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Before the
ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

In the Matter of the Formal Complaint of the
Arizona Local Exchange Carriers Association
against TracFone Wireless, Inc.

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) 2017 FEB 15 PM 3 15 DOCKETED
) Docket No. T-20664A-17-0017
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FEB 15 2017

DOCKETED BY
GAB

TRACFONE WIRELESS, INC.'S ANSWER AND MOTION TO DISMISS

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby files this Answer to the above-captioned Complaint filed by the Arizona Local Exchange Carriers Association ("ALECA" or "Complainant").¹ In addition, pursuant to A.A.C. R14-3-106.H, TracFone respectfully requests the Arizona Corporation Commission ("Commission") to dismiss the Complaint for the reasons set forth below.

ANSWER

1. TracFone lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the first, second and third sentences of Section I of the Complaint regarding the identity of the members of ALECA, whether Federal Universal Service Fund ("FUSF") support is received by ALECA's members, and the telephone services provided by ALECA's members.

2. TracFone admits the allegations in the fourth sentence of Section I of the Complaint that TracFone was designated as an Eligible Telecommunications Carrier ("ETC") by Decision No. 72222, dated March 9, 2011, in Docket No. T-20664A-09-0148.

¹ The Complaint was filed with the Arizona Corporation Commission ("Commission") on January 19, 2017, and served on TracFone's counsel of record on January 26, 2016.

3. TracFone admits the allegations in the first and second sentences of Section II of the Complaint that Decision No. 72222, at 13-14, approved an agreement between TracFone, Commission Staff and ALECA that “TracFone would not attempt to provide its SafeLink Wireless[®] Lifeline service to eligible residents on Tribal lands” and that TracFone agreed to implement procedural safeguards to ensure that it would not provide Lifeline service to residents on Tribal lands.

4. TracFone denies the allegations in the third sentence of Section II of the Complaint that TracFone has been and is violating Decision No. 72222 by actively offering and providing Lifeline service to tribal residents on Tribal lands.

5. TracFone opposes Complainant’s requested relief in Section III, paragraph a, of the Complaint asking the Commission to order TracFone to discontinue Lifeline service currently being provided to tribal residents on Tribal lands and to cease all efforts to provide such service. TracFone further denies the allegation that it is providing Lifeline service to residents on Tribal lands and denies that it is engaging in efforts to provide Lifeline service to residents on Tribal lands.

6. TracFone opposes Complainant’s requested relief in Section III, paragraph b, of the Complaint asking the Commission to order TracFone to show cause why the Commission should not cancel TracFone’s ETC designation provided in Decision No. 72222. TracFone further states that Complainant has failed to allege any facts that warrant cancellation of TracFone’s ETC designation, that TracFone is in good standing with the Commission and Federal Communications Commission (“FCC”), is in full compliance with the Commission and FCC’s rules governing Lifeline service, and is in full compliance with Decision No. 72222, including all conditions contained therein.

7. TracFone denies every allegation contained in the Complaint and not specifically admitted in this Answer.

AFFIRMATIVE DEFENSES

8. ALECA fails to state a claim upon which relief can be granted.

9. TracFone reserves the right to assert other affirmative defenses, including affirmative defenses listed in Rule 8(c) of the Rules of Civil Procedure for the Superior Courts of Arizona, to the extent that TracFone becomes aware of additional information that warrants the assertion of other affirmative defenses.

MOTION TO DISMISS

Pursuant to A.A.C. R14-3-106.H, TracFone requests the Commission to dismiss the Complaint because it fails to allege sufficient facts to state a claim upon which relief can be granted. In the Complaint, ALECA alleges that TracFone agreed that it would not attempt to provide its Lifeline service to residents on Tribal lands and would implement procedural safeguards to ensure that it would not provide Lifeline service to residents on Tribal lands. TracFone's agreement to these conditions is set forth in the Commission's Decision No. 72222. The sole alleged conduct upon which ALECA bases its Complaint is the following: "ALECA is informed and believes that the evidence will show that TracFone has been and is violating Decision No. 72222 by actively offering and providing its lifeline service to tribal residents on Tribal Lands."²

The facts alleged by ALECA are not sufficient to state a claim. ALECA's sole allegations are that: (1) it heard from someone that TracFone may be offering and providing Lifeline service to residents on Tribal lands and (2) it believes there is evidence to support what

² Complaint, at 2.

it heard from someone about TracFone's alleged conduct. ALECA's Complaint omits any details that would enable TracFone to investigate any specific instances of alleged conduct. As such, ALECA fails to allege sufficient facts to support a claim for relief and should be dismissed on that basis.

Furthermore, the Commission should dismiss ALECA's Complaint because TracFone has not been and is not violating the conditions in Decision No. 72222. Specifically, TracFone is has been and is in full compliance with the requirements that it would not attempt to provide Lifeline service to residents on Tribal lands and would implement procedural safeguards to ensure compliance with that condition. In Decision No. 72222, the Commission notes:

TracFone states it will implement the following procedures to comply with its commitment not to serve tribal residents:

- 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.³

The Commission further stated in Decision No. 72222 that "ALECA has agreed to work with TracFone to identify zip codes located within Federally-Recognized Tribal Lands for exclusion of service by TracFone."⁴ After working with ALECA to identify ZIP Codes within Tribal lands, TracFone filed with the Commission a document identifying ZIP Codes located within Federally-Recognized Tribal Lands for which TracFone will not be providing service in Arizona (the "Tribal lands ZIP Code list") and a list all ZIP Codes TracFone will be serving in

³ Decision No. 72222, at 14.

⁴ *Id.*

Arizona.⁵ TracFone subsequently updated the list to remove ZIP Code 85256 from the list of ZIP Codes TracFone serves in Arizona and to add it to the list of ZIP Codes located within Federally-Recognized Tribal Lands in which TracFone does not provide service.⁶

TracFone has implemented all the safeguards described in Decision No. 72222. First, TracFone has programmed its data base so that any Lifeline application listing a ZIP Code on the Tribal lands ZIP Code list is denied. For example, when an applicant attempts to commence the Lifeline application process through the SafeLink Wireless[®] website, the applicant is asked to provide his or her ZIP Code. When a ZIP Code on the Tribal lands ZIP Code list is provided (e.g., 85530), the applicant will see the following notice: “Area not Supported”.⁷ TracFone’s system denies all applications that list a physical residence address with a ZIP Code on the Tribal lands ZIP Code list. Indeed, TracFone’s customer data base does not include any subscribers with a ZIP code on the Tribal lands ZIP Code list.

Second, TracFone’s SafeLink Wireless[®] Lifeline application also includes a line for applicants to self-certify under penalty of perjury that they do not reside in Federally-Recognized Tribal Lands. In Section 3 of the application used for Arizona applicants, all applicants must certify under penalty of perjury to several statements, including: “I do not reside in Federally-Recognized Tribal Lands or reside in the area of a Chapter House of the Navajo Nation within the Western Navajo Agency.”⁸ All Arizona Lifeline applicants must complete this certification,

⁵ See TracFone Wireless, Inc.’s First Supplemental Compliance Filing, Docket No. T-20664A-09-0148, April 13, 2011.

⁶ See TracFone Wireless, Inc.’s Fifth Supplemental Compliance Filing, Docket No. T-20664A-09-0148, October 28, 2011.

⁷ See SafeLink Wireless[®] enrollment pages, attached as Exhibit 1.

⁸ See SafeLink Wireless[®] Arizona Certification Form, attached as Exhibit 2.

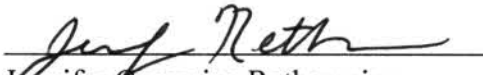
as well as meet all Lifeline program requirements, to be approved to receive Lifeline-supported service.

ALECA's Complaint asserts a generalized belief that TracFone is providing Lifeline service to residents of Tribal lands. However, ALECA's Complaint fails to identify a single subscriber who is a resident of Tribal lands in Arizona and who is receiving Lifeline service from TracFone. In contrast, TracFone has demonstrated that it has systems and procedures in place to block all applicants with a physical residence address with a ZIP Code on the Tribal lands ZIP Code list and that its system is working. As such, ALECA's Complaint fails to include sufficient facts to state any claim for relief.

CONCLUSION

Based on the foregoing, TracFone respectfully requests that the Commission dismiss the Complaint and order such other relief that the Commission deems appropriate.

Respectfully submitted,


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February 15, 2017

Original and 13 copies of the foregoing filed
this 15th day of February 2017 with:

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DECLARATION

Javier Rosado states as follows:

1. I am employed by TracFone Wireless, Inc. ("TracFone") as Senior Officer Business Development and Government Services. My business address is 9700 NW 112 Avenue, Miami, FL 33178. I have personal knowledge of the facts set forth below.

2. I am providing this declaration in support of TracFone's Answer and Motion to Dismiss. In my capacity as Senior Office Business Development and Government Services, I am an authorized officer of TracFone and am responsible for federal Lifeline service provided by TracFone.

3. I have read TracFone's Answer and Motion to Dismiss, including all Exhibits. I confirm that all factual information contained in the Answer and Motion to Dismiss Petition is true and accurate to the best of my knowledge.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2017



Javier Rosado

EXHIBIT 1

FREE WIRELESS PROGRAM

LIVE CONNECTED

Apply Now

Enter your zip code to start the process.

Get More Data using your Own Smartphone

[Watch tutorial](#)



Receive a free phone

[SEE PLANS FULL FEATURES](#)

[Watch the Safelink TV Commercial](#)

[Upgrade to a Smartphone](#)

Can't complete your Application?

[FIND HELP NEAR YOU](#)

Get Unlimited Plans!


ADD UNLIMITED TALK & TEXT + DATA	\$15 TALK & TEXT	\$20 1GB DATA
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Area not Supported

We are currently offering service in parts of Alabama, Arizona, Arkansas, 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, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin

Do you wish to be notified if SafeLink Wireless becomes available in your area? Please click [here](#).

Want Unlimited Talk, Text and Web for only \$45.00 every 30 days? Shop.  [Click Here](#)

NAVIGATE

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LEGAL NOTES

SafeLink Wireless® is a Lifeline supported service, a government benefit program. Only eligible consumers may enroll in Lifeline. Lifeline service is non-transferable and limited to one per household. Documentation of income or program participation may be required for enrollment. SafeLink is provided by TracFone Wireless Inc. [More Legal](#)

EXHIBIT 2

Enrollment ID: _____

PromoCode: _____

Section 1

Date: _____

Please make sure that you provide correct personal information. Your information will be validated against Public Records and any discrepancies could result in delays in your approval or rejection of service.

1. PLEASE PRINT name and physical residence address of person verifying for assistance:

_____	_____	_____	_____	_____
Legal Last Name	Legal First Name	MI	SSN (Last 4)	Birth Date (MM/DD/YYYY)
_____		_____	_____	
Street Address / Apt. Number (no PO BOX allowed)		City	Zip Code	
_____	_____	_____	_____	
Address Line 2	State	Contact Phone Number	Email Address	

Mailing Address



_____	_____	_____	_____	_____
Mailing Address (P O Box allowed)	Mailing Address 2	City	Zip Code	State

Complete this part ONLY if your child or dependent is the beneficiary of the qualifying program.

_____	_____	_____	_____
First Name	Last Name	Birth Date (MM/DD/YYYY)	SSN (Last 4)

Your Plan Features

If you qualify for SafeLink Wireless, you can receive a free SafeLink phone, or use your current one with our Bring Your Own Phone program (BYOP). Select which phone option you would prefer.

 <p>Bring Your Own Phone (BYOP) 350 FREE monthly minutes & unlimited texts. Receive 1GB/month of FREE data for the first 3 months of service and 500MB/month thereafter. Only new or returning customers who have been De-enrolled for more than 90 days will receive our 1GB promotion.</p> <p>You must have a T-Mobile or other Unlocked GSM compatible phone for the BYOP program.</p>	OR	 <p>Free SafeLink Smartphone 350 FREE monthly minutes & unlimited texts with 500MB/month of FREE data.</p>
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Unused minutes and data will not carryover from month to month for either plan.
The Android robot is reproduced or modified from work created and shared by Google and used according to terms and conditions described in the Creative Commons 3.0 Attribution License.

Section 2

I hereby certify that I participate in at least ONE of the following public assistance programs (select just ONE program):

- | | |
|---|--|
| <input type="checkbox"/> Medicaid | <input type="checkbox"/> Federal Public Housing Assistance (Section 8) |
| <input type="checkbox"/> Supplemental Nutrition Assistance Program (SNAP) Food Stamps | <input type="checkbox"/> Veterans and Survivors Pension Benefit |
| <input type="checkbox"/> Supplemental Security Income (SSI) | |

You must send a COPY of any current document that proves your participation in one of the programs previously selected. All documents must have the same name and address as provided in this application.

SafeLink is a Lifeline supported service. Lifeline is a federal benefit, and only eligible subscribers may enroll. Customers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program. Lifeline is available for only one line per household. A household is defined as any individual or group of individuals who live together at the same address and share income and expenses. A household is not permitted to receive Lifeline benefits from multiple providers. Violation of the one-per-household rule constitutes a violation of FCC rules, and will result in the Customer's de-enrollment from Lifeline. Lifeline is a non-transferable benefit, and a Customer may not transfer his or her benefit to another person.

Section 3

You MUST place a check mark (✓) next to each statement, then Sign and Date below (your application cannot be approved without these items).

I certify under penalty of perjury to each of the following:

1. I participate in the above designated qualifying program.
2. I understand that I must notify SafeLink within 30 days if I no longer participate in the qualifying program, if I or another member of my household obtains Lifeline supported service from another carrier, or, for any other reason, I no longer qualify for Lifeline support.
3. I understand I may be required to recertify my continued eligibility for Lifeline at any time, and failure to do so will result in termination of my Lifeline benefits.
4. If I change my address, I will provide my new address to SafeLink within 30 days.
5. I understand that my household may receive only one Lifeline supported service. My Household does not currently receive Lifeline Service OR my household currently receives Lifeline Service from another carrier and I authorize SafeLink to transfer my Lifeline benefit to SafeLink and I understand this will terminate my Lifeline benefits with my existing carrier.
6. The information contained in this application is true and accurate to the best of my knowledge, and I acknowledge that providing false or fraudulent information to obtain Lifeline benefits is punishable by law.
7. I do not reside in Federally-Recognized Tribal Lands or reside in the area of a Chapter House of the Navajo Nation within the Western Navajo Agency.
- I authorize SafeLink Wireless or its duly appointed representative to: (1) access any records required to verify my statements herein; (2) to confirm my continued eligibility for Lifeline assistance; (3) to update my address to proper mailing address format; (4) to provide my name, telephone number, and address to the Universal Service Administrative Company (USAC) (the administrator of the program) and/or its agents for the purpose of verifying that I do not receive more than one Lifeline benefit; and (5) authorize social service agency representatives to discuss with and/or provide information to SafeLink Wireless verifying my participation in benefit programs that qualify me for Lifeline assistance.

By signing below, I separately affirm and agree to each of the above statements

Printed Name

Date

Applicant Signature

PromoCode

E-Signature

Referred by a Friend

Referred by a Friend

Customer's First Name

Customer's Last Name

SafeLink Phone Number

- Please check this box if you would like to receive pre-recorded special offers for SafeLink customers and promotional offers from TracFone at the home telephone number provided in the contact information.

Please Return to

Mail Application: SafeLink Wireless
PO Box 220009
Milwaukie, OR 97269-0009

Or Fax Application: 1 (866) 902-5756
For questions concerning Lifeline, please call SafeLink Wireless business office at 1 (800) SafeLink (723-3546)

Lifeline Household Worksheet

Lifeline is a government program that provides a monthly discount on home or mobile telephone services. Only ONE Lifeline discount is allowed per household. Members of a household are not permitted to receive Lifeline service from multiple telephone companies.

Your household is everyone who lives together at your address as one economic unit (including children and people who are not related to you).

The adults you live with are part of your economic unit if they contribute to and share in the income and expenses of the household. An adult is any person 18 years of age or older, or an emancipated minor (a person under age 18 who is legally considered to be an adult). Household expenses include food, health care expenses (such as medical bills) and the cost of renting or paying a mortgage on your place of residence (a house or apartment, for example) and utilities (including water, heat and electricity). Income includes salary, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, and lottery winnings.

Spouses and domestic partners are considered to be part of the same household. Children under the age of 18 living with their parents or guardians are considered to be part of the same household as their parents or guardians. If an adult has no income, or minimal income, and lives with someone who provides financial support to that adult, both people are considered part of the same household.



You have been asked to complete this Worksheet because someone else currently receives a Lifeline-supported service at your address. This other person may or may not be a part of your household. Answer the questions below to determine whether there is more than one household residing at your address.

1. Does your spouse or domestic partner (that is, someone you are married to or in a relationship with) already receive a Lifeline-discounted phone? (check no if you do not have a spouse or partner)
[] YES [] NO

If you checked YES, you may not sign up for Lifeline because someone in your household already receives Lifeline. Only ONE Lifeline discount is allowed per household. If you checked NO, please answer question #2.

2. Other than a spouse or partner, do other adults (people over the age of 18 or emancipated minors) live with you at your address?

A. A parent

[] YES [] NO

B. An adult son or daughter

[] YES [] NO

C. Another adult relative (such as a sibling, aunt, cousin, grandparent, grandchild, etc.)

[] YES [] NO

D. An adult roommate

[] YES [] NO

E. Other

[] YES [] NO

If you checked NO for each statement above, you do not need to answer the remaining questions. Please initial line B, below, and sign and date the worksheet.

If you checked YES, please answer question #3.

3. Do you share living expenses (bills, food, etc.) and share income (either your income, the other person's income or both incomes together) with at least one of the adults listed above in question #2?
[] YES [] NO

If you checked NO, then your address includes more than one household. Please initial lines A and B below, and sign and date the worksheet.

If you checked YES, then your address includes only one household. You may not sign up for Lifeline because someone in your household already receives Lifeline.

CERTIFICATION

Please initial the certifications below and sign and date this worksheet. Submit this worksheet to SafeLink Wireless along with your Lifeline application.

A. [] I certify that I live at an address occupied by multiple households.

B. [] I understand that violation of the one-per-household requirement is against the Federal Communication Commission's rules and may result in me losing my Lifeline benefits, and potentially, prosecution by the United States government.

Signature _____

Date _____