepaid minutes. TracFone has proposed that if a PSAP fails to provide the requisite certification within 90 days of a request that TracFone then be allowed to self-certify that it meets the aforementioned condition. Self-certification would be permissible upon TracFone confirming with its underlying carriers that TracFone customers' 911 calls are routed to the PSAPs in the same manner as the underlying carriers' retail customers' calls

In the 7 months since receiving ETC designation, TracFone has expended considerable effort and resources to obtain PSAP certifications. These efforts have been only partially successful. In three states, TracFone has received statewide PSAP certification; in a few other states, it has obtained certifications from some, but not all, PSAPs. In certain jurisdictions, the process has dragged on with repeated demands for additional information and testing. In some situations, PSAPs have not even returned phone calls or responded to written requests.

These delays might be warranted if there were no other way to ensure that TracFone Lifeline customers have access to 911 and E911. Fortunately, that is not the case. All TracFone handsets are E911 compliant in accordance with Commission rules. Further, all of TracFone's underlying carriers report quarterly on the progress of E911 deployment so the availability of 911 and E911 to TracFone's carriers, and therefore to TracFone's customers is a matter of record at the Commission.

Under TracFone's SafeLink Wireless, Lifeline program, every customer will receive a free handset and free quantities of wireless airtime. The delays in the PSAP certification process have precluded TracFone from providing this service to low income households at a time when many households, due to current economic conditions, need any assistance available. TracFone is anxious to

expand the availability of its Lifeline service. The modification to the PSAP certification petition proposed in this petition would enable TracFone to make its Lifeline service available to many low income families in the states where it has been designated as an ETC.

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**PETITION FOR MODIFICATION OF PUBLIC SAFETY
 ANSWERING POINT CERTIFICATION CONDITION**

TracFone Wireless, Inc. (TracFone), by its attorneys, hereby petitions the Commission to modify a condition attached to the order designating TracFone as an Eligible Telecommunications Carrier (ETC). Specifically, it requests modification of the condition that it obtain certification from each Public Safety Answering Point (PSAP) wherever it offers Lifeline service that TracFone customers can access 911 and E911 without regard to activation status or availability of prepaid minutes. TracFone proposes that a ninety day period of time be established following notification to PSAPs by TracFone that it is planning to commence Lifeline service in the PSAP area and requesting certification. If the PSAP does not provide the requisite certification by the expiration of that period, then TracFone would be allowed to self-certify that its Lifeline customers will have access to 911 and E911 without regard to activation status or availability of prepaid minutes. Such self-certification would be permissible only upon TracFone confirming with its underlying carriers that TracFone customers' 911 calls are treated in the same manner as the underlying carrier treats its own retail customers' 911 calls.¹

¹ The 90 day PSAP certification period proposed in this petition is analagous to the 90 day deadline imposed by the Commission on local franchising authorities to award cable franchises to competitive franchise applicants who have existing authority to access public rights-of-way (180 deadline for applicants who do not have existing authority to access public rights-of-way). 47 C.F.R. § 76.41(d).

Introduction

As will be described in this petition, the PSAP certification requirement was included as a condition to the Commission's exercise of its forbearance authority allowing it to consider TracFone's petitions for designation as an ETC, and later as a condition to the ETC designations. However well-intentioned the condition may have been to ensure that all TracFone Lifeline customers are able to access emergency services, the same level of public safety assurances can be attained by other means. More importantly, the PSAP certification requirement has proven to be largely unworkable, and has delayed TracFone's efforts to make available free wireless telephone handsets and wireless service to low income consumers -- consumers who could utilize those handsets to access emergency services which they would otherwise be unable to access.

With more than 10 million customers, TracFone is the nation's leading provider of prepaid wireless services. Unlike traditional post-paid services, TracFone's pay-as-you-go service requires no service contracts, no volume or term commitments, and no credit checks. Moreover, since TracFone's service includes long distance calling with no toll charges, and, since the service is entirely prepaid, there is no risk of customers incurring significant toll charges or losing service for non-payment of those charges. For all of these reasons, TracFone prepaid wireless service is ideal for low income consumers. Indeed, low income users have been an important part of TracFone's customer base and its marketing focus since the company's inception more than a decade ago.

Given TracFone's history of serving low income, low volume consumers, it made sense for TracFone to seek designation as an ETC for the limited purpose of offering a wireless Lifeline service option. In June 2004, TracFone petitioned the Commission to exercise its

statutory forbearance authority under Section 10 of the Communications Act of 1934, as amended,² so as to allow TracFone to seek ETC designation notwithstanding the fact it provides service on a resale basis only and does not operate its own wireless telecommunications facilities. At that time, TracFone also began filing with the Commission petitions for ETC designation for each state in which the state regulatory agency does not have jurisdiction to confer ETC designation on wireless carriers.

By order issued September 6, 2005, the Commission granted TracFone's petition for forbearance, concluding that a wireless prepaid service for Lifeline-eligible low income households like that proposed by TracFone would serve the public interest.³ In the Forbearance Order, the Commission properly acknowledged the importance of public safety in general and access to emergency services in particular, and imposed upon TracFone a condition that TracFone provide its Lifeline customers with access to 911 and E911 service upon activation of service, and that TracFone demonstrate compliance with that condition by obtaining from each PSAP where it provides Lifeline service certification that TracFone provides its customers with 911 and E911 access irrespective of activation status or availability of prepaid minutes.

With or without a PSAP 911 certification condition, there never was any doubt that TracFone is fully committed to making available to all of its customers, including its Lifeline customers, 911 and E911 access. As far back as August 2004, TracFone committed to the Commission that it would ensure that all consumers would be able to place E911 calls from their handsets, even if the consumer's service is not active or does not have prepaid minutes

² 47 U.S.C. 160.

³ Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005) ("Forbearance Order").

available.⁴ In fact, under TracFone's Lifeline program, being marketed as SafeLink Wireless, every Lifeline customer is provided at no charge with a wireless handset which is E911-compliant⁵ and which has been programmed to complete 911 calls whether or not the handset has been initialized and whether or not there are remaining prepaid minutes available.

Furthermore, all of TracFone's underlying carriers, including AT&T Mobility, Verizon Wireless, T-Mobile, U.S. Cellular, and others, route 911 calls to the serving PSAPs and E911 service is provided wherever the PSAP is equipped to provide E911. Those underlying carriers' provision of 911 and E911 service to all customers, including their wholesale customers' (such as TracFone) end users is a matter of public record. The Commission requires that such carriers submit quarterly reports describing the current status of E911 deployment.⁶ The best proof of TracFone's commitment to 911 and E911 availability is that in the decade it has provided service, it is not aware of a single instance when a TracFone customer's 911 call was not routed to a serving PSAP.

Despite the fact that TracFone is committed to providing reliable access to 911 and E911 to its customers irrespective of the activation status of any customer account and irrespective of the availability of prepaid minutes, and despite the fact that availability of 911 access and availability of E911-compliant handsets are Commission requirements, the Commission nonetheless has required TracFone to obtain from every PSAP where it offers service a certification that it complies with those requirements.

⁴ Forbearance Order at ¶ 15, citing to Reply Comments of TracFone filed August 16, 2004 -- more than four years ago.

⁵ In the case of GSM networks, E911 access is network-based rather than handset-based.

⁶ See Revision to the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (Order), 17 FCC Rcd 14841 (2002); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems (Fourth Memorandum Opinion and Order), 15 FCC Rcd 17422 (2000).

TracFone is committed to its Safelink Wireless Lifeline program. Under that program, qualified low income customers not only receive at no charge fully functional E911-compliant wireless handsets, they also receive specified quantities of free minutes of airtime each month, with the ability to purchase additional usage at TracFone's lowest charge. Unused minutes roll over from month to month so long as a Lifeline customer remains enrolled in the program. If TracFone's Lifeline program was important in April 2008 when the Commission designated TracFone as a limited purpose (Lifeline only) ETC, it is far more important now. In the months since that designation, the U.S. economy has been devastated. Tens of Thousands of jobs have been lost, investment portfolios and retirement accounts have lost much of their value, and many thousands of Americans have lost their homes to foreclosure. TracFone believes that its wireless Lifeline program will provide a measure of economic relief to many households who desperately need any assistance available. Yet, despite more than seven months of continuous efforts to obtain the requisite PSAP certifications, TracFone has been able to offer Safelink Wireless only in four states - Florida, Georgia, Tennessee, and (as of November 18, 2008) Massachusetts. In the meanwhile, the free service remains unavailable to consumers in the other jurisdictions for no reason other than delay resulting from a largely unworkable and unnecessary PSAP certification requirement.

I. TracFone has Expended Significant Effort and Expense to Obtain PSAP Certification

In the seven months since the Commission designated TracFone as an ETC for the limited purpose of offering Lifeline service to low income households,⁷ TracFone has expended considerable effort to contact PSAPs in the states where it has been designated as an ETC for the

⁷ Federal-State Joint Board on Universal Service and TracFone Wireless, Inc., et al, 23 FCC Rcd 6206 (2008) ("TracFone ETC Designation Order").

purpose of obtaining the requisite certifications. There are many hundreds of PSAPs in those states. For example, in Florida, there are 67 PSAPs; in Tennessee, 119 PSAPs, Virginia, 100 PSAPs, Georgia, 164 PSAPs, and New York, 62 PSAPs.⁸ Even jurisdictions where there are few PSAPs -- or only a single PSAP such as New Hampshire (1) and the District of Columbia (1), obtainment of PSAP certification has proven to be time-consuming, costly, and unsuccessful.

TracFone has worked with individual PSAPs and with state public safety departments in those states where the PSAP certification process is done on a statewide level.⁹ These efforts have involved deployment of various TracFone employees, including several senior employees. TracFone has also deemed it necessary to engage consultants and several law firms to represent it in the complex PSAP certification process -- a process never before before imposed on any other ETC.

Despite these efforts, TracFone's attempts to obtain PSAP certifications have been only partially successful. After months of effort, it obtained statewide PSAP certifications from the public safety officers in Virginia, Tennessee and Massachusetts. However, in other states, the requests submitted to PSAPs have received much resistance and continuing delay. For example, in Georgia, after six months of effort, including in-person meetings, conference calls, engagement of consultants and attorneys, and direct contact with the Governor's Chief of Staff, TracFone has obtained certifications from 137 out of 164 PSAPs. The remaining 27 PSAPs have failed even to respond to all written and telephonic requests. In the District of Columbia, TracFone has provided the PSAP, at the PSAP's request, with test phones activated on each of

⁸ Georgia and Florida are states which retain jurisdiction to designate wireless ETCs. Accordingly, TracFone's ETC designations in those states were awarded by the respective state commissions. However, the conditions set forth in the Forbearance Order are applicable to both those states' ETC designations.

⁹ TracFone has been able to obtain statewide PSAP certification in three states -- Virginia, Tennessee and Massachusetts.

the underlying carriers used by TracFone in that jurisdiction. Those test handsets were provided to the District of Columbia PSAP in April 2008. The PSAP, using its own outside consultant, has conducted not less than three rounds of test calls commencing in May and continuing through the end of October. Following that third (and what was represented to be the final) round of testing, the PSAP, through its consultant, informed TracFone in November for the first time that it would then be consulting with the city's Metropolitan Police Department and the city's Homeland Security and Emergency Management Agency regarding TracFone's PSAP certification request. However, so far as TracFone is aware, no meetings with either of those departments have been scheduled and it is not known when -- or if -- such meetings will take place. Nor is it known why the PSAP did not elicit the views of either of those agencies during the six month period that the prolonged PSAP testing process has dragged on. The PSAP certification process in Washington, DC remains on indefinite hold, and TracFone is unable to commence its Lifeline program there despite the fact that it is prepared to immediately provide free handsets and free airtime to the city's thousands of low income households who would qualify for the Lifeline program.

Similar anecdotal examples could be provided for most of the other jurisdictions where TracFone has been designated as an ETC but where its offering of Lifeline service is being held hostage to continuing bureaucratic delay and inaction involving the PSAP certification process. In Pennsylvania, more than one-half of the PSAPs provided certifications. However, many have since been "rescinded." The rescission notices sent to TracFone indicated that the PSAP certifications were being rescinded at the request of the Pennsylvania Emergency Management Agency (PEMA) and the Keystone Chapter of the National Emergency Numbers Association (NENA), and that the PSAPs were seeking input from their counsel. Not understanding the

relationship between the state's Emergency Management Agency and its NENA chapter or those groups' roles in the PSAP certification process, if any, on October 29, 2008, TracFone sent requests for information and documents to PEMA and to several rescinding PSAPs pursuant to Pennsylvania's Open Records Act. Those requests are still pending and no information has been provided. Nonetheless, the all-important PSAP certifications have not been issued.¹⁰

Similar narratives could be provided for other jurisdictions where PSAP certifications have not been forthcoming. Presently, the PSAP certification process remains incomplete in other jurisdictions including New Hampshire (which has steadfastly resisted any involvement in the PSAP certification process, claiming not be familiar with TracFone's services), New York, and North Carolina. In fact, given the massive resources which this process has required, TracFone has not been able even to begin the process in several of the other states where it has been designated as an ETC including, for example, Connecticut, Alabama, and Michigan.

Part of the problem is that the PSAP certification requirement, as stated by the Commission, places PSAPs in the position of being asked to certify to matters which some PSAPs believe beyond their control and about which they have no direct knowledge. Condition (d) as stated at ¶ 21 of the ETC Designation Order and at ¶ 6 of the Forbearance Order requires TracFone to obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone complies with condition (a). Condition (a) requires TracFone to provide its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes. PSAPs can certify TracFone's selection of network providers in

¹⁰ Despite the difficulties encountered in Pennsylvania, NENA at the national level has been cooperative in working with TracFone to advance the PSAP certification process. NENA and TracFone officials have held several constructive meetings and NENA has notified its state affiliates that the PSAP certification is limited to whether TracFone provides its customers with 911 and E911 access regardless of activation status or availability of prepaid minutes. Notwithstanding these efforts, in many states PSAP certifications have not been forthcoming.

any state at a specific point in time and whether those providers are able to route E911 calls to the PSAPs. However, some PSAPs have refused to provide certifications, noting that TracFone could change underlying carriers and therefore they unwilling to certify as to 911/E911 access. Notwithstanding those stated PSAP concerns, all of TracFone's underlying network providers do route calls to PSAPs as they are required to do and have submitted reports to the Commission indicating that they do so. Nonetheless, many PSAPs continue to withhold certification.

As for whether TracFone allows calls to 911 regardless of activation status and availability of prepaid minutes, that too is outside the scope of what PSAPs are able to certify. Whether TracFone allows calls to 911 without regard to activation status is dependent on how TracFone handsets are programmed to operate. In fact, all TracFone handsets are E911 compliant,¹¹ all handsets are programmed to complete 911 calls whether or not the phones are active and whether or not they have available prepaid minutes. That is TracFone's practice. That is required by Commission rule. However, it is not within the control of PSAPs and many PSAPs have been reluctant to certify to matters outside their control.

II. TracFone Can Assure that All Lifeline Customers Will Have Access to 911 and E911 Without PSAP Certification

As described above, the PSAP certification requirement has become a major obstacle to TracFone's ability to provide its Lifeline service, including free handsets as well as free wireless airtime, to qualified low income households in the jurisdictions where it has been designated as an ETC. The impracticality of the condition and the resulting delay in commencing service could be justified if the PSAP certification requirement was necessary to ensure that all TracFone Lifeline customers would have access to 911 and E911 wherever its Lifeline service is offered.

¹¹ As noted at n. 4, in the case of GSM networks, E911 access is network-based rather than handset-based.

Fortunately, it is not necessary. Other safeguards and legal requirements provide such assurances.

Regarding the handsets themselves, Section 20.18 of the Commission's rules requires that all handsets, including non-initialized handsets, be capable of accessing 911. Moreover, Section 20.18(m) of the rules imposes E911 access requirements on resellers. TracFone complies fully with that requirement. All handsets provided by TracFone to all customers, including those handsets provided free of charge to Lifeline customers, are E911-compliant and, if necessary, TracFone would be willing to provide certification to the Commission that all handsets provided to Lifeline customers are E911-compliant.¹²

In order to ensure that TracFone Lifeline customers have access to 911 and E911 wherever it offers Lifeline service, it is not sufficient to provide those customers with E911-compliant handsets. The networks which carry TracFone Lifeline customers' calls must route 911 calls to the appropriate PSAP. TracFone has confirmed with each of its underlying network providers that each provider does, in fact, route 911 calls to the PSAPs. Also, as noted above, network-based providers are required to submit periodic reports of 911 and E911 deployment to the Commission. Those reports are matters of public record and can be relied on by the Commission, by TracFone and, more importantly, by TracFone's Lifeline customers, to confirm that 911 and E911 access will be available and that 911 calls will be routed to the appropriate PSAPs.

¹² Among the other conditions imposed upon TracFone by the Forbearance Order and by the TracFone ETC Designation Order is the following: "(b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service." TracFone complies fully with that condition.

In view of those reporting requirements and the public availability of 911 deployment information provided by each of TracFone's underlying carriers, imposition of a separate PSAP certification condition seems redundant and unnecessary to provide the important assurances to TracFone's Lifeline customers that 911 and E911 access will be available. Moreover, the prolonged delay by many PSAPs in considering TracFone's requests to provide the needed certifications has precluded TracFone from making available its Lifeline service to low income consumers in those states. Accordingly, TracFone proposes that the Commission modify the PSAP certification requirement so as to impose a ninety (90) day time period on certification requests. If a PSAP has failed to act on a TracFone request for PSAP certification that its Lifeline customers will be able to access 911 and E911 without regard to activation status or availability of prepaid minutes within ninety days of receiving the request in writing, then TracFone would be allowed to self-certify compliance with condition (a) as described below:

TracFone would be permitted to certify that it has confirmed with each of its underlying carriers who provide service to TracFone in the area served by the PSAP that the carriers route 911 calls from TracFone customers to the PSAPs in the same manner that they route 911 calls from their own customers. TracFone will retain all such certifications and will make those available to the Commission upon request.

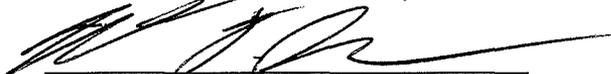
This alternative certification process will afford the PSAPs a reasonable opportunity to provide the requisite certification of 911 access while providing TracFone with an alternative method of certification to be available in situations where the PSAPs have failed to act on certification requests within a reasonable period.

Conclusion

In a separate statement accompanying the TracFone ETC Designation Order, Commissioner Michael J. Copps stated as follows: “. . .we lose sight of the fact that there is an entire segment of consumers who would lack a phone at all and would easily become disconnected from society were it not for the support of the Lifeline program. I am very pleased that today the Commission takes a moment to focus on making it easier for low-income consumers to receive wireless phone service.”¹³ Despite Commissioner Copps supportive comments, the Commission has not made it easier for low income consumers to receive wireless phone service. Whatever may have been the Commission’s intent, the reality is that, based on experience, the PSAP certification requirement has become a substantial impediment to TracFone’s ability to deliver free wireless handsets and wireless phone service to low income consumers. TracFone believes that this is not what was intended by the Commission in attaching conditions to TracFone’s ETC designation. By this petition, TracFone respectfully requests that the Commission modify the PSAP certification condition as described herein.

Respectfully submitted,

TRACFONE WIRELESS, INC.



Mitchell F. Brecher

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

Its Attorneys

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¹³ ETC Designation Order, Statement of Commissioner Michael J. Copps.