

OPEN MEETING ITEM



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COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: FEBRUARY 15, 2011

DOCKET NO.: T-20664A-09-0148

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

TRACFONE WIRELESS, INC.
(ELIGIBLE TELECOMMUNICATIONS CARRIER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

FEBRUARY 24, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 1, 2011 and MARCH 2, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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FEB 15 2011

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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION
9 OF TRACFONE WIRELESS, INC. FOR
10 DESIGNATION AS AN ELIGIBLE
11 TELECOMMUNICATIONS CARRIER FOR
12 THE LIMITED PURPOSE OF OFFERING
13 LIFELINE AND LINK UP SERVICES TO
14 QUALIFIED HOUSEHOLDS IN ARIZONA.

DOCKET NO. T-20664A-09-0148

DECISION NO. _____

ORDER

10 Open Meeting
11 March 1 and 2, 2011
12 Phoenix, Arizona

13 **BY THE COMMISSION:**

14 * * * * *

15 Having considered the entire record herein and being fully advised in the premises, the
16 Commission finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 **I. Procedural History**

19 1. On March 24, 2009, TracFone Wireless, Inc. ("TracFone") filed with the Arizona
20 Corporation Commission ("Commission") an application for designation as an Eligible
21 Telecommunications Carrier ("ETC") for the limited purpose of offering Lifeline and Link Up
22 services in Arizona.

23 2. On July 27, 2009, TracFone filed a First Amendment to Petition for Designation as an
24 ETC.

25 3. On August 7, 2009, TracFone filed a Revised First Amendment to its application.

26 4. On October 28, 2009, TracFone filed a Second Amendment to its application.

27 5. On December 18, 2009, the Arizona Local Exchange Carriers Association
28 ("ALECA") filed a Motion to Intervene.

1 6. On February 8, 2010, TracFone filed a response to ALECA's Motion to Intervene,
2 stating that TracFone did not object to ALECA's intervention and that its proposed services are not
3 the same as those offered by ALECA member companies.

4 7. By Procedural Order issued on February 19, 2010, the Commission's Utilities
5 Division ("Staff") was directed to file a response to ALECA's Motion to Intervene.

6 8. On March 1, 2010, Staff filed a response to ALECA's Motion to Intervene, stating that
7 Staff had no objections to the intervention.

8 9. On March 16, 2010, by Procedural Order, ALECA's Motion to Intervene was granted.

9 10. On April 7, 2010, pursuant to Arizona Supreme Court Rule 38(a), Kristine K.
10 Campbell, an attorney with Greenberg Taurig, LLP, filed with the Commission a Motion and Consent
11 of Local Counsel for *Pro Hac Vice* Admission of Mitchell Brecher on behalf of TracFone Wireless,
12 Inc.

13 11. On April 15, 2010, by Procedural Order, Mitchell Brecher was admitted *pro hac vice*
14 in this matter with Kristine K. Campell as the designated member for the Arizona State Bar with
15 whom communications may be made and papers may be served.

16 12. On April 29, 2010, Staff issued a Staff Report, recommending approval of TracFone's
17 application with conditions.

18 13. On May 10, 2010, by Procedural Order, a procedural conference was scheduled for
19 May 20, 2010.

20 14. On May 20, 2010, a procedural conference was held as scheduled. TracFone,
21 Intervenor ALECA, and Staff appeared through counsel. During the procedural conference,
22 procedural deadlines were discussed; other Commission Decisions regarding TracFone's proposed
23 services were discussed; the parties were directed to make a joint filing updating the Commission on
24 the settlement of any of the issues raised in this proceeding; and tentative dates for a status conference
25 were discussed.

26 15. On May 25, 2010, by Procedural Order, a status conference was scheduled to
27 commence on July 1, 2010.

28 16. On June 17, 2010, TracFone filed a Notice of Mailing Application and Procedural

1 Order to Rural Incumbent Local Exchange Carriers.

2 17. On June 21, 2010, Staff filed a request to vacate the July 1, 2010, status conference
3 (“Request”). The Request stated the parties were in the process of trying to resolve the disputed
4 issues and that all the parties were in an agreement that more time was needed.

5 18. On June 25, 2010, by Procedural Order, Staff’s request to vacate the July 1, 2010,
6 status conference was granted and the parties were ordered to make a joint filing within 30 days
7 updating the Commission on the resolution of any disputed issues.

8 19. On July 26, 2010, the parties filed a joint status report stating that significant progress
9 had been made towards narrowing the disputed issues, but that additional time, until August 16, 2010,
10 was needed.

11 20. On August 3, 2010, by Procedural Order, the parties were granted additional time to
12 until August 31, 2010, to file their joint status report.

13 21. On September 3, 2010, the parties filed a Supplemental Joint Status Report (“Report”)
14 outlining the issues the parties were able to resolve.

15 22. On December 6, 2010, by Procedural Order, a pre-hearing conference was scheduled
16 for December 22, 2010.

17 23. On December 22, 2010, the pre-hearing conference was held as scheduled. Staff,
18 TracFone, and ALECA appeared through counsel. During the pre-hearing conference, TracFone
19 stated that the parties and Staff are in agreement on the substantive issues raised in this matter and
20 requested that no hearing be held, and that an Order be submitted to the Commission. After some
21 clarifying comments, Staff and ALECA concurred that this matter could proceed without a hearing as
22 the issues in dispute had been settled.

23 **II. Background**

24 24. TracFone is a telecommunications corporation, incorporated under the laws of
25 Delaware, with its principal place of business in Miami, Florida.¹ TracFone is a reseller of
26 commercial mobile radio service (“CMRS”), and provides services using a “virtual network.”²

27 _____
28 ¹ TracFone application at 2.

² Id.

1 According to TracFone's application, it has consistently provided CMRS services throughout Arizona
 2 and the United States for the past ten years through wireless carriers like AT&T Wireless, T-Mobile,
 3 and Verizon Wireless.³

4 25. TracFone is seeking ETC designation solely to provide Lifeline⁴ and Link Up⁵
 5 services to qualified low-income Arizona households. TracFone will be eligible to receive funds from
 6 the federal Universal Service Fund ("USF") for its Lifeline services only (see discussion below on
 7 TracFone's limited ETC designation), but is not eligible to receive federal USF support for high-costs
 8 services such as Link Up, toll limitation, or Lifeline to Tribal Lands.⁶ TracFone seeks to provide
 9 service within areas served by other non-rural and rural incumbent local exchange carriers
 10 ("ILECs").⁷

11 26. TracFone states that it will provide Lifeline service in all areas in Arizona served by
 12 AT&T Mobility, T-Mobile, and Verizon Wireless.⁸ TracFone's Lifeline customers in Arizona will
 13 receive 68 minutes of use each month at no charge, unused minutes will roll over from month to
 14 month, and all Link Up customers will receive handsets at no charge.⁹

15 27. Subsequent to filing the above application, TracFone filed a Notice of Expanded
 16 Lifeline Offering. The Notice states TracFone will offer expanded SafeLink Wireless® Lifeline
 17 service for existing and new customers.¹⁰ Under the expanded service, TracFone will offer Lifeline
 18 customers in all states and Arizona the option to select from three monthly plans.¹¹ The plans are:

- 19 a. 250 free minutes each month, which do not carry over the next month if
 20 unused, with texting available at a rate of one text per minute of airtime; or
- 21 b. 125 free minutes each month, which carry over the following month if unused,
 with texting available at a rate of one text per minute of airtime; or
- 22 c. 68 free minutes each month, which carry over the following month if unused,

23 ³ TracFone application at 2.

24 ⁴ TracFone's Lifeline service will offer low income customers wireless services and limited wireless usage at no charge.
 TracFone application at 3.

25 ⁵ TracFone's Link Up service will provide qualified customers with a free wireless telephone handset. TracFone
 application at 3.

26 ⁶ The FCC states that the Lifeline and Link Up programs are designed to reduce the monthly cost of telecommunications
 service and the cost of initial connection, respectively, for qualifying consumers. TracFone application at 2.

27 ⁷ Application at Exhibit 11.

⁸ TracFone's Second Amended Petition (dated October 28, 2009) at 1.

⁹ TracFone's First Amended Petition (dated July 27, 2010) at 2.

28 ¹⁰ TracFone's Notice of Expanded Lifeline Offering filed August 13, 2010.

¹¹ Id.

1 with texting available at a rate of 3 texts per each minute of airtime, plus
2 International Long Distance calling to over 60 destinations.¹²

3 28. TracFone states that its proposed Lifeline service in Arizona will differ from other
4 ETC Lifeline programs because it will offer low-income consumers the convenience and portability
5 of wireless services free of charge.¹³ TracFone also states that under its Link Up service plan,
6 customers will receive a free wireless telephone handset, which will allow Lifeline and Link Up
7 customers to initiate and receive calls from their wireless handset without incurring activation or
8 usage charges.¹⁴ TracFone believes its proposed services will operate in accordance with the spirit of
9 universal service because its services can be accessed virtually nationwide and its rates are nationally
10 uniform.¹⁵

11 29. ALECA is comprised of small telephone companies and member-owned cooperatives
12 providing local exchange telecommunications services to customers in rural, high cost areas of
13 Arizona, and are considered "rural telephone companies" under the Telecommunications Act of 1996
14 ("1996 Act").¹⁶ ALECA states its members are Fort Mojave Telephone Company; Frontier
15 Communications Corporation; Gila River Telecommunications, Inc.; Hopi Telecommunications, Inc.;
16 Midvale Telephone Exchange, Inc.; San Carlos Apache Telecommunications Utility, Inc.; South
17 Central Communications; Table Top Telephone Company, Inc.; TDS; Tohono O'odham Utility
18 Authority; Valley Telephone Cooperative; and Zona Communications.¹⁷

19 30. ALECA states that it is concerned that TracFone's proposed services in Arizona will
20 be duplicative of the services already provided by its member companies and may cause the federal
21 USF to grow to the point where its members' compensation under the fund is endangered, and public
22 support may be undermined.¹⁸

23 31. TracFone asserts that its proposed Lifeline services are not similar to the Lifeline
24 offerings of ALECA member companies in that TracFone will offer wireless services at no charge to

25 ¹² TracFone's Notice of Expanded Lifeline Offering filed August 13, 2010.

26 ¹³ TracFone application at 3.

27 ¹⁴ Id.

28 ¹⁵ Id.

¹⁶ ALECA Motion to Intervene (dated December 18, 2009) at 1.

¹⁷ The Motion to Intervene states that Fort Mohave Telecommunications, Gila River Telecommunications, Hopi Telecommunications, San Carlos Apache Telecommunications, and Tohono O'odham Utility Authority are tribal owned telephone companies and are not subject to the ACC's jurisdiction. ALECA Motion to Intervene at 1.

¹⁸ ALECA Motion to Intervene (dated December 18, 2009) at 2.

1 customers and free E911 compliant handsets.¹⁹ In contrast, ALECA member companies offer Lifeline
 2 services using landlines.²⁰ Regarding the growth of the federal USF, TracFone asserts that it is
 3 seeking Tier 1, Tier 2, and Tier 3 Lifeline support from the federal USF and that it is not eligible for
 4 Tier 4 support which allows an ETC to receive an additional \$25 per customer, per month for
 5 residents of tribal communities.²¹ TracFone contends that because several of ALECA's member
 6 companies are tribally owned it will not be competing for federal USF support with those companies
 7 and therefore the funds dispersed from the federal USF will not grow as a result of TracFone's
 8 proposed services.²²

9 32. Staff believes that TracFone's proposed service as a wireless ETC is consistent with
 10 the FCC's requirement that universal service support not unfairly advantage or disadvantage one
 11 provider over another or one technology over another.²³ Staff also contends that since TracFone is
 12 not eligible for high cost support (Tier 4), TracFone's proposed services will not affect any Lifeline
 13 support for ALECA member companies serving tribal lands.²⁴

14 33. Staff's conclusions are consistent with the FCC's Forbearance Order (discussed
 15 below) which states that "if TracFone is able to obtain ETC designation for Lifeline-only services, we
 16 do not expect this to significantly burden the universal service fund and thus negatively affect
 17 consumers through increased pass through charges of the carriers' contribution obligations."²⁵

18 **III. Requirements for Designation as an ETC**

19 34. Pursuant to 47 U.S.C. § 214(e)(1) of the 1996 Act, in order to qualify for designation
 20 as an ETC a common carrier must meet the following requirements:

21 "A common carrier designated as an eligible telecommunications carrier
 22 under paragraph (2) or (3) shall be eligible to receive universal service
 23 support in accordance with Section 254 and shall throughout the service
 24 area for which the designation is received – (A) offer the services that are
 25 supported by Federal universal service support mechanisms under Section
 254(c), either using its own facilities or a combination of its own facilities
 and resale of another carrier's services (including the services offered by
 another eligible telecommunications carrier); and (B) advertise the

26 ¹⁹ TracFone Response to ALECA's Motion to Intervene at 1.

²⁰ TracFone Response to ALECA Motion to Intervene at 2.

²¹ Id. at 2.

²² Id.

²³ Staff Report at 10.

²⁴ Id.

²⁵ Staff Report at 11.

1 availability of such services and the corresponding charges using media of
2 general distribution.”

3 35. TracFone acknowledges that Section 214(e)(1)(A) requires that a common carrier
4 seeking designation as an ETC must “offer services, at least in part, over their own facilities and that
5 Federal Communication Commission Rules prohibits state commissions from designating as an ETC
6 a telecommunications carrier that offers services exclusively through the resale of another carrier’s
7 services.”²⁶

8 36. TracFone attached to its application in this docket a Forbearance Order issued by the
9 Federal Communication Commission (“FCC”) granting TracFone forbearance from the facilities-
10 based service requirement pursuant to Section 214(e)(1)(A) for its Lifeline support services only, and
11 subject to the following conditions.²⁷ The Forbearance Order requires TracFone to:

- 12 a. Provide its Lifeline customers with 911 and enhanced 911 (“E911”) access
13 regardless of the activation status and availability of prepaid minutes;
- 14 b. Provide its Lifeline customers with E911-compliant handsets and replace, at no
15 additional charge to the customer, non-compliant handsets of existing
16 customers who obtain Lifeline supported services;
- 17 c. Comply with conditions (a) and (b) as of the date it provides Lifeline services;
- 18 d. Obtain a certification from each Public Safety Answering Point (“PSAP”)
19 where TracFone provides Lifeline service confirming that TracFone complies
20 with condition (a) or if within 90 days of TracFone’s request a PSAP has not
21 responded, TracFone may self-certify that it meets the basic and E911
22 requirements;
- 23 e. Require its customers to self-certify at time of service activation and annually
24 thereafter that they are the head of the household and receive Lifeline
25 supported service only from TracFone; and
- 26 f. Establish safeguards to prevent its customers from receiving multiple TracFone
27 Lifeline subsidies at the same address.²⁸

28 37. Under the Forbearance Order, TracFone is designated as a “limited ETC” because its
29 eligibility applies to only Lifeline services, TracFone is not eligible to receive support for other
30 supported services under the low-income program, and it is not eligible to receive support for services
31 supported by the other universal service fund support mechanisms like high costs Link Up services.²⁹

32 ²⁶ TracFone application at 4.

33 ²⁷ Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd
34 15095 (2005) (“TracFone Forbearance Order”).

35 ²⁸ Id.

36 ²⁹ Id.

1 **IV. Staff Recommendations**

2 38. In addition to the conditions set forth by the FCC, Staff recommends approval of
3 TracFone's application for designation as an ETC, subject to the following conditions:

- 4 a. TracFone shall evaluate providing Lifeline customers free access to Customer
5 Service from TracFone's handsets;
- 6 b. TracFone shall evaluate offering a rate no more than \$0.10 per minute for
7 additional minutes;
- 8 c. TracFone shall file a tariff with the Commission, setting forth the rates, terms,
9 and conditions for its Lifeline service within thirty (30) days of a Commission
10 Order in this matter;
- 11 d. TracFone shall notify the Commission of any future changes to its rates, terms
12 and/or conditions regarding its Lifeline offerings and file such charges in its
13 tariff and amend its tariff in compliance with A.R.S. § 40-367;
- 14 e. TracFone shall make available Lifeline services to qualifying low-income
15 applicants in its ETC service area no later than ninety (90) days after the
16 effective date of this decision and concurrently to notify the Utilities Division
17 Director, by making a filing in Docket Control, of the commencement for such
18 services;
- 19 f. TracFone shall apprise the Commission of customer complaints that may arise
20 from its ETC service offerings by making a filing in Docket Control;
- 21 g. TracFone shall provide a regulatory contact to the Commission's Consumer
22 Services Division;
- 23 h. In the event that TracFone requests to relinquish its ETC status and no longer
24 provides Lifeline services, it must provide notice to both the Commission and
25 its customers. Such notices shall be in accordance with A.A.C. R14-2-1107;
- 26 i. TracFone shall submit an annual report by April 15th of each year, beginning
27 April 15, 2011, that contains its total number of Lifeline subscribers, total
28 amount of Federal USF support received and an affidavit stating that Lifeline
discounts or the equivalent are equal to the amount of total federal USF support
per line. The annual filing shall be submitted as a compliance item in this
docket; and
- j. That TracFone submit a quarterly report detailing the total number of Lifeline
customers, the total number of customers removed from the customer base due
to 60-day inactivity, the number of customers removed from the customer base
due to annual verification, and the total number of customers who voluntarily
relinquished Lifeline service. The quarterly report should be submitted as a
compliance item in this docket on the 15th of the month following the end of
the quarter.

39. Staff believes its recommendation that TracFone provide a quarterly report of the
number of customers with periods of inactivity greater than sixty (60) days who have not cancelled

1 service, are no longer eligible for Lifeline service, or who voluntarily deactivate service; will help to
 2 monitor whether TracFone is continuing to receive the \$10 per month, per handset fee from the
 3 Universal Service Administrative Company after customers deactivate services.³⁰

4 **V. TracFone's Compliance with the Requirements for ETC Designation**

5 **A. Services Designated for Support**

6 40. TracFone states it will offer the services set forth in 47 C.F.R. § 54.101(a) and
 7 54.202(a), in order to receive federal USF support for its Lifeline service.³¹ These services include:

- 8 a. Voice Grade Access to the Public Switched Network: "Voice grade access" is
 9 defined as a functionality that enables a user of telecommunications services to
 10 transmit voice communications, including signaling the network that the caller
 11 wishes to place a call, and to receive voice communications, including
 12 receiving a signal indicating there is an incoming call. The bandwidth for
 13 voice grade access should be at a minimum, 500 to 4,000 Hertz;
- 14 b. Local usage: "Local usage" means an amount of minutes of use of exchange
 15 service, prescribed by the Commission, provided free of charge to end users;
- 16 c. Dual Tone Multi-Frequency Signaling of its Functional Equivalent: "Dual
 17 tone multi-frequency" ("DTMF") is a method of signaling that facilitates the
 18 transportation of signaling through the network, shortening call set-up time;
- 19 d. Single-Party Service or its Functional Equivalent: "Single-party service" is a
 20 telecommunications service that permits users to have exclusive use of a
 21 wireline subscriber loop or access line for each call placed, or, in the case of
 22 wireless telecommunications carriers, which use spectrum shared among users
 23 to provide service, a dedicated message path for the length of a user's
 24 particular transmission;
- 25 e. Access to Emergency Services: "Access to emergency services" includes
 26 access to services, such as 911 and enhanced 911, provided by local
 27 governments or other public safety organizations. 911 is defined as a service
 28 that permits a telecommunications user, by dialing the three-digit code "911,"
 to call emergency services through a Public Service Access Point ("PSAP")
 operated by the local government. "Enhanced 911" is defined as 911 service
 that includes the ability to provide automatic numbering information ("ANI"),
 which enables the PSAP to call back if the call is disconnected, and automatic
 location information ("ALI"), which permits emergency service providers to
 identify the geographic location of the of the calling party. "Access to
 emergency services" includes access to 911 and enhanced 911 services to the
 extent the local government in an eligible carrier's service area has
 implemented 911 or enhanced 911 systems;
- f. Access to Operator Services: "Access to operator services" is defined as
 access to any automatic or live assistance to a consumer to arrange for billing
 or completion, or both, of a telephone call;
- g. Access to Interexchange Service: "Access to interexchange service" is defined

³⁰ Staff Report at 9.

³¹ TracFone's application at 9.

1 as the use of the loop, as well as that portion of the switch that is paid for by
2 the end user, or the functional equivalent of these network elements in the case
3 of a wireless carrier, necessary to access an interexchange carrier's network;

4 h. Access to Directory Assistance: "Access to directory assistance" is defined as
5 access to a service that includes, but is not limited to, making available to
6 customers, upon request, information contained in directory listings; and,

7 i. Toll Limitation for Qualifying Low-Income Consumers: "Toll limitation for
8 qualifying low-income consumers" is described in Subpart E³² of this part.

9 41. ALECA raised concerns over whether TracFone could adequately provide 911 service
10 to its LifeLine customers.³³ TracFone states that the FCC's Forbearance Order directs TracFone to
11 provide E911 compliant handsets to all its Lifeline customers and that TracFone has complied with
12 that directive in every jurisdiction where it provides Lifeline service, and that TracFone will also in
13 Arizona.³⁴ Further, TracFone states the Forbearance Order requires TracFone to obtain PSAP
14 certification that its Lifeline customers have access to 911 and E911 service; that TracFone can self-
15 certify that its customers have 911 and E911 service if TracFone obtains from its underlying carriers
16 documentation stating that those carriers will treat 911 calls from TracFone customers in the same
17 manner as they treat their own retail customers; and that TracFone has already obtained such
18 documentation from its underlying carriers.³⁵

19 42. Based on the information provided by TracFone, TracFone and ALECA agree that
20 TracFone has the ability to provide 911 and E911 service.³⁶

21 43. Based on TracFone's ability to provide all of the support services and functionalities
22 required in the proposed ETC coverage area to all subscribers taking services under its Lifeline plan
23 through arrangements with its underlying carriers, Staff believes that TracFone meets the ETC
24 designation criteria.³⁷

25 **B. Advertising of Supported Services**

26 44. Pursuant to Section 214(e)(1)(A) of the 1996 Act and 47 C.F.R. § 54.201(d)(2)
27 TracFone states that it will advertise the availability of its Lifeline and Link Up services and the

28 ³² "Toll limitation" denotes either toll blocking or toll control for eligible telecommunications carriers that are incapable
of providing both services. For eligible telecommunications that are capable of providing both services, "toll limitation"
denotes both toll blocking and toll control. 47 C.F.R. § 54-400(d).

³³ Joint Supplemental Status Report filed September 3, 2010 at 3.

³⁴ Id.

³⁵ Id.

³⁶ Id. at 4.

³⁷ Staff Report at 5.

1 associated charges using media of general distribution as well as using marketing and outreach efforts
 2 (i.e., print and broadcast advertising) to ensure that eligible consumers are aware of the services it
 3 offers.³⁸ In addition, TracFone states it will use its network of retail outlets to help promote the
 4 availability of Lifeline and Link Up programs.³⁹

5 45. TracFone provided sample print, radio, and television ads for its proposed services and
 6 charges for Staff's review. Based on the information provided, Staff concluded that TracFone will
 7 advertise the availability of its supported services and corresponding charges using media of general
 8 distribution and therefore meets the ETC designation criteria.

9 **C. ETC Requirements Pursuant to 47 C.F.R. § 54.202(a)(1)-(5)**⁴⁰

10 46. Pursuant to 47 C.F.R. § 54.202(a)(1) an "ETC applicant must demonstrate its
 11 commitment and ability to provide the supported services throughout the designated service area by
 12 providing services to all requesting customers within its designated service area and by submitting a
 13 formal network improvement plan that demonstrates how universal service funds will be used to
 14 improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of
 15 high cost support."

16 47. In its application, TracFone states that it will provide services in the designated areas
 17 within a reasonable time by reselling its service through its underlying facilities-based providers; its
 18 providers are operational and are largely built out and service can commence upon Commission
 19 approval; and that TracFone is ready to commence providing handsets to qualified customers under
 20 its Link Up plan.⁴¹

21 48. Based on the information provided by TracFone, Staff concluded that TracFone meets
 22 the non-facilities based portion of the ETC criteria.

23 49. In accordance with 47 C.F.R. § 54.202(a)(2), an applicant for ETC designation must
 24 demonstrate that "it has a reasonable amount of back-up power to ensure functionality without an
 25 external power source, is able to reroute traffic around damaged facilities, and is capable of managing
 26

³⁸ TracFone application at 15.

³⁹ TracFone states its retail vendors include Rent-a-Center, Dollar General Stores, Walgreen's, CVS, and Wal-Mart.
 Tracfone application at 15.

⁴⁰ Federal-State Joint Board on Universal Service, CC Docket No. 96-45.

⁴¹ TracFone application at 14.

1 traffic spikes resulting from emergency situations.”

2 50. Staff states that because of TracFone’s use of underlying wireless carriers who have
3 state-of-the-art network reliability standards, TracFone’s service reliability compares favorably with
4 that of any facilities-based operator in the wireless telecommunications industry.⁴² Therefore, Staff
5 concludes that TracFone has demonstrated its ability to remain functional in emergency situations and
6 therefore meets the ETC designation criteria.⁴³

7 51. TracFone states it will comply with the Cellular Telecommunications and Internet
8 Association’s (“CITA”) Consumer Code for Wireless Service to meet the ETC criteria that all ETC
9 applicants must demonstrate “a commitment to meeting consumer protection and service quality
10 standards,” pursuant to 47 C.F.R. § 54.202(a)(3).⁴⁴ Further, TracFone states it will make its website
11 available to customers for review of TracFone’s Privacy Policy.⁴⁵

12 52. Based on the information provided by TracFone, Staff believes TracFone meets the
13 ETC designation criteria for consumer protection and service quality.⁴⁶

14 53. Pursuant to 47 C.F.R. § 54.202(a)(4), an ETC applicant must “demonstrate that it
15 offers a local usage plan comparable to the one offered by the incumbent local exchange carrier
16 (“LEC”) in the services areas for which it seeks designation.”

17 54. TracFone states that it will provide customers with service capable of sending and
18 receiving local phone calls and that local usage is included in TracFone’s calling plan wherever it
19 provides service.⁴⁷ TracFone states that under FCC rules an ETC applicant’s local usage plan should
20 be reviewed on a case-by-case basis to ensure that the ETC provider local usage plan is comparable to
21 other plans offered by ILECs in the area.⁴⁸ Further, TracFone states that although the FCC has not
22 adopted minimum local usage requirements, TracFone will comply with any applicable minimum
23 local usage requirements adopted by the FCC.⁴⁹

24

25 ⁴² Staff Report at 7.

⁴³ Id.

⁴⁴ TracFone application at 14.

⁴⁵ Id.

⁴⁶ TracFone application at 7.

⁴⁷ TracFone application at 10.

⁴⁸ TracFone application citing Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6385, 33 (2005).

⁴⁹ TracFone application at 32.

1 55. Staff believes that TracFone meets the ETC designation criteria for minimum local
2 usage.⁵⁰

3 56. Applicants for the ETC designation are required under 47 C.F.R. § 54.202(a)(5) “to
4 provide equal access to long distance carriers in the event that no other eligible telecommunications
5 carrier is providing equal access within the service area.”

6 57. Staff states that TracFone received a waiver of this requirement in its Forbearance
7 Order because the FCC concluded that TracFone is a pure reseller.⁵¹ Staff therefore concludes that the
8 equal access requirement is not applicable to TracFone.⁵²

9 **D. ETC Requirements Pursuant to 47 C.F.R §§ 54.410 and 54.416**

10 58. FCC Rules require ETC providers to comply with certification of eligibility and
11 verification of continued eligibility for Lifeline and Link Up participation. TracFone states it will
12 comply with the FCC rules regarding certification and continued eligibility.⁵³

13 59. According to Staff, TracFone certified that it will also comply with the FCC’s
14 expanded eligibility criteria, certification, verification, and recordkeeping requirements pursuant to 47
15 § 54.410 which were adopted in Commission Decision No. 67941 (June 21, 2005).⁵⁴

16 60. Pursuant to 47 U.S.C. § 214(e)(2) the Commission must establish a geographic area
17 for the purpose of determining universal service obligations and support mechanisms for each
18 designated ETC.

19 61. TracFone initially sought designation as an ETC for the entire state of Arizona.⁵⁵
20 ALECA objected to TracFone’s proposed service on tribal lands because ALECA believed the
21 services would be duplicative of services provided by its member companies.⁵⁶

22 62. Regarding TracFone’s designated service area, the parties and Staff agreed that
23 TracFone would **not** attempt to provide its SafeLink Wireless® Lifeline service to eligible residents
24

25 ⁵⁰ Staff Report at 8.

26 ⁵¹ Staff Report citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, FCC 08-100 (rel. April 11, 2008), note 30.

27 ⁵² Staff Report at 8.

27 ⁵³ TracFone application at 17.

27 ⁵⁴ Staff Report at 9.

28 ⁵⁵ TracFone application at 17.

28 ⁵⁶ ALECA’s Motion to Intervene and Joint Supplemental Status Report dated September 3, 2010.

1 on tribal lands.⁵⁷ TracFone states it will implement the following procedures to comply with its
2 commitment not to serve tribal residents:

- 3 a. Exclusion by Zip Code: TracFone will program its data base to deny
4 applications for SafeLink Wireless® Lifeline service to zip codes located
5 within tribal lands; and
6 b. Self-Certification of Non-Tribal Land Residency: TracFone will include in its
7 Arizona Lifeline enrollment application a line for applicants to self-certify
8 under penalty of perjury that they do not reside in Federally-Recognized Tribal
9 Lands.⁵⁸

10 63. With the above agreed upon procedures, the parties and Staff were able to resolve the
11 issue and ALECA has agreed to work with TracFone to identify zip codes located within Federally-
12 Recognized Tribal Lands for exclusion of service by TracFone.⁵⁹

13 64. ALECA expressed concern that TracFone should be required to pay certain fees to
14 various state agencies, including the ACC assessment, Residential Utilities Consumer Office
15 (“RUCO”) assessment, Arizona Emergency Telecommunications Services Revolving Fund (911
16 fees), the Arizona Telecommunications Relay Service Fund, and the Arizona USF fee, on behalf of
17 TracFone’s customers.⁶⁰ TracFone asserts that the current laws governing the above fees are not
18 applicable to prepaid wireless services such as those proposed by TracFone in Arizona.⁶¹ To resolve
19 the issue, TracFone recommends that it send letters to each of the agencies⁶² with jurisdictional
20 authority seeking clarification as to whether the fees, over which the agency has jurisdiction, apply to
21 TracFone.⁶³ TracFone states that it will file as a compliance item in this docket, the letters sent to the
22 agencies as well as the agencies determinations’ on the issue.⁶⁴

23 65. TracFone, Staff, and ALECA stated that based on the above proposed procedures, the
24 parties and Staff agree to the mechanism to resolve the issue.⁶⁵

25 ⁵⁷ Joint Supplemental Status Report at 2.

26 ⁵⁸ Joint Supplemental Status Report at 3.

27 ⁵⁹ Id.

28 ⁶⁰ Joint Supplemental Status Report at 4.

⁶¹ Id.

⁶² TracFone states that those agencies include the Arizona Department of Administration; the Arizona Commission on the Deaf and Hard of Hearing (Telecommunications Relay Service); and the Commission.

⁶³ Joint Supplemental Status Report at 4.

⁶⁴ Id. at 5.

⁶⁵ Tr. at 4-9.

1 **VI. Analysis**

2 66. Pursuant to the 1996 Act⁶⁶ the Commission must make a determination that an
3 applicant's application for designation as an ETC is in the public interest. TracFone asserts that its
4 proposed services are in the public interest because it will serve consumers in non-rural and rural,
5 high cost areas where most competitive wireline carriers do not provide service. TracFone states that
6 its proposed services will provide an alternative to existing telecommunications services available in
7 the ETC designated areas. TracFone states that the benefits of its proposed services include: wider
8 local calling areas; the convenience and security of mobile service; customers' ability to control the
9 cost of service; and the availability of E911 services.⁶⁷

10 67. Staff expressed concerns that TracFone has stated it will deduct minutes from Lifeline
11 customers when they call TracFone's customer service line.⁶⁸ Staff states that TracFone's three
12 underlying carriers are among the largest wireless providers in the country and that they do not
13 deduct minutes from customers when making customer service calls.⁶⁹ Staff recommends that
14 TracFone evaluate providing Lifeline customers with free customer service calls.⁷⁰ TracFone has
15 agreed to evaluate whether deducting customer minutes for customer service calls is appropriate.⁷¹

16 68. Staff also expressed concerns regarding the limited amount of free minutes (68
17 minutes per month)⁷² and the additional cost per minute TracFone's plan provides.⁷³ Staff states that
18 in other jurisdictions TracFone has offered a \$0.10 per additional minute option and Staff requests
19 that TracFone extend the same rate to Arizona low-income households.⁷⁴

20 69. Staff believes TracFone meets the overall criteria for designation as an ETC. Staff
21 recommends that the Commission grant TracFone's application for designation as ETC pursuant to
22 47 U.S.C. § 214(e)(2).

23
24 ⁶⁶ 47 U.S.C. § 214(e)(2).

⁶⁷ TracFone application at 19.

25 ⁶⁸ Staff Report at 11.

⁶⁹ Id.

⁷⁰ Id.

26 ⁷¹ Tr. at 10.

⁷² Subsequent to the Staff Report, TracFone filed a Notice of Expanded Lifeline Offering, which gives customers three options to choose from for Lifeline services. Under the three plans, customers will be able to choose from a plan with the minimum 68 free minutes up to 250 free minutes. See discussion in section II of this Decision.

27 ⁷³ Staff Report at 11.

28 ⁷⁴ Id.

ORDER

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IT IS THEREFORE ORDERED that the TracFone Wireless, Inc.'s application for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2) is hereby granted, conditioned upon compliance with the following Ordering Paragraphs.

IT IS FURTHER ORDERED that TracFone Wireless, Inc. shall make available Lifeline and Link Up services to qualifying low-income applicants in its new ETC area no later than 90 days after the effective date of this Decision.

IT IS FURTHER ORDERED that TracFone Wireless, Inc. shall comply with all Federal Communication Commission rules and Staff's conditions as set forth in Finding of Fact No. 38.

IT IS FURTHER ORDERED that TracFone Wireless, Inc., shall, within 30 days of the effective date of this Decision as a compliance item in this docket, file a document identifying zip codes located within Federally-Recognized Tribal Lands for which TracFone Wireless, Inc., will not be providing service in Arizona.

IT IS FURTHER ORDERED that TracFone Wireless, Inc., shall, within 30 days of the effective date of this Decision as a compliance item in this docket, file a list of all (rural and non-rural local exchange carrier) zip codes TracFone will be serving in Arizona for Staff's review and acceptance.

IT IS FURTHER ORDERED that TracFone Wireless, Inc., shall, within 30 days of the effective date of this Decision as a compliance item in this docket, file an affidavit stating that it has submitted letters (as well as attach to its filing such letters) to the Arizona Department of Administration; the Arizona Commission on the Deaf and Hard of Hearing (Telecommunications Relay Service); and the Arizona Corporation Commission, seeking a determination as to whether the fees, over which the agencies have jurisdiction, apply to TracFone Wireless, Inc.'s services as an Eligible Telecommunications Carrier in Arizona.

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1 IT IS FURTHER ORDERED that TracFone Wireless, Inc., shall, within 10 days of receipt,
2 file as a compliance item in this docket any response(s) or determinations by the above agencies of
3 the applicable and/or non applicable fees to be paid by TracFone Wireless, Inc.

4 IT IS FURTHER ORDERED that TracFone Wireless, Inc.'s designation as an Eligible
5 Telephone Carrier shall include a service area covered by its underlying carriers AT&T Mobility, T-
6 Mobile, and Verizon Wireless, with the exception of Federally-Recognized Tribal Lands located
7 within the state of Arizona.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10
11
12 CHAIRMAN _____ COMMISSIONER

13
14 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

15 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
16 Executive Director of the Arizona Corporation Commission,
17 have hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this _____ day of _____, 2011.

20
21 _____
22 ERNEST G. JOHNSON
23 EXECUTIVE DIRECTOR

24 DISSENT _____

25
26 DISSENT _____

27 YBK:db

28

1 SERVICE LIST FOR: TRACFONE WIRELESS, INC.

2 DOCKET NO.: T-20664A-09-0148

3

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