

The screenshot shows a Microsoft Internet Explorer browser window. The title bar reads "Safelink Wireless - Enroll in Lifeline - Microsoft Internet Explorer provided by PA Public Utility Commission". The address bar shows the URL "https://www.safelinkwireless.com/EnrollmentPublic/enrol\_lifeline.aspx".

The website header features the "SafeLink WIRELESS" logo on the left. To the right, there are navigation links: "Check Status", "Service & Support", "Español", and a "GO" button. Below the logo, there are three main menu items: "Learn PROGRAM INFORMATION", "Enroll JOIN SAFELINK WIRELESS", and "Airtime ADD OR BUY AIRTIME".

The main content area is titled "Enroll in Lifeline". Below the title, a paragraph states: "To begin receiving Lifeline Service through Safelink Wireless, which includes benefits such as FREE cellular service, a FREE cell phone, and FREE Minutes, you must enroll in the program."

Centered on the page is a form box titled "Enter Your ZIP Code". The text inside the box says: "Please provide us with your home ZIP code so we can tell you exactly how to qualify and apply in your area." Below this text is a text input field containing the number "15233" and a "GO" button.

The browser's status bar at the bottom shows "Done" and the Windows taskbar with several open applications: "start", "Microsoft Office...", "Internet Explorer", and "Documents1 - Microsof...". The system clock in the bottom right corner displays "12:47 PM".

Pgh-4

Safelink Wireless - State Benefits - Microsoft Internet Explorer provided by PA Public Utility Commission

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites History Mail Print Edit Discuss Research Messenger

Links Customize Links Free Hotmail shop and compare prices on digital cameras Welcome to the Pennsylvania Public Utility Commission Windows Windows Marketplace

Address https://www.safelinkwireless.com/EnrollmentPublic/enroll\_lifeline.aspx Go

today.

**Get Started Now**

If you're ready to fill out your application online click the button below to get started now! If you still have questions about Safelink Wireless or the Lifeline Service please visit our Frequently Asked Questions page [here](#).

**3 Easy Steps**

**Apply**

**Benefits in Pennsylvania** expand/collapse

Through Safelink Wireless' Lifeline Service you can receive:

- A FREE Safelink Wireless phone
- A FREE cellular plan that gives you 42 Minutes *every month*

**Qualifying in Pennsylvania** expand/collapse

Done

start... 2 Microsoft Office... 4 Internet Explorer - Document1 - Microsoft... Internet 12:46 PM

Cumb-1

SafeLink Wireless - Enroll in Lifeline - Microsoft Internet Explorer provided by PA Public Utility Commission

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites History Mail Print Edit Discuss Research Messenger

Links Customize Links Free Hotmail shop and compare prices on digital cameras Welcome to the Pennsylvania Public Utility Commission Windows Windows Marketplace

Address [https://www.safelinkwireless.com/EnrollmentPublic/enroll\\_lifeline.aspx](https://www.safelinkwireless.com/EnrollmentPublic/enroll_lifeline.aspx) Go

**SafeLink**  
WIRELESS

Check Status Service & Support Español GO

**Learn**  
PROGRAM INFORMATION

**Enroll**  
JOIN SAFELINK WIRELESS

**Airtime**  
ADD OR BUY AIRTIME

## Enroll in Lifeline

To begin receiving Lifeline Service through SafeLink Wireless, which includes benefits such as FREE cellular service, a FREE cell phone, and FREE Minutes, you must enroll in the program.

**Enter Your ZIP Code**

Please provide us with your home ZIP code so we can tell you exactly how to qualify and apply in your area.

17011 GO

Done Internet

start | Inbox - Micros... | RE: SafeLink, W... | Airtime Zip Co... | SafeLink Wire... | Document1 - H... | 12:25 PM

Cumb-2

Safelink Wireless - State Benefits - Microsoft Internet Explorer provided by PA Public Utility Commission

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites History Mail Print Edit Discuss Research Messenger

Customize Links Free Hotmail Shop and compare prices on digital cameras Welcome to the Pennsylvania Public Utility Commission Windows Windows Marketplace

Address: https://www.safelinkwireless.com/EnrollmentPublic/enroll\_welfare.aspx

PROGRAM INFORMATION JOIN SAFELINK WIRELESS ADD OR BUY AIRTIME

## Lifeline Service in Pennsylvania

Congratulations, Safelink Wireless is offering Lifeline Service in your area! Below is a summary of the benefits you can receive, how to qualify for service, and how to apply today.

**Get Started Now**

If you're ready to fill out your application online click the button below to get started now! If you still have questions about Safelink Wireless or the Lifeline Service please visit our Frequently Asked Questions page [here](#).



**Apply**

**Benefits in Pennsylvania** open & close

Done

start | Inbox - Micro... | PE: Safelink, WI... | Airnova Zip Co... | Safelink Wire... | Document1 - IN... | Internet | 12:00 PM

Cumb-3

today.

**Get Started Now**

If you're ready to fill out your application online click the button below to get started now! If you still have questions about Safelink Wireless or the Lifeline Service please visit our [Frequently Asked Questions](#) page here.

**3 Easy Steps**

**Apply**

**Benefits in Pennsylvania** opens | close

Through Safelink Wireless' Lifeline Service you can receive:

- A FREE Safelink Wireless phone
- A FREE cellular plan that gives you 42 Minutes *every month*

**Qualifying in Pennsylvania** opens | close

Done

start... Inbox - Micro... RE: Safelink Wi... Allstate 2p Co... Safelink Wire... Document1 - M... Internet

12:36 PM

**ATTACHMENT B**



Lane Mansell  
Vice President  
Resale and Partnerships

AT&T Mobility  
1025 Lenox Park Blvd  
Atlanta, GA 30319

**Date:** September 22, 2008  
**To:** Pennsylvania  
**From:** AT&T Mobility, Inc.  
**Re:** Routing of E911 Calls from Resold Wireless Services

**Reseller E911 Access.** AT&T Mobility, Inc. (AT&T) provides licensed, facilities-based wireless services directly to Pennsylvania customers and routes E911 calls from such customers to the Public Safety Answering Points (PSAPs) in accordance with the law and pursuant to arrangements with PSAPs to receive such calls.

AT&T also offers wholesale wireless services to TracFone Wireless, Inc. (TracFone), which resells such services to Pennsylvania customers under its own brand on a prepaid basis.

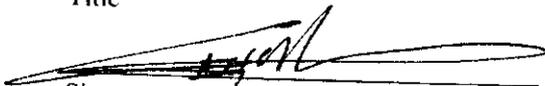
Whether a customer purchases a wireless service plan directly from AT&T or purchases resold services from TracFone using the AT&T network, any 911 call placed by such customer is processed in an identical manner – it is routed to the PSAPs over the AT&T network. If both AT&T and the PSAP have deployed Phase I or II E911 service, then the TracFone customer has E911 access.

As a wholesale customer of AT&T, TracFone has asked AT&T to certify to Pennsylvania TracFone's Lifeline customers will have access to E911. In this regard, AT&T certifies that, with respect to any TracFone customer whose service is activated on the AT&T network and who dials 911, such customer will have the same access to E911 as a retail customer of AT&T.

Thus, for a 911 call placed within the jurisdiction of any PSAP where both AT&T and the PSAP are Phase I or II compliant, the TracFone customer using AT&T's resold service should have the benefit of enhanced 911 services.

Lane Mansell  
Name

Vice President, Resale & Partnerships  
Title

  
Signature

1025 Lenox Park Blvd  
Street

Atlanta, GA  
City & State

404-986-1035  
Phone

lm1144@att.com  
Email

**From:** Thomas Dubas [dubast@lackawannacounty.org]  
**Sent:** Thursday, October 16, 2008 9:01 AM  
**To:** 'Michael J. McAllister'  
**Cc:** Wentzel, Robert  
**Subject:** RE: Tracfone / PSAP Certification for Lifeline Mobile Service  
To Whom It May Concern:

I am Thomas K. Dubas, Director of Emergency Services for Lackawanna County PA. In that capacity I am director of 911 services for our entire county in Northeastern PA. I have been asked to "certify" TracFone for use in my county. I have been made aware that TracFone is using several other carriers in the Commonwealth and that they are all certified through Pennsylvania Emergency management Agency (PEMA) to operate Phase II in PA.

The only certification I will endorse is the fact that if TracFone is actually using a carrier certified and tested for Lackawanna County and they are using the technology which was certified for Lackawanna County and the call comes into our PSAP as a 911 Phase II call, it will be answered as we answer ALL 911 calls. If, however, TracFone does not comply with the technology or uses different technology than was accepted for use and tested in our county we cannot guarantee, nor do we accept any liability for, calls which do not make it to our PSAP or which do not contain the essential information needed for us to successfully answer the call.

If TracFone wishes to "test" their technology with our PSAP, as I believe it may not be covered under Act 56 funding, they would be required to underwrite any expenses connected with such testing.

Additionally, I am aware negotiations are underway between PEMA and TracFone regarding the surcharge placed on ALL carriers in the Commonwealth and expect Lackawanna County to be included financially in any agreement.

If there are any questions or concerns, please feel free to contact me.

THOMAS K. DUBAS  
Lackawanna County Department of Emergency Services  
30 Valley View Business Park  
Jessup, PA 18434  
(570) 307-7300  
[dubast@lackawannacounty.org](mailto:dubast@lackawannacounty.org)

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**From:** Michael J. McAllister [mailto:MMcAllister@shutts.com]  
**Sent:** Wednesday, October 15, 2008 1:10 PM  
**To:** dubast@lackawannacounty.org  
**Subject:** Tracfone / PSAP Certification for Lifeline Mobile Service

Dear Mr. Dubas:

My firm represents Tracfone Wireless with respect to its PSAP (E911) certifications in the state of Pennsylvania and Lackawanna County. Tracfone is in the process of launching its Lifeline program in the State of Pennsylvania in order to offer free mobile phones and mobile telephone service to qualified individuals within the state. A formality as part of that process is that the FCC and State of Pennsylvania require certification from County coordinators that Tracfone's service is E9-1-1 compliant. A brief certification form is pasted below, which can be quickly filled out and returned by reply e-mail to me. For your information, Tracfone handsets operate on the Alltel, AT&T Mobility, T-Mobile and Verizon Wireless networks, all of which are already certified for compliance. Accordingly, 9-1-1 service operates on all Tracfone mobile phones regardless of activation status or

availability of pre-paid minutes. For your records, Tracfone has certified to this on the attached form; your authorization is simply a required formality.

As such, I would be grateful if you could return by reply email the certification form pasted below for Lackawanna County County to me at your earliest convenience. You need only reply to this email and fill in the highlighted areas. We apologize for the interruption and thank you very much for your time and attention. The form takes only a few moments to fill out, and as soon as we have collected all forms, Tracfone will be able to commence issuing free phones to qualified individuals. Jose Fuentes, Director of Government Relations for Tracfone (305.715.3727; [jfuentes@tracfone.com](mailto:jfuentes@tracfone.com)) and myself will be pleased to answer any questions you may have.

Sincerely,

Michael McAllister

Michael J. McAllister, Esq.

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**Shutts & Bowen LLP**

200 East Broward Boulevard, Suite 2100 | Fort Lauderdale, FL 33301

Direct: (954) 847-3835 | Fax: (954) 527-7935

STATE: Pennsylvania

**TracFone CERTIFICATION**

PSAP 9-1-1 Coordinator Name: \_\_\_\_\_

PSAP Jurisdictional Boundary Description: \_\_\_\_\_

Business address: \_\_\_\_\_

In my capacity as E911 Carrier Relations Manager, I serve as the 911 Coordinator. As 911 Coordinator, I am responsible for implementation by the Public Safety Answering Point (PSAP) of Enhanced 911 service in accordance with the rules of the Federal Communications Commission (FCC).

I am aware that, by order issued April 11, 2008, the FCC has designated TracFone Wireless, Inc. (TracFone) an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (47 U.S.C. § 214(e)(6)), for the limited purpose of providing Lifeline service in various states, including Pennsylvania. The FCC's designation of TracFone is subject to certain conditions, including a condition that TracFone obtain from each PSAP where it will provide Lifeline service certification that TracFone provides its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes.

As 911 coordinator, I hereby certify that all 911 calls, including those from TracFone customers, will be treated and responded to in the same manner regardless of carrier, activation status, or availability of prepaid minutes.

Returning the requested information by replying to this email is certification that all the information provided to TracFone Wireless, Inc. is accurate to the best of my knowledge.

IRS CIRCULAR 230 NOTICE: Pursuant to recently enacted

U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice expressed above was neither written nor intended by the sender or this firm to be used and cannot be used by any taxpayer for the purpose of avoiding penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then the advice should be considered to have been written to support the promotion or marketing by a person other than the sender or this firm of that transaction or matter, and such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

The information in this email transmission is privileged and confidential. If you are not the intended recipient, nor the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this transmission (including any attachments) is strictly prohibited. If you have received this email in error, please notify the sender by email reply. Thank you.

**From:** Wesley Hill [whill@beavercountypa.gov]  
**Sent:** Friday, October 17, 2008 12:48 PM  
**To:** Michael J. McAllister  
**Cc:** Kevin Joy; Randy Dawson; Wentzel, Robert  
**Subject:** RE: Tracfone / E911 Certification Request

**Attachments:** image001.png  
Mr. McAllister,

In addition to the certification info requested I would like to add that the actual routing of 9-1-1 calls is dependant upon the capabilities of the users' handset, the originating carriers' network, and the PSAPs' serving telephone company, all of which are outside the control of my PASAP.

Wes Hill, Director  
Beaver County Emergency Services

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**From:** Michael J. McAllister [mailto:MMcAllister@shutts.com]  
**Sent:** Friday, October 17, 2008 11:27  
**To:** Wesley Hill  
**Subject:** Tracfone / E911 Certification Request

Dear Mr. Hill:

This e-mail is a brief follow-up to our request for your assistance certifying Tracfone's Lifeline service for E911 compliance in Beaver County. Pasted below, for your reference, is the E911 certification letter provided by AT&T, Tracfone's supplier for Safelink, the sole network to be used in connection with Tracfone's Lifeline program. As indicated, Tracfone has certified to the State of Pennsylvania that it will provide its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes.

As stated in my email Wednesday, the certification process is a formality required by the FCC. Should any questions remain, please let me know when I might be able to call you to resolve any other questions you might have. The certification form is also pasted below - I would be grateful if you could fill in the three highlighted fields and return it to me by reply email. As soon as we have collected all certifications, Tracfone can begin distributing free phones and commencing Lifeline service for qualified customers.

Thank you again.

Sincerely,

Michael McAllister

**Michael J. McAllister**  
*Attorney at Law*

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**Shutts & Bowen LLP**  
200 East Broward Boulevard, Suite 2100 | Fort Lauderdale, FL 33301  
Direct: (954) 847-3835 | Fax: (954) 527-7935

STATE: Pennsylvania

**TracFone CERTIFICATION**

PSAP 9-1-1 Coordinator Name: \_\_\_\_\_ Wesley W.  
Hill \_\_\_\_\_

PSAP Jurisdictional Boundary Description: \_\_\_\_\_ County of Beaver, Leet Twp, and Bell

Acres Boro which are located in Allegheny County \_\_\_\_\_

Business address: 250 East End Ave. Beaver, Pa. 15009

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In my capacity as E911 Carrier Relations Manager, I serve as the 911 Coordinator. As 911 Coordinator, I am responsible for implementation by the Public Safety Answering Point (PSAP) of Enhanced 911 service in accordance with the rules of the Federal Communications Commission (FCC).

I am aware that, by order issued April 11, 2008, the FCC has designated TracFone Wireless, Inc. (TracFone) an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (47 U.S.C. § 214 (e)(6)), for the limited purpose of providing Lifeline service in various states, including Pennsylvania. The FCC's designation of TracFone is subject to certain conditions, including a condition that TracFone obtain from each PSAP where it will provide Lifeline service certification that TracFone provides its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes.

**As 911 coordinator, I hereby certify that all 911 calls, including those from TracFone customers, will be treated and responded to in the same manner regardless of carrier, activation status, or availability of prepaid minutes.**

Returning the requested information by replying to this email is certification that all the information provided to TracFone Wireless, Inc. is accurate to the best of my knowledge.



IRS CIRCULAR 230 NOTICE: Pursuant to recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice expressed above was neither written nor intended by the sender or this firm to be used and cannot be used by any taxpayer for the purpose of avoiding penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then the advice should be considered to have been written to support the promotion or marketing by a person other than the sender or this firm of that transaction or matter, and such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of TracFone Wireless, Inc.	)	CC Docket No. 96-45
For Modification of Public Safety Answering	)	DA 08-2779
Point Modification	)	
	)	
Virgin Mobile USA, L.P.'s Petition	)	CC Docket No. 96-45
For Forbearance and Designation as	)	DA No. 07-4983
An Eligible Telecommunications Carrier in	)	
The State of New York and the	)	
Commonwealths of Pennsylvania and Virginia	)	

**PROPOSED ORDER AND  
NOTICE OF PROPOSED RULEMAKING**

**Adopted:**

**Released: March 5, 2009**

By the Commission:

**I. INTRODUCTION**

1. In this Order and Notice of Proposed Rulemaking, we grant for good cause shown a waiver from the requirement in Section 1.724 to append a Proposed Order as well as the Section 1.727(b) and (c) obligation of a party filing a Motion to append findings of fact and conclusions of law in a proposed Order. We find that good cause exists given the time constraints and the parties' familiarity with the issues. We waive no other noncompliance with the FCC requirements imposed on TracFone Wireless, Inc. (TracFone). We also deny the TracFone

Motion, deny the TracFone Modification Petition<sup>1</sup> and grant the PEMA Petition asking us to revoke TracFone's prior "self certification" that it is in compliance with Pennsylvania law.<sup>2</sup> In addition, we deny the Virgin Mobile Forbearance Petition and determine that TracFone's actions warrant revocation of the forbearance previously granted TracFone Wireless, Inc. (TracFone) in our 2005 Forbearance Order related to Pennsylvania because the predictive effect in 2009 in Pennsylvania is far different from what we expected in 2005. We further find that TracFone's substantial noncompliance with the requirements imposed on TracFone when the FCC granted ETC Designation for Pennsylvania in the April 2008 ETC Order warrant revocation of ETC Designation in Pennsylvania as well. Our denial does not abrogate any existing forbearance or ETC obtained in Pennsylvania that otherwise complies with our requirements as of the date of issuance of this order but where it is not in compliance, TracFone must proceed with all deliberate speed to transition wireless Lifeline consumers to an alternative Lifeline service provider. Finally, We issue a Notice of Proposed Rulemaking on Forbearance seeking comment on forbearance from the Section 254 obligation to own at least a portion of facilities to obtain ETC Designation and Federal Universal Service Fund (FUSF) support, including the parallel obligation at 47 CFR 54.201.<sup>3</sup> We take these actions given the significant evidence of TracFone's noncompliance with FCC requirements and the fact that the predictive effect of the 2005 Forbearance Decision<sup>4</sup> in 2009 is not what was anticipated in 2005.

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<sup>1</sup> TracFone Wireless, Inc. Petition for Modification of Public Safety Answering Point Certification Condition, November 21, 2008; TracFone Supplement to Petition for Modification (December 23, 2008). The PaPUC has yet to receive a copy of any of these pleadings.

<sup>2</sup> The PaPUC does not want to be accused of filing inconsistent pleadings. The PaPUC's Ex Parte Letter dated February 26, 2009 asked the FCC to deny the PEMA Petition. The PaPUC made that request so that the PaPUC can address that issue for Pennsylvania now that the PaPUC will be making wireless ETC designations in Pennsylvania. However, if the FCC decides that TracFone's ETC designation is somehow beyond consideration by the PaPUC, the PaPUC alternatively urges the FCC to grant the PEMA petition. The proliferation of procedural anomalies and inconsistent statements by TracFone throughout this entire proceeding warrants that express clarification.

<sup>3</sup> The PaPUC took no position on Virgin Mobile's ETC Designation petition for Pennsylvania. This is appropriate to avoid prejudgment because, as occurred with Florida in the *2008 ETC Order*, the FCC will dismiss without prejudice the Virgin Mobile petition for Pennsylvania now that the PaPUC has asserted jurisdiction over wireless ETC designations in Pennsylvania.

<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. 214(e)(1)(A) and 47 CFR 54.201(i)*, Docket No. 96-45 (September 8, 2005), paragraph 6, n. 23 (*2005 Forbearance Order*).

## II. BACKGROUND

### A. The Act

2. Section 254(e) of the Telecommunications Act of 1996 (TA-96) provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

3. Section 214(e)(2) of TA-96 gives state commissions the primary responsibility for performing ETC designations. Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission. Under section 214(e)(6), 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, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>5</sup>

### B. PRIOR RELEVANT COMMISSION ACTION ON ETC DESIGNATIONS.

5. On December 29, 1997, we issued a Public Notice in Docket FCC 97-419 establishing the Procedures for FCC Designation of Eligible Telecommunications Carriers (ETC) Pursuant to Section 214(e)(6) of the Communications Act (the 1997 Notice). The 1997 Notice delegated to the FCC's then-Common Carrier Bureau, now the Wireline Competition Bureau, the authority to make ETC Designations under Section 214(e)(6). The petitioner was required to attach a certification and brief statement of supporting facts demonstrating that the petition is "not subject to the jurisdiction of a state

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<sup>5</sup> Under section 214(e)(1)(A) of TA-96, an ETC must offer service using its own facilities or a combination of its own facilities and resale of another. We granted TracFone a waiver from that statutory obligation in the 2005 Forbearance Order. See 20 FCC Rcd 15095 (2005) (*2005 Forbearance Order*). We subsequently granted TracFone ETC designation for multiple jurisdictions, including Pennsylvania, by Order issued April 8, 2008 and released April 11, 2008. See *April 2008 Forbearance Order*, Docket No. 96-45 (April 11, 2008) (*April 2008 Forbearance Order*).

commission” and a certification that the petitioner provides all services designated for support by the Commission pursuant to Section 254(c). The petitioner also had to offer the supported services using either its own facilities or a combination of its own facilities and resale of other carriers’ services. Petition further had to provide a description of how the petitioner advertises the availability of the supported services and the charges therefore using media of general distribution. Finally, there were certain provisions applicable to rural telephone company study areas, including the obligation to identify the study area and a detailed description of the geographic service area. There were other requirements addressing compliance with Section 5301 of the Anti-Drug Abuse Act of 1988 and including the names of individuals specified by Section 1.2002(b) of the Commissions rules, issues not relevant to this proceeding.

6. On June 30, 2000, we released the Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking (the *12<sup>th</sup> Report and Order*).<sup>6</sup> The *12<sup>th</sup> Report and Order* provided a more extensive enumeration of the requirements and processes for securing ETC Designation pursuant to Section 214(e)(6) in Part IV. The most salient portions of the *12<sup>th</sup> Report and Order* applicable to today’s decision are set out in paragraphs 92-93 and 113.

7. In Paragraph 92, the FCC recognized the need to provide a roadmap detailing the procedures that carriers seeking ETC Designation had to make to comply with Section 214(e)(6).

8. In Paragraph 93, we required carriers seeking ETC Designation in non-tribal lands to consult with the state commission, even if the carrier asserts that the state commission lacks jurisdiction over the case. We held that we would act on a section 214(e)(6) designation request for non-tribal lands designation only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.

9. In Paragraph 113, we discussed the carrier’s obligations even when the carrier believes the state law precludes the state commission from exercising jurisdiction. We concluded, as a matter of federal-state comity, that the carrier should first consult with the state commission to give the state commission an opportunity to interpret state law. We also concluded that state commissions should be allowed a specific opportunity to address and resolve issues involving a state commission’s authority under state law to regulate certain carriers or classes

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<sup>6</sup> *Twelfth Report and Order*, 15 FCC Rcd 12255 (2000), Docket No. 96-45.

of carriers. Only in those instances where a carrier provides the Commission with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation will we consider section 214(e)(6) designation requests from carriers serving non-tribal lands. We further concluded that an "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. Each carrier should consult with the state commission to receive such a notification, rather than relying on notifications that may have been provided to similarly situated carriers.

10. On June 24, 2004, the FCC issued a Public Notice seeking Comment on TracFone Wireless' Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and a secondary notice on the Petition for Forbearance From Application of Section 214(e)(1)(A) requirement that an ETC offer services support by the FUSF must use either its own facilities or a combination of its own facilities and those of another carrier. There was no reference to any FCC regulations nor was there evidence that TracFone provided the New York Public Service Commission. The FCC required TracFone to provide the New York PSC with a copy and the FCC provided a copy by overnight express to ensure notice.

11. On August 24, 2008, we issued an Order granting the petition of NPCR, Inc. d/b/a Nextel Partners (Nextel) to be designated as an eligible telecommunications carrier (ETC) for the requested service areas in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended by TA-96.<sup>7</sup>

12. In Paragraph 9 of the *Sprint-Nextel ETC Order*, we concluded that Sprint-Nextel demonstrated that the Commission has authority to consider the seven petitions under section 214(e)(6) of the Act, including Pennsylvania.<sup>8</sup> That petition complied with the requirement to include an affirmative statement from the relevant state commissions stating that the carrier's request for designation as eligible telecommunications carriers should be sought from the Commission.

13. In Paragraph 13 of the *Sprint-Nextel Order*, we further

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<sup>7</sup> In the Matter of Federal-State Joint Board on Universal Service, Petition for Designation as an Eligible Telecommunications Carrier in Alabama, *et al.*, Docket No. 96-45 (August 25, 2004)(the *Sprint-Nextel ETC Order*).

<sup>8</sup> AL Petition at Attachment 2; FL Petition at Attachment 2; GA Petition at Attachment 2; NY Petition at Attachment 2; PA Petition at Attachment 2; TN Petition at Attachment 2; VA Petition at Attachment 2.

concluded that the Pennsylvania Public Utility Commission (PaPUC) filed reply comments stating that although it submitted a letter stating its intent to refrain from exercising jurisdiction over Nextel for ETC designation purposes, it has not relinquished its jurisdiction altogether for all CMRS carriers. Specifically, the Pennsylvania Commission expressed concern that it did not intend its letter to operate as a pronouncement of its position on jurisdiction for future ETC designations for all wireless carriers. We further noted that subsequently, the Pennsylvania Commission filed a letter stating that it does not object to the Commission's consideration of Nextel's petition as long as the effect of its letter is limited solely to Nextel's ETC designation request. We therefore found it was appropriate to consider the request for ETC designation in Pennsylvania. As requested by the Pennsylvania Commission, we further concluded that the effect of the Pennsylvania Commission's letter indicating that it lacks jurisdiction in this proceeding is limited solely to Nextel's ETC petition.

14. September 8, 2005, the FCC released an Order denying ETC Designation in New York but conditionally granting TracFone Forbearance from Section 214(e) of the TA-96 as well as Sections 54.201(d)(1) and 54.201(i) of the Commissions rules albeit limited to Lifeline support only.<sup>9</sup> The *2005 Forbearance Order* concluded at Paragraph 6 that if ultimately granted ETC status, TracFone will be eligible only for Lifeline support. As a limited ETC, TracFone would not be eligible to receive support for the other supported services under the low-income program nor would it be eligible, as an ETC, to receive support for services supported by the other universal support mechanisms. We committed to addressing TracFone's petitions for ETC designation in later orders.

15. In sum, the *2005 Forbearance Order* was conditional on TracFone (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (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; (c) complying with conditions (a) and (b) as of the date it provides it provides Lifeline service; (d) obtaining a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) requiring its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address. We specifically

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<sup>9</sup> *2005 Forbearance Order*, para. 6 and n. 4. We expressly stated our intention to address TracFone's ETC Designation petitions in subsequent orders.

recognized that the grant was conditional, that parties could file petitions if warranted by subsequent events, that we would reconsider the forbearance grant, and that any violation of the conditions could result in losing the ETC designation.<sup>10</sup>

16. The *2005 Forbearance Order* also required, within thirty days of the release of this Order, that TracFone file with the Commission a plan outlining the measures it will take to implement these conditions. TracFone filed a Compliance Plan on October 11, 2005 related to the *2005 Forbearance Order*, with several corrections thereafter, which we approved in Paragraph 23 of the *April 2008 ETC Order* as adequate.<sup>11</sup>

17. On January 9, 2008, the FCC issued a Public Notice seeking Comment on TracFone's Petitions for ETC Designation as an Eligible Telecommunications Carrier throughout the entire Commonwealth of Pennsylvania.<sup>12</sup> The notice set Comment and Reply Comment deadlines of February 8, 2008 and February 25, 2008, respectively. There were no extensions.

18. On April 3, 2008, we issued a Commission Meeting Agenda (the April Agenda Notice) listing several pending TracFone ETC Designation petitions, Pennsylvania was not included. Item #4 listed petitions for New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, and New Hampshire.

19. On April 11, 2008, we released the *April 2008 Forbearance Order* addressing ETC Designation Petitions, including Pennsylvania and the District of Columbia.<sup>13</sup> New York, Florida, Virginia, Connecticut, Massachusetts,

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<sup>10</sup> At that time, Commenters raised concerns about the administrative costs, complexities, and burdens of granting this Petition and presumably the associated ETC designation petitions. See Letter from Robin E. Tuttle, USTelecom, to Marlene Dortch, FCC, CC Docket No. 96-45 (filed August 17, 2005) (USTelecom August 17 *Ex Parte*). We believe that this conditional forbearance will serve to further the statutory goal of the providing telecommunications access to low-income subscribers while establishing the necessary safeguards to protect the universal service fund and the functioning of the low-income support mechanism. To the extent, however, that our predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, the parties were instructed to file appropriate petitions with the Commission and the Commission has the option of reconsidering this forbearance ruling. We also noted that the conditions impose here would be incorporated into any grant of subsequent ETC designation petitions and any violation of such conditions may result in loss of ETC status.

<sup>11</sup> *April 2008 ETC Order*, paras. 8 and 23.

<sup>12</sup> *Comment Sought on TracFone Wireless Petitions for Designation as an ETC in the Commonwealth of Pennsylvania*, Docket No. 96-45, DA 08-57 (January 9, 2008).

<sup>13</sup> *In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless Petitions for Designation as an ETC Carrier in the State of New York, et al.*, 23 FCC Rcd 6206 (2008) (*April 2008 ETC Order*).

Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia were included.

20. The FCC concluded that, except for Florida, the relevant state commissions lack authority to perform the requested limited ETC designations and that therefore the Commission had the authority to make those designations under Section 214(e)(6) of TA-96. We dismissed without prejudice the Florida ETC petition given the change in Florida law and instructed TracFone to re-file a petition with the Florida Public Service Commission.<sup>14</sup>

21. In Paragraphs 15 and 16 of the *April 2008 ETC Order*, respectively, we found that TracFone's Lifeline offering will provide a variety of benefit including increased customer choice, high-quality service, and mobility. In addition, the prepaid feature, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts. Finally, we disagreed with TracFone that compliance with 911/E911 requirements was not relevant to the public interest. We conditioned TracFone's ETC designation as an ETC eligible for Lifeline support in each state on TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations related to the provision, and support of, 911 and E911 service.

22. In Paragraphs 22 and 23 of the *April 2008 ETC Order*, respectively, we reiterated TracFone's obligation to obtain a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a). Condition (a) requires TracFone to provide its Lifeline customers with 911 and enhanced E911 access regardless of activation status and availability of prepaid minutes.

23. On May 1, 2008, we issued an order granting NEP Cellcorp, Inc. (NEP) ETC Designation premised, in part, on NEP's securing a carrier-specific statement from the PaPUC declining to exercise jurisdiction.<sup>15</sup>

### C. THE PENDING MATTERS

24. On December 5, 2007, by Virgin Mobile USA, L.P. (Virgin Mobile), a reseller of commercial mobile radio services filed a petition requesting that the Commission forbear from applying the requirement in section 214(e)(1)(A) of the Act that an eligible telecommunications carrier (ETC) offer services supported by the universal service fund using either its own facilities or a

<sup>14</sup> 2005 Forbearance Order, para. 9.

<sup>15</sup> *In re: Federal-State Universal Service and ETC Designation Petitions*, Docket No. 96-45 (May 1, 2008), Appendix B, n. 30.

combination of its own facilities and resale of another carrier's services. In addition, Virgin Mobile asked the Commission to grant designation as an ETC in the state of New York and the Commonwealths of Pennsylvania and Virginia.

25. On December 13, 2007, we published Notice of the Virgin Mobile Petitions seeking Comments and Reply Comments on January 14, 2008 and January 29, 2008, respectively. That matter is currently pending with a statutory deadline for action on the forbearance by March 5, 2009. The PaPUC, among others, has filed in this proceeding.

26. On November 21, 2008, TracFone filed the pending Petition for Modification of Public Safety Answering Point Certification Condition (TracFone Modification Petition) with the FCC. The TracFone Modification Petition raises concerns with the time and cost to obtain PSAP certification. The TracFone Modification Petition also makes several allegations about delay, revocation, or refusal to provide PSAP Certification in Georgia, the District of Columbia, and Pennsylvania. There is no evidence that TracFone provided a copy to any party, including the PaPUC.

27. On December 24, 2008, we published notice of the TracFone Modification Petition issued on December 23, 2008. Comments and Reply Comments deadlines were January 14, 2009 and January 29, 2009, respectively. That notice was published on December 24, 2009. Several parties, among them the PaPUC, filed Comments and Reply Comments.

28. On December 23, 2008, TracFone filed a Supplement to the TracFone Modification Petition reiterating problems with obtaining PSAP certification from the District of Columbia, the City of Bethlehem, and inaction in New Hampshire. There is no evidence that TracFone provided a copy to any party, including the PaPUC.

29. On January 29, 2009, the Pennsylvania Emergency Management Agency (PEMA) filed a Petition to Reject TracFone's self-certification that TracFone is in full compliance with applicable Commonwealth of Pennsylvania 911 and enhanced 911 (E911) obligations, including obligations relating to the provision and support of 911 and E911 service pursuant to paragraph sixteen (16) of our order No. 08-100.

30. On March 2, 2009, TracFone filed a Motion for Partial Dismissal and Response to Ex Parte (the TracFone Motion). The TracFone Motion is limited to the PaPUC's Ex Parte filing of February 26, 2009. TracFone provided the PaPUC with an electronic copy.

### III. DISCUSSION

#### A. The Virgin Mobile and TracFone Forbearance Issues.

31. *The Virgin Mobile Forbearance Petition.* 47 USC § 160 requires the Commission to act on a forbearance petition by a date certain, in this case March 5, 2009, or the matter is deemed granted as a matter of law. Virgin Mobile's petition must be addressed no later than March 5, 2009 and Virgin Mobile relies on the *2005 Forbearance Order* for TracFone to obtain similar forbearance. Given their interconnection, we must deny the Virgin Mobile Petition for two primary reasons. First, we expressly noted in n. 25 of the *2005 Forbearance Order* which Virgin Mobile relies on to secure this relief that we would revisit forbearance from the Section 254(b) mandate on the ownership of facilities and the ancillary Commission regulations based on the predictive effect. The record in this case amply demonstrates that the predictive effect in 2009 on the one forbearance we did grant to TracFone in the *2005 Forbearance Order* is substantially different from the effect anticipated when we granted TracFone that forbearance in 2005.

32. TracFone has not complied with the obligation to obtain PSAP certification, a condition imposed in the *2005 Forbearance Order*. The pleadings of the parties, particularly the PaPUC and PEMA, demonstrate that TracFone has misrepresented the facts and made inconsistent statements about compliance with the *2005 Forbearance Order* conditions. The importance of public safety emphasized in the *2005 Forbearance Order* is not a matter we take lightly on compliance with public safety mandates. Given these evident problems, we see no reason to expect a different result with a grant of forbearance to other similarly situated carriers. This includes Virgin Mobile.

33. The denial of forbearance to Virgin Mobile is not in perpetuity, however. We are today issuing a Notice of Proposed Rulemaking on Grants of Forbearance from the Section 254(b) obligation on ownership as well as any ancillary Commission regulations. We recognize, in hindsight, that the anomalous process used to seek Comment on the then-pending TracFone petition resulted in less comment than would have been received by a better process, including a Notice of Proposed Rulemaking. We also recognize that a more detailed consideration of forbearance from this Congressional mandate warrants reconsideration. Indeed, denial of similar forbearance petitions and issuance of Notice of Proposed Rulemaking gives us a unique opportunity to address what

appears to be a major problem with forbearance from a carrier's obligation to own at least some facilities given the predictive effect in Pennsylvania.

34. Today's action will be retroactive for TracFone as well. We remove TracFone's forbearance for Pennsylvania because TracFone is the only entity that benefited from the *2005 Forbearance Order*. Affirmation of that forbearance is in Pennsylvania given the substantial change in predictive effect, particularly the changes outlined in the filings of the PaPUC and PEMA. Denial of that same precedent to similarly situated carriers is equally warranted to avoid compounding the evident predictive effects in Pennsylvania. But, to avoid disruptions in service to lower-income wireless Lifeline customers in jurisdictions where TracFone already has uncontested compliance with FCC mandates sufficient to market TracFone's wireless Lifeline service, we see no reason to disturb those uncontested operations or support at this time. We will address that issue as a final reconsideration in the Facilities Forbearance NPRM.

35. *The TracFone Forbearance*. The predictive effect of the *2005 Forbearance Order* in 2009 is markedly different compared to what we anticipated in 2005. As we noted in the *2005 Forbearance Order*, the Commission could, and does, reconsider that forbearance grant for TracFone albeit limited to Pennsylvania.

36. Pennsylvania's regulatory agencies have filed voluminous and credible facts and documentation amply demonstrating that TracFone is not in compliance with the mandate to "self certify" compliance with applicable Pennsylvania law. TracFone is not able to secure PSAP certification more as a result of TracFone's behaviors than any alleged unreasonable refusal, arbitrary delay, or capricious revocation. The PaPUC and PEMA filings demonstrate that TracFone is simply unable to obtain the prerequisite PSAP certifications, and for good reason. TracFone said at first that TracFone would only use AT&T Facilities but then capriciously reversed course and made contradictory claims that it actually uses multiple vendors. TracFone arbitrarily refused to conduct reasonable testing in some counties while apparently agreeing to undertake similar if not identical testing in Philadelphia County. TracFone made undocumented claims that unnamed counties revoked PSAP certifications. TracFone made unsubstantiated claims about "other agendas" driving the PaPUC and PEMA concerns with TracFone's operations, including the mandate to comply with state law and the accompanying obligation to secure PSAP certification.

37. We do not agree with TracFone that this is the result of some "other agenda" or unreasonable delays or revocations by PSAP operators or the

PaPUC or PEMA. To the contrary, TracFone's problems are largely self-created. TracFone makes inconsistent commitments to county PSAPs, such as Philadelphia and Monroe counties. TracFone makes inconsistent statements about what facilities TracFone intends to use when it seeks PSAP certification. Finally, TracFone's refusal to comply with state law addressing wireless support for 911 is evident in the fact that regulatory agencies are currently pursuing TracFone in state court for violation of state laws.

38. Unlike the situation in Pennsylvania, however, we are more reluctant to revoke forbearance based on predictive effect in other jurisdictions.

39. We are reluctant to do that given the harm to wireless Lifeline consumers currently receiving TracFone's wireless Lifeline service.

40. TracFone, as the only carrier that currently benefits from the *2005 Forbearance Order* waiving the statutory obligation to own at least some facilities as a precondition to ETC designation and FUSF support, should be allowed to continue to provide FUSF supported wireless Lifeline services in study areas where the predictive effect is other than that evident in Pennsylvania.

41. Absent evidence that the predictive effect from forbearance is different from what we anticipate (as is the case in Pennsylvania) or that challenges to TracFone's "self-certification" are outstanding (again, as is the case in Pennsylvania) and that PSAP operators are truly acting unreasonably when refusing to provide PSAP certification (again, not the case in Pennsylvania), we see no reason to revoke forbearance.

**B. The TracFone and Virgin-Mobile ETC designations.**

42. *TracFone's ETC Designation.* We also see no reason to continue ETC designation for TracFone in Pennsylvania. The PaPUC and PEMA filings amply demonstrate that TracFone is not in compliance with state laws. Those state filings demonstrate that TracFone's inability to obtain PSAP certification in some counties is not the result of arbitrary, capricious, or unreasonable refusals or revocations by the PSAP operators. To the contrary, their actions are reasonable and responsive to TracFone's own actions. This includes inconsistent statements about what facilities are being used and where they are being used, contradictory commitments to undertake testing in some counties while refusing to do similar if not identical testing in other counties. This also includes substantial failure to comply with the fundamental notice provisions the FCC imposed on TracFone when TracFone sought ETC designation in the first