

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

In the Matter of:

Federal-State Joint Board on Universal Service

WC Docket No. 09-197

Colorado E-911 Authorities Petition
to Reject TracFone Wireless Inc.'s
Self-Certification of 911 and E-911 Compliance

**REPLY COMMENTS OF THE
CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”)¹ respectfully submits these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice regarding the Petition filed by the Colorado 911 Authorities to reject TracFone’s self-certification to the FCC of compliance with applicable 911 and E-911 obligations.² As described below, the Commission should dismiss the Petition because (1) the Colorado 911 Authorities misunderstand the requirements of eligible telecommunications carriers (“ETCs”) participating in the Federal Universal Service Low-Income programs, (2) TracFone is not required to make any such certification for Colorado, and (3) the Colorado 911 Authorities have chosen an improper venue for their request.

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, broadband PCS, ESMR and 700 MHz licensees, as well as providers and manufacturers of wireless data services and products.

² See *Comment Sought on Colorado E-911 Authorities Petition to Reject TracFone Wireless Inc.’s Self-Certification of 911 and E-911 Compliance*, Public Notice, WC Docket No. 09-197, DA 10-346 (rel. March 1, 2010) (The Colorado E911 Authorities incorrectly conflate the FCC’s condition on forbearance from the facilities-based carrier requirement of participation in the Lifeline program with the FCC’s condition on TracFone’s grant of ETC designation. CTIA will address both requirements in these reply comments as the Petition’s request suffers from the same infirmities for each.).

TracFone is Not Required to Obtain Certification From Colorado PSAPs or to Certify Compliance With Colorado E911 Laws

The Colorado 911 Authorities base their Petition on the Commission's ability to reject TracFone's self-certification that it has complied with state 911/E911 laws as a condition of ETC designation. Specifically, the Colorado 911 Authorities' Petition asks the FCC to examine TracFone's compliance with two of the conditions of its certification as an ETC – the PSAP Certification requirement that was a condition of FCC forbearance from the requirement that Lifeline participants provide service over their own facilities, and the State 911/E911 Law Compliance Certification that is a condition of the FCC's grant of TracFone's ETC designation. Because TracFone is not an ETC in Colorado and because the FCC does not certify ETCs for the state of Colorado, the Colorado 911 Authorities request is misplaced.

TracFone participates in the Federal Lifeline program, which is part of the Universal Service Fund's Low-Income fund.³ In order to obtain certification as an ETC – a prerequisite to participation in the Universal Service Fund mechanisms – TracFone successfully petitioned the FCC for forbearance from the requirement that ETCs use their own facilities to provide the supported services.⁴ As a condition of that forbearance, TracFone must obtain certification of E911 service compliance from each PSAP in the coverage area for which they are receiving support⁵ – or in the alternative, self-certify compliance with E911 coverage requirements.⁶ Additionally, for those states for which the FCC designates ETCs, the Commission imposed a requirement on TracFone that it certify compliance with state 911 and E911 laws.⁷

³ See generally, Universal Service Program for Low-Income Customers at http://www.fcc.gov/wcb/tapd/universal_service/lowincome.html.

⁴ *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 FCC Rcd 15095 (2005) (“TracFone Forbearance Order”).

⁵ TracFone Forbearance Order at ¶15.

⁶ See *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. et al*, 24 FCC Rcd 3375 (2009).

⁷ *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al*, 23 FCC Rcd 6206 (2008) (“TracFone ETC Designation”).

The Colorado 911 Authorities, however, are asking the Commission to reject a certification that TracFone is not required to make. The FCC’s designation of TracFone – and thus, the FCC’s requirement for state 911 law compliance certification – was specific to the 11 states for which TracFone petitioned and for which the Commission is the entity that certifies ETC status.⁸ Colorado does not fit into either of those categories. TracFone’s Petition for ETC designation at the FCC did not include a request for designation in Colorado, as the Colorado Public Utilities Commission (“Colorado PUC”) designates ETCs in Colorado.⁹ As a result, the Colorado 911 Authorities are seeking a result the FCC is not in a position to grant and is more properly resolved through Colorado agencies. The Colorado 911 Authorities Petition should be dismissed.

Even if the FCC Were the Proper Venue, the State Tax Law in Question Does Not Address Prepaid Wireless Services

Finally, even if the FCC were the proper venue for the Colorado 911 Authorities to seek action in this matter, the state tax law in question does not address prepaid wireless. The operative statutes in Colorado governing the collection and remittance of E911 fees make no mention of prepaid wireless services. In fact, legislation was proposed in 2008 specifically seeking to expand the E911 statutes to include prepaid wireless consumers in the fee base. Those provisions, however, were removed from the bill prior to final passage.¹⁰

Order”) (“we condition TracFone’s *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 relating to the provision, and support, of 911 and E911 service.” (emphasis added)).

⁸ TracFone has been designated by the Commission as an ETC in New York, Virginia, Connecticut, Massachusetts, North Carolina, Alabama, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.

TracFone Designation Order at ¶ 26.

⁹ See 4 CCR 732-2 § 2187 *et seq.*

¹⁰ Introduced bill -

http://www.leg.state.co.us/clics/clics2008a/csl.nsf/fsbillcont3/6B0AA59282A2E4B7872573940062B1A0?open&file=1249_01.pdf

Enrolled measure –

http://www.leg.state.co.us/clics/clics2008a/csl.nsf/fsbillcont3/6B0AA59282A2E4B7872573940062B1A0?open&file=1249_enr.pdf

In many states, the wireless industry is working directly with the public safety community to pass legislation to address prepaid customer participation in the E911 base through a retail point-of-sale collection mechanism.¹¹ In fact, CTIA has worked in Colorado with the Colorado 911 Authorities involved with this Petition during the 2010 legislative session.¹² The industry has similar legislation pending in approximately 16 states and CTIA believes this is the best approach that allows for collection of critical E911 fees directly from the end-user or prepaid wireless services, while ensuring that all wireless users are contributing equitably and transparently to the funding requirements necessary to support the emergency communications systems.

¹¹ See, e.g., *Comment Sought on Alabama Commercial Radio Service Emergency Telephone Board Petition to Reject TracFone Wireless Inc. 's ETC Self-Certification*, Public Notice, CC Docket No. 96-45, DA 09-1558 (rel. July 21, 2009).

¹²

http://www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont3/C2D1A9E5BF83061E872576AC00670983?open&file=120_ren.pdf

CONCLUSION

CTIA remains committed to working with public safety, retailers and state and local governments to implement collection of E-911 fees for prepaid wireless services at the retail point-of-sale. However, because the instant Petition seeks action that is outside the scope of the Commission's ETC authority, the Petition should be dismissed.

Respectfully submitted,

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April 15, 2010