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BRADLEY ARANT
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W. Wendell Cauley

Direct Dial: (334) 956-7603
Direct Fax: (334) 956-7803
wcauley@bradleyarant.com

Alabama Center for Commerce
401 Adams Avenue, Suite 700
Montgomery, Alabama 36104

May 29, 2009

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: CC Docket No. 96-45 Federal-State Joint Board on Universal Service

TracFone Wireless, Inc. - Petition for Designation as an Eligible
Telecommunications Carrier in the State of Alabama

Dear Ms. Dortch:

Enclosed for filing in the referenced matter are the original and five copies of the Alabama Commercial Mobile Radio Service Emergency Telephone Services Board's Petition for Rejection of Certification and for Revocation of the Limited "ETC" Status of TracFone Wireless, Inc. in the State of Alabama.

Should you have any question about this filing, or should additional information be needed, please contact the undersigned.

Thank you.

Sincerely,



Wendell Cauley

Enclosures

cc: Mitchell F. Brecher, Esq. (w/enclosure)
Leighton W. Lang, Esq. (w/enclosure)
James T. Sasser, Esq. (w/enclosure)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
State of Alabama) CC Docket No. 96-45
)
Petition for Designation as an Eligible)
Telecommunications Carrier in the)
State of Alabama)

**PETITION FOR REJECTION OF CERTIFICATION
AND FOR REVOCATION OF THE LIMITED "ETC" STATUS
OF TRACFONE WIRELESS, INC. IN THE STATE OF ALABAMA**

The Alabama Commercial Mobile Radio Service Emergency Telephone Services Board ("Board"), an agency of the State of Alabama created under the provisions of §11-98-7, *Code of Alabama 1975*, as amended, hereby respectfully petitions the Commission to reject TracFone Wireless, Inc.'s ("TracFone") self-certification that it is in full compliance with the applicable 911 and enhanced 911 ("E-911") obligations of the State of Alabama, including obligations relating to the provision and support of 911 and E-911 service pursuant to the provisions of paragraph sixteen (16) of the Federal Communications Commission ("FCC" or "Commission") Order 08-100, and to revoke TracFone's limited "Eligible Telecommunications Carrier" ("ETC") status in the State of Alabama.¹

¹ See *In the Matter of Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45 (April 9, 2008), 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; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts; Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; 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; Petition for Designation as an Eligible

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In support of this Petition to reject TracFone's certification and to revoke its limited ETC status ("Order 08-100"), the Board shows as follows:

1. In Order 08-100, the FCC granted TracFone conditional designation as an ETC pursuant to the provisions of §214(e)(6) of the Communications Act of 1934.² By virtue of this designation, TracFone is eligible to receive universal service lifeline support in a number of states, including the State of Alabama. Order 08-100 includes certain requirements that TracFone must satisfy as a condition of its ETC designation. In particular, TracFone must certify to the FCC that it is in full compliance with any applicable 911 and E-911 obligations, including obligations relating to the provision, and support of 911 and E-911 service in each of the affected states, including the State of Alabama.

2. By letter dated August 18, 2008, TracFone certified to the Commission that it "collects E-911 fees from those Alabama customers to whom it directly sells its services."³ On its face, this letter is deficient as certification that TracFone is in full compliance with all applicable 911/E-911 obligations, including obligations relating to provision, and support of, 911 and E-911 service in the State of Alabama, and TracFone is not in full compliance with all applicable 911/E-911 obligations (including obligations relating to provision and support of 911 and E-911 service in the State of Alabama).

3. Under the provisions of §11-98-7(b)(1), *Code of Alabama 1975*, as amended, the Board is authorized to levy a CMRS Emergency Telephone Service Charge ("CMRS Service Charge") on each CMRS connection that has a place of primary use within the geographical

Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households; 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 ("Order 08-100").

² 47 U.S.C. §§151, *et seq.*

³ Letter of Mitchell F. Brecher to Secretary Marlene H. Dortch dated August 18, 2008, a copy of which is attached as Exhibit "A."

boundaries of the State of Alabama. Pursuant to this statutory authority, the Board has levied a CMRS Service Charge of \$.70 per month per CMRS customer on each CMRS connection in the State of Alabama.⁴ By statute, the Board is to receive all revenue derived from this CMRS Service Charge. The funds collected from the CMRS Service Charge are distributed to emergency communication districts within the State of Alabama for the lease, purchase, or maintenance of wireless enhanced emergency telephone equipment, including necessary computer hardware, software, and database provisioning, and the handling of wireless emergency calls, and also are used for payment of the actual costs incurred by CMRS providers in complying with the wireless E-911 service requirements established by the FCC and any rules and regulations adopted by the FCC, “[i]ncluding, but not limited to, costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide the service as well as the incremental costs of operating the service.”⁵

4. §11-98-8 *Code of Alabama 1975*, as amended, provides that each CMRS provider (*i.e.*, acting as a collection agent for the CMRS Fund) collect the CMRS Service Charge levied upon CMRS connections pursuant to §11-98-7(b)(1) from each CMRS connection to whom the CMRS provider furnishes CMRS service, and, not later than sixty (60) days after the end of each calendar month in which CMRS Service Charges are collected, remit to the Board the net CMRS Service Charges collected (after deducting the fee authorized as compensation for the act of collecting the fee).⁶

⁴ A CMRS connection is a mobile telephone number assigned to the customer. *See*, §11-98-6(5) *Code of Alabama 1975*, as amended.

⁵ *See* §11-98-7(b)(2) *Code of Alabama 1975*, as amended.

⁶ CMRS providers are not obliged to take legal action to enforce the collection of the CMRS Service Charge, and if a CMRS provider receives partial payment for a monthly bill from a CMRS subscriber, the CMRS provider is authorized to apply the payment against the CMRS subscriber owes the CMRS provider first and then remit to the

5. TracFone provides prepaid wireless service in the State of Alabama, and, as such, is a CMRS provider in the State of Alabama. TracFone, therefore, is required to collect and remit to the Board the \$.70 per month CMRS Service Charge for each CMRS connection to which TracFone furnishes CMRS service in Alabama.

6. TracFone's representation that it collects E-911 fees from those Alabama customers to whom it sells its services directly contained in its August 18, 2008 letter to the FCC, on its face, does not certify that TracFone is in compliance with *all* of the State of Alabama's 911 and E-911 obligations, including obligations relating to the provision and support of 911 and E-911 service. TracFone's August 18, 2008 letter artfully avoids mention of service provided to customers, who purchase TracFone's prepaid service through retail outlets; and while the August 18, 2008 letter states that TracFone *collects* E-911 fees from Alabama customers to whom it sells its services directly, the letter says nothing about *remittance* of CMRS Service Charges to the Board.

7. The statute directs that TracFone collect and remit to the Board \$.70 per month for each CMRS connection (*i.e.*, a mobile telephone number) to which TracFone furnishes CMRS service in Alabama. TracFone furnishes CMRS service to many CMRS customers who purchase TracFone's prepaid service through retail outlets. TracFone has made no representation that it collects or remits the amount of the CMRS Service Charge for each of the CMRS connections assigned to these CMRS customers; and in fact, TracFone does not collect or remit the CMRS Service Charges for these connections.

8. In addition, TracFone does not remit with respect to its "direct" sales on a per CMRS connection as required by the statute. Rather, TracFone divides its "direct" sales revenue

Board the lesser amount, if any, resulting from application of payment to the amount the CMRS subscriber owes the CMRS provider. §11-98-8, *Code of Alabama 1975*, as amended.

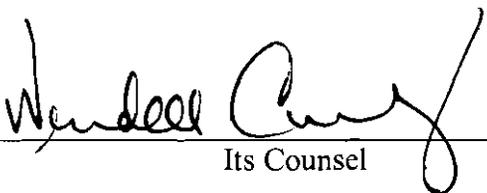
by fifty dollars, and multiplies the quotient by the amount of the CMRS Service Charge. Nothing in the Alabama statutes or the Board regulations authorizes TracFone to employ a "proxy" for CMRS connections of this character. TracFone is not, therefore, in compliance with the State of Alabama's 911 and E-911 obligations, including obligations relating to the provision and support 911 and E-911 service.

9. The Board, therefore, respectfully requests (1) that the Commission reject TracFone's August 18, 2008 "certification" as deficient on its face, and to the extent that TracFone may contend that its August 18, 2008 "certification" is a certification of compliance with the State of Alabama's 911 and E-911 obligations, including obligations relating to the provision and support of 911 and E-911 service, factually incorrect, and (2) that the Commission revoke TracFone's limited ETC status in the State of Alabama.

WHEREFORE, the Board respectfully requests that the Commission reject TracFone's self-certification of compliance with Alabama law regarding 911 and E-911 obligations and revoke TracFone's limited ETC status in Alabama.

Respectfully submitted,

The Alabama Commercial Mobile Radio Service
Emergency Telephone Services Board

By: 
Its Counsel

Of Counsel:

Bradley Arant Boult Cummings LLP
401 Adams Avenue, Suite 780
Montgomery, Alabama 36104

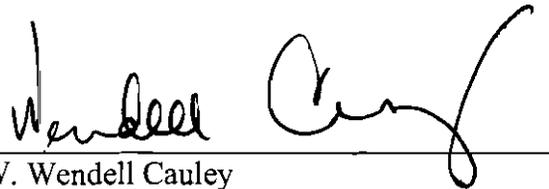
Date: May 29, 2009

CERTIFICATE OF SERVICE

I, W. Wendell Cauley, attorney for the Alabama Commercial Mobile Radio Services Board, hereby certify that on May 29, 2009, I caused to be served a true and correct copy of the foregoing "Petition to Reject Certification" by U.S. Mail, first-class postage prepaid and addressed to the following individuals:

Mitchell F. Brecher, Esq.
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, D.C. 20037

Leighton W. Lang, Esq.
Assistance Vice President & General Counsel
State Regulatory Affairs
TracFone Wireless, Inc.
9700 N.W. 112th Avenue
Miami, Florida 33178

A handwritten signature in black ink, appearing to read "Wendell Cauley", written over a horizontal line.

W. Wendell Cauley
Its Counsel

EXHIBIT "A"

Letter of Mitchell F. Brecher to
Secretary Marlene H. Dortch
dated August 18, 2008

August 18, 2008

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

Re: CC Docket No. 96-45 Federal-State Joint Board on Universal Service
TracFone Wireless, Inc. Petitions for Designation as an Eligible
Telecommunications Carrier

Dear Ms. Dortch:

By order issued April 11, 2008 (FCC 08-100), the Commission designated TracFone Wireless, Inc. as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended, to receive Universal Service Fund support to provide Lifeline service in the states of New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia.

Those ETC designations are subject to certain conditions, including a condition set forth at paragraph 16 of the aforementioned order that TracFone certify that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to provision, and support, of 911 and E911 service. By this letter, TracFone certifies that it collects E911 fees from those Alabama customers to whom it directly sells its services.

If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,

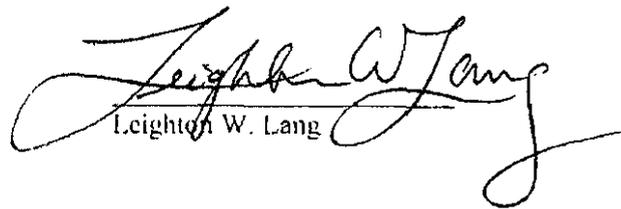


Mitchell F. Brecher

DECLARATION

I am Leighton W. Lang, Assistant Vice President and General Counsel, State Regulatory Affairs, TracFone Wireless, Inc. My business address is 9700 N.W. 112th Avenue, Miami, FL 33178.

I have reviewed the letter from Mitchell F. Brecher, to which this Declaration is attached. All matters stated therein are true and correct based upon information and belief.


Leighton W. Lang