

ORIGINAL

FORMAL COMPLAINT



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BEFORE THE ARIZONA CORPORATION COMMISSION

TOM FORESE  
Chairman  
BOB BURNS  
Commissioner  
DOUG LITTLE  
Commissioner  
ANDY TOBIN  
Commissioner  
BOYD W. DUNN  
Commissioner

Arizona Corporation Commission

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T-20664A-17-0021

IN THE MATTER OF THE FORMAL )  
COMPLAINT OF GILA RIVER )  
TELECOMMUNICATIONS, INC. AGAINST )  
TRACFONE WIRELESS, INC. D/B/A AS )  
SAFELINK WIRELESS )

DOCKET NO. T-20664A-17-

FORMAL COMPLAINT

INTRODUCTION

1. Gila River Telecommunications, Inc., ("GRTI") is a Tribal Corporation chartered and wholly-owned by the Gila River Indian Community and is the authorized provider of communications services in all parts of the Gila River Indian Community. This Complaint addresses the unlawful solicitation of (and enrollment in) cellular Lifeline service by Tracfone Wireless, Inc., dba Safelink Wireless, within the Gila River Indian Community and to Community Tribal Members.

2. Tracfone Wireless, Inc. dba Safelink Wireless ("TracFone") is a wireless provider of phone services and was granted Eligible Telecommunications Carrier ("ETC") certification in 2011 by the Arizona Corporation Commission ("Commission"). See Dkt No. T-20664A-09-0148 (Decision 72222) (March 9, 2011). TracFone is not authorized to provide service on the Gila River Indian Community and is prohibited by its Arizona ETC certification from enrolling Tribal Members who reside on Tribal Lands.

3. GRTI seeks an expedited order from the Commission requiring TracFone to immediately cease and desist all new Lifeline enrollments in Arizona and all renewals of current enrollees – Tribal or non-Tribal – until a compliance audit, performed by the Commission, demonstrates TracFone is in full compliance with Decision 72222. TracFone’s disregard of the terms of its certification warrant a Commission investigation into its overall compliance.

### **JURISDICTION**

4. The Commission has jurisdiction to hear and decide this complaint pursuant to A.R.S. §40-246 and A.A.C. R14-3-106(L).

### **COMPLAINT**

5. On Friday, January 6, 2017, TracFone representatives erected a sales tent at the Sacaton Super Mart, which is located within the Gila River Indian Community. As the photo attached as Exhibit 1 shows, TracFone was actively marketing a “FreePhoneProgram” and soliciting applicants for SafeLink phone service. When approached about whether they had a Tribal business license, the TracFone representatives packed up their boxes of phones, and the tent, and departed the Super Mart lot. GRTI has learned that TracFone has been actively marketing free cell phones and Lifeline service on the Community in recent months, and it is likely that many Tribal Members have been enrolled as TracFone Lifeline customers. Neither TracFone nor SafeLink hold a Gila River Indian Community business license.

6. On Tuesday, January 20, 2017, the SafeLink advertisements attached as Exhibit 2 were found on the “Gila River Buy \*Sell\* Trade” Facebook Page which is a page used by Members of the Gila River Indian Community, and not accessible to the general public. Use of this Facebook page to advertise SafeLink phones is further evidence that TracFone is targeting Tribal Members for enrollment in Lifeline through its SafeLink product, thereby violating the

terms of its Arizona certification. This Facebook page also alerts viewers to future sites where phones will be available on Community, or in close proximity to the Community.

7. Attached as Exhibit 3 is a marketing brochure filed with the FCC by Tracfone on December 2, 2016, following an ex parte presentation to the Associate Chief of the FCC Wireline Competition Bureau. According to the cover letter accompanying the filing, Tracfone provided to the FCC “a program brochure which describes TracFone’s Lifeline program.” Exhibit 3 is that brochure. A red circle, which was not on the original brochure, highlights the clear effort TracFone is making to market the Lifeline Program to Tribal Members. On information and belief, these brochures have been distributed or made available at TracFone marketing locations in Arizona. Nowhere on the brochure does TracFone disclose that it is prohibited from providing service to anyone living on Tribal Lands.

#### **TERMS OF TRACFONE’S ETC CERTIFICATION**

8. TracFone is certified as an ETC in Arizona pursuant to Decision No. 72222 (Docket No. T-20664-A-09-0148). TracFone committed to the Arizona Corporation Commission that it “would not attempt to provide its SafeLink Wireless Lifeline service to eligible residents on tribal lands.” In the ETC proceeding, the Arizona Local Exchange Carrier Association (ALECA), which is a consortium of Tribal telecoms and small rural exchange carriers, intervened and opposed any TracFone service on Tribal Land. The terms of TracFone’s ETC Order represent the compromise reached by TracFone and the Intervenors.

9. To comply with its commitment not to serve Tribal Members, TracFone’s ETC certification requires the following:

- a. Exclusion by Zip Code: TracFone will program its data base to deny applications for SafeLink Wireless® Lifeline service to zip codes located within tribal lands; and

- b. Self-Certification of Non-Tribal Land Residency: TracFone will include in its Arizona Lifeline enrollment application a line for applicants to self-certify under penalty of perjury that they do not reside in Federally-Recognized Tribal Lands.

Decision 72222, page 14 (footnote omitted). By selling to Tribal members on Tribal Land, and thereby not obtaining the certification required by (b) above, TracFone is directly violating the terms and conditions of its certification. Furthermore, TracFone is showing complete disregard for the requirements of Decision 72222 as well as the authority of the Tribal government over the provision of utility services within the Community boundary.

10. TracFone ETC status “applies to the service area covered by its underlying carriers AT&T Mobility, T-Mobile and Verizon Wireless, ***with the exception of Federally-Recognized Tribal Lands located within the state of Arizona.***” Decision 72222, p. 16 (emphases added). TracFone has no authority to market to, solicit, or enroll customers who live on Tribal Lands.

11. Ordering paragraph 4 of Decision 72222 provides “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.” Despite making that promise, TracFone is now intentionally and unapologetically enrolling Tribal members within Tribal zip codes.

12. The final ordering paragraph of Decision 72222 unequivocally repeats that TracFone’s ETC service area excludes “Federally-Recognized Tribal Lands located within the state of Arizona.” TracFone is marketing SafeLink cellular services within the Gila River Indian Community and enrolling Tribal Members who live on Tribal Lands in direct violation of its certification in Arizona.

13. On January 9, 2017, undersigned counsel for GRTI contacted Corporate Counsel for TracFone, Mr. Stephen Athanson, and alerted him to the violations. In response, Mr. Athanson assured GRTI that the violations would stop and he would investigate immediately. Mr. Athanson spoke directly of the zip code limitations imposed in the Decision 72222 and was aware of the prohibition against serving on Tribal Lands. To date, GRTI has not received any information from Mr. Athanson that the solicitations have ceased, or that TracFone is addressing the violations. To the contrary, a recent Commission filing discussed immediately below suggests TracFone has no intention of ceasing Lifeline enrollment efforts on Tribal Lands.

14. Without notice to any Tribal entity, and in complete disregard of Tribal sovereignty, TracFone applied on January 13, 2017, to extend its ETC service area designation to cover all Tribal Lands in Arizona. *See* ACC Dkt. T-20554A-17-0013 (filed January 13, 2017). TracFone does not possess a license to do business within the Gila River Indian Community, has not requested permission to serve on Tribal Lands, and is violating a current Commission order by serving Tribal Members on Tribal Lands and marketing its services on Tribal Lands. The application filed by TracFone does not mention how Tracfone will comply with Tribal law or with federal Tribal Engagement requirements.

15. TracFone has also filed a Petition with the FCC for nationwide designation as a Lifeline-supported Broadband Internet Access Service provider. *See* TracFone Petition for Designation as a Lifeline Broadband Provider FCC Dkt. 09-0197 (October 31, 2016). TracFone requests designation to provide service “to qualifying low-income households throughout the United States, including low-income households located on Tribal lands.” TracFone Petition p. 1-2. Nowhere in the Petition does TracFone disclose that it is prohibited from serving on Tribal Lands in Arizona. Nor does Tracfone appear cognizant of laws recognizing Tribal sovereignty

over utility service on Tribal Lands. In its Petition, Tracfone describes a specially designed package for Tribal Lifeline subscribers without mentioning that it is prohibited from serving Tribal Lands in Arizona, a state with twenty-two sovereign American Indian communities. TracFone attaches as Exhibit 2 to its Petition a list of zip codes where it intends to provide service, a list which includes *all* Arizona zip codes and makes no effort to exclude zip codes within Federally Recognized Tribal Lands.<sup>1</sup> TracFone's failure to disclose the Arizona prohibition against service on Tribal Lands is an intentional misrepresentation of TracFone's authority, and should concern this Commission as well as the FCC.

### **Role of Lifeline Program Benefit on Tribal Lands**

16. While not relevant to TracFone's violation of Commission Decision 72222, the role of Lifeline Program benefits on Federally Recognized Tribal Lands explains why TracFone's actions are so egregious. Only one Lifeline Program benefit is allowed per household, whether that is a landline phone, a cell phone data plan, or home Internet. New Lifeline Broadband Provider rules, which became effective October 3, 2016, allow a Lifeline broadband benefit. Tribal carriers (or an authorized non-tribal carrier) may provide Internet service as a Lifeline Broadband Provider and receive a maximum Lifeline Program benefit of \$34.25 per household. The Program benefit makes a household's broadband affordable. However, if one member of the household signs up for a SafeLink cell phone, the landline Lifeline Internet benefit for the entire household (e.g. home wifi) disappears. The cell phone data plan promoted by SafeLink provides a maximum of 500 Megabytes (MB) of free data per month,

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<sup>1</sup> Commission Decision 72222 requires adherence to both the zip code exclusion (no enrollment of persons with zip codes within Tribal Lands) *and* self-certification of all enrollees that they do not reside in Federally-Recognized Tribal Lands. Full compliance with both requirements is critical because many Tribal Members live within Tribal Lands but receive mail at post offices located off reservation, but nearby. The zip code exclusion alone is not sufficient.



while a Lifeline supported home broadband service will provide unlimited data usage to multiple devices. In other words, 500 MB through one handset, or unlimited data usage for an entire household of users. Tribal Members are typically unaware that the “free” SafeLink cell phone will cause them to lose the more valuable landline Lifeline broadband benefit. The National Lifeline Accountability Database (NLAD) tracks and prevents duplicate enrollments in the Lifeline Program, so a household will not be permitted to simultaneously keep a Lifeline supported landline broadband service and a Lifeline supported cell phone. Once Tribal Members learn the Internet service benefit has been lost, it is too late to cancel the cell phone contract.

## **V. RELIEF REQUESTED**

17. GRTI asks the Commission to issue an order requiring TracFone to immediately cease and desist all new Lifeline enrollments in Arizona – Tribal or non-Tribal – and halt any renewal of any current Lifeline enrollees. This order will remain in place until the Commission completes an audit of TracFone’s compliance with the terms and condition of its ETC designation in Arizona. We do not know what other Federally Recognized Tribal Lands have been subject to TracFone marketing and enrollment campaigns. These Tribal communities need to know that Members have been targeted and the Lifeline benefits now going to Tracfone should be reversed.

18. GRTI further requests an order which directs TracFone to immediately and permanently cease and desist all customer solicitations on Tribal Lands and all TracFone efforts to enroll Tribal Members of the Gila River Indian Community whether through direct in-person marketing or through social media contact. (TracFone includes all TracFone agents, employees, affiliates, contractors, marketing partners, and representatives.)

19. TracFone has intentionally disregarded the terms of its current ETC certification and should not be permitted to add any additional enrollees in Arizona until the results of an overall compliance audit are available and TracFone comes into full compliance with Decision 72222.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of January 2017.

By:   
Joan S. Burke, 013687  
LAW OFFICE OF JOAN S. BURKE, P.C.  
1650 North First Avenue  
Phoenix, Arizona 85003  
Telephone: (602) 535-0396  
[Joan@jsburkelaw.com](mailto:Joan@jsburkelaw.com)

Attorney for: Gila River Telecommunications, Inc.

ORIGINAL and 13 copies  
of the foregoing filed  
this 26<sup>th</sup> day of January 2017 with:

The Arizona Corporation Commission  
Docket Control  
1200 W. Washington Street  
Phoenix, Arizona 85007



I hereby certify that I have this day served the foregoing document on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

Mr. Stephen Athanson  
Regulatory Attorney  
TracFone Wireless, Inc.  
9700 NW 112<sup>th</sup> Avenue  
Miami, FL 33178

Jennifer Cummins Rethemeier  
GREENBERG TRAUIG, LLP  
2375 East Camelback Road, Suite 700  
Phoenix, AZ 85016









### Free smartphones with data

**FREE**

📍 Buckeye, AZ (85396)

Do anyone need a free smartphone, the phone would have to come thur mail. It take 3 to 7 business days once the application has been submitted. I was stopped from coming to the rez, due to addresses there. I fought hard to be able to come back to the rez so this is how it has to work. You get a free smartphone, with 350 minutes and unlimited text and 500mb of data. If anyone would like one please comment. For those that get a discount on your home phone, getting a free phone will cut that benefit off.



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80 Comments





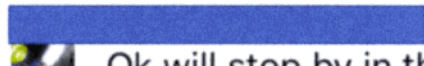
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[Redacted] Ok i live on the rez casa blanca.

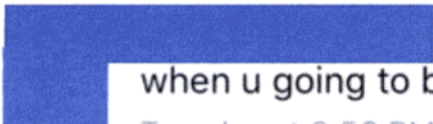
Tuesday at 6:49 PM · Like · Reply

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[Redacted] Ok will stop by in the morning

Wednesday at 4:53 PM · Like · 1 · Reply



[Redacted] when u going to b in Sac again I need one?

Tuesday at 6:56 PM · Like · Reply



[Redacted] I can come to you

Tuesday at 7:04 PM · Like · Reply



Interested!

Is this still available?

Do you have more photos?

# FREE WIRELESS PROGRAM

LIVE CONNECTED

Talk | Text | Data

Qualify with SNAP, Medicaid & Others



## Frequently Asked Questions

**SafeLink**  
WIRELESS

1-800-SafeLink SafeLink.com

### What is SafeLink?

SafeLink Wireless is a LifeLine government benefit program that provides a FREE phone or if you want to use your own phone we will mail you a SIM card. You must have a compatible or unlocked GSM phone to participate in the BIPIC program. Each customer receives Voice and Text minutes along with amazing data plans each month for income-eligible customers who apply and qualify for the service.

### Who is eligible?

Applicants may qualify if their household income level is below their state's of residency poverty guidelines, or if they participate in a government assistance program such as:

- Supplemental Nutrition Assistance Program (Food Stamps or SNAP)
- Medicaid
- Supplemental Security Income (SSI)
- Federal Public Housing Assistance (Section 8)
- Veterans' Survivors Pensions and Aid

### Tribal Programs

- Bureau of Indian Affairs General Assistance (BIA)
- Tribal Administered Temporary Assistance for Needy Families (Tribal TANF)
- Tribal Head Start (only those households meeting its income qualifying standard)
- Food Distribution Program on Indian Reservations (FDPIR)

### Is SafeLink available in my state?

SafeLink Wireless is currently available in Alabama, Arizona, Arkansas, California, Connecticut, DC, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

For additional information and your state's requirements, please visit [www.SafeLink.com](http://www.SafeLink.com)

### Frequently Asked Questions

#### How do I enroll?

You have 3 options to enroll:

- Online at our SafeLink website - [www.SafeLink.com](http://www.SafeLink.com)
- Call SafeLink at 1-800-723-3546
- With one of our SafeLink Representatives

#### How much does it cost?

ABSOLUTELY NOTHING! We send you a free cell phone or SIM card that will allow you to enjoy SafeLink Wireless service at NO COST.

#### Will I be required to sign a contract?

No contracts are ever required with SafeLink Wireless.

#### How long is this service for?

12 months and you will need to re-certify once a year.

#### When will I receive my cell phone?

If you qualify, you will receive your cell phone or SIM card within 7-10 business days starting from the date of qualification.

#### Can I switch to SafeLink Wireless if I have a LifeLine benefit with another carrier?

Yes. For voice services, customers must remain with their service provider for sixty (60) days before transferring their benefit to another LifeLine provider. Broadband customers must remain for twelve (12) months.

#### How do I keep my SafeLink service active?

You must make a minimum of one phone call or send a text each month. Data usage counts as well.

#### Who can I contact regarding my SafeLink service?

Questions about your service will be answered by calling SafeLink Customer Service at 1-800-723-3546.

#### Who can I contact if I have technical issues with my phone or SIM card?

Call Technical Support at 1-800-378-1684.  
Hours of operation: 8:00 A.M. - 12:00 A.M. EST (7 days a week).



### What do I do if I need Additional Minutes or Data?

Feel free to talk all you want from your SafeLink phone. If you run out of Minutes, add any SafeLink Airtime Card without interfering with your regular monthly benefits. You can find these by visiting [SafeLink.com](http://SafeLink.com).



- \$15** + 500MB of Data    **\$20** Unlimited Talk & Text + 1GB of Data
- \$30** + 1GB of Data    **\$45** Unlimited Talk & Text + 10GB of Data

\* Networkable Talk/Text/Data - There is no carry over of unused service - 30 Days of Service  
\* Data plans include a fixed amount of high-speed data as specified in the plan

### Have additional questions?

Please contact our SafeLink Wireless information line at:

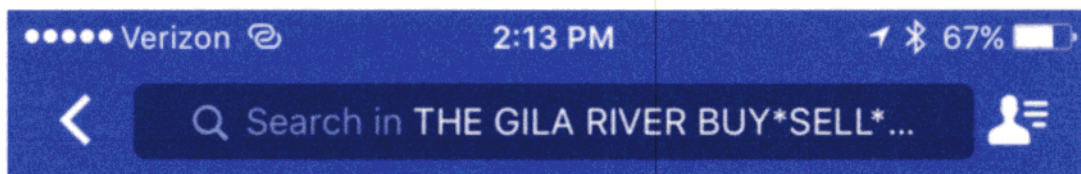
**1-800-723-3546**  
Monday through Saturday,  
8 A.M. to 10 P.M. and  
Sunday 8 A.M. to 7 P.M.  
(Eastern Standard Time)



SafeLink is a LifeLine program, a government assistance program. Only eligible consumers may receive a LifeLine. LifeLine service is non-transferable and cannot be used to receive other services. The transmission of text messages to and from LifeLine numbers may be subject to carrier restrictions. Service restrictions apply to all carriers. Service is provided by a third party. Service is not available in all areas. SafeLink BIPIC and providers are subject to the State's annual Contribution of Funds Report to the State of Alaska. The Terms and Conditions of Service are available at [www.SafeLink.com](http://www.SafeLink.com). The program is subject to change and may be discontinued at any time without notice. © 2014 SafeLink Wireless. All rights reserved.







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**FREE**

📍 Buckeye, AZ (85396)

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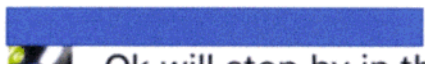
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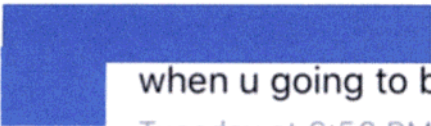
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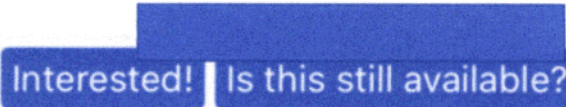
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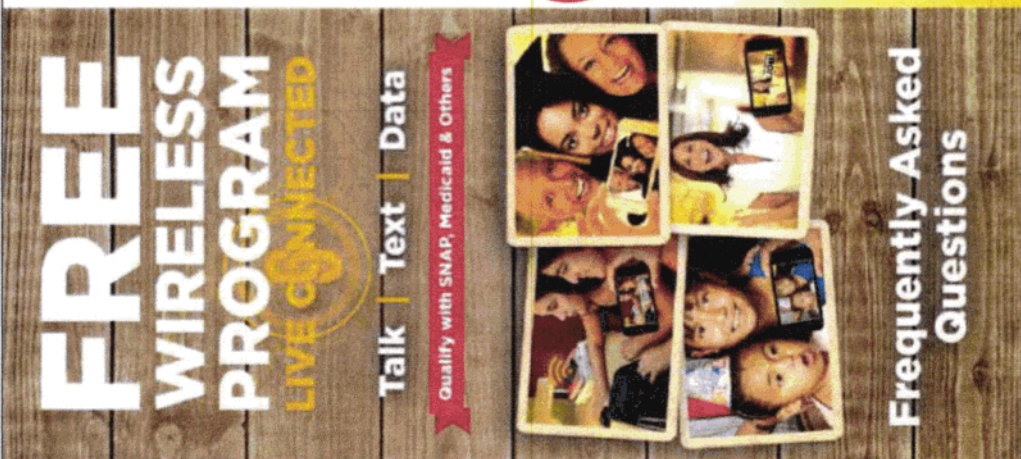
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- \$45** Unlimited Talk & Text + 10GB of Data

\*Monthly Talk/Text/Data - There is no cap on any of our service - 90 Days of Service  
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