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Ex Parte Notice

By ECFS

January 8, 2010

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

Re: *Comment Sought on TracFone Request for Modification of Condition Adopted in Commission Order Granting TracFone Forbearance from Eligible Telecommunications Carrier Requirements, CC Docket No. 96-45*

Dear Secretary Dortch:

The Massachusetts Department of Telecommunication and Cable (“MDTC”)¹ respectfully submits this letter as an ex parte communication in response to the Public Notice issued by the Federal Communications Commission (“FCC”) on June 5, 2009, in the above-captioned docket. The MDTC proposes that the FCC refrain from considering TracFone Wireless Inc.’s (“TracFone”) proposal to eliminate a condition of the FCC’s earlier grant of forbearance until such a time as the MDTC has concluded its pending investigation into

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. Mass. Gen. Laws c. 25C, § 1.

TracFone's first annual verification audit so that the findings of that investigation may be available to the FCC in considering TracFone's instant petition.

On September 8, 2005, the FCC released an order granting TracFone's request that the FCC forbear from the requirement that an eligible telecommunications carrier ("ETC") provide services at least partly over its own facilities. *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 C.F.R. § 54.201(i)*, 20 F.C.C.R. 15095, 15095 (Sept. 8, 2005) ("*Forbearance Order*"). In granting forbearance, the FCC specifically required TracFone to meet certain conditions. *Id.* at 15098-99. Among these, the FCC mandated that "[s]pecifically, as a further condition of this grant of forbearance and in addition to all other required certifications under the program, we require that TracFone require its Lifeline customers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are the head of household and only receive Lifeline-supported service from TracFone." *Id.* at 15103.

In April of 2009, TracFone petitioned the FCC seeking modification of the condition established in the forbearance order which requires TracFone's Lifeline customers to verify their eligibility for the Lifeline program through self-certification on an annual basis. *Comment Sought on TracFone, Request for Modification of Conditions Adopted in Commission Order Granting TracFone Forbearance From Eligible Telecommunications Carrier Requirements, Public Notice*, 24 F.C.C.R. 7694, 7694 (June 5, 2009) ("Notice"). TracFone seeks instead to annually verify with a statistically valid sample of its customers that they are the head of household and receive Lifeline-supported service from TracFone only. *Id.* The deadline for comments in that proceeding was July 20, 2009. *Id.* The MDTC did not comment prior to the July 20, 2009 deadline as it did not have anything specific to contribute at that time.

On November 17, 2009, TracFone submitted its Annual Audit Report of its SafeLink Wireless Lifeline subscribers to the MDTC for the purpose of verifying the eligibility of its subscribers. Letter from Debra McGuire Mercer, Counsel for TracFone, to Catrice Williams, Secretary, Massachusetts Department of Telecommunications and Cable (Nov. 17, 2009). The MDTC has recently opened an investigation into the matter and docketed the matter as D.T.C. 09-9.

Now, after having received TracFone's audit report and having subsequently opened an investigation into that audit, the MDTC recommends that the FCC delay considering elimination of the annual verification requirement until the MDTC concludes its review of TracFone's audit. The MDTC anticipates concluding this proceeding within six months. The MDTC believes that the results of its investigation may be of use to the FCC and can only serve to further inform the FCC on this issue.

Sincerely,

/s/
Geoffrey G. Why, Commissioner
Massachusetts Dept. of
Telecommunications and Cable

cc: Sharon Gillett
Jennifer McKee
Elizabeth Valinoti McCarthy
Antoinette Stevens