# ATTACHMENT B

TRACFONE'S COMPLIANCE PLAN (in PDF)

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

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| In the Matter of | ) | |
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| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i) | ) | |

# TRACFONE WIRELESS, INC.'S COMPLIANCE PLAN

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## TABLE OF CONTENTS

SUMMARY ..... ii

BACKGROUND ..... 1

COMPLIANCE PLAN ..... 3

I. Policy ..... 3

II. Unrestricted Access to Basic and E911 Services and Certification of Such Access ..... 4

A. Underlying carrier uses a network-based solution to provide E911 service ..... 7

B. Underlying carrier uses a handset-based solution to provide E911 service ..... 8

III. E911-Compliant Handsets ..... 10

IV. TracFone Seeks Permission to Offer Lifeline Service Wherever 911 Service is Available, Irrespective of Deployment of E911 by PSAPs ..... 11

V. Certification and Verification of Lifeline Customers' Eligibility ..... 14

A. Policy ..... 14

B. Certification Procedures ..... 14

C. Verification Procedures ..... 17

CONCLUSION ..... 18

## SUMMARY

The Commission recently granted a petition for forbearance by TracFone Wireless, Inc. ("TracFone"), requesting forbearance from the requirements in 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i) that a carrier designated as an eligible telecommunications carrier for purposes of federal universal service support provide service at least in part over its own facilities. In the Commission's order ("Forbearance Order"), grant of TracFone's petition was subject to various conditions and a requirement that TracFone advise the Commission of its plan to implement those conditions.

In accordance with the conditions in the Forbearance Order, TracFone will provide Lifeline customers with access to basic and E911 services immediately upon activation of service and irrespective of whether TracFone handsets have remaining unexpired minutes of use. TracFone proposes that the Commission permit it to provide a direct certification from TracFone that it is providing service to Lifeline customers using a specific underlying carrier's network, and/or that it is providing E911-compliant handsets, and that the relevant underlying carrier has filed verified quarterly reports concerning E911 deployment with the Commission. TracFone's suggested certification process will provide greater assurance to the Commission and to the public that it will offer basic and E911 access to customers than would individual certifications from PSAPs that have no direct knowledge about TracFone's service. TracFone also commits to providing E911-complaint handsets to all new Lifeline customers. For existing customers who qualify for and enroll in TracFone's Lifeline program, but do not own an E911-compliant handset, TracFone will replace the handset with an E911-compliant handset free of charge.

TracFone also requests that it be permitted to offer Lifeline service in markets where basic 911 service is available, even if E911 service has not yet been deployed. When E911 service is not available, access to basic 911 is important to public safety and provides substantial

benefits to consumers seeking emergency assistance. Limiting TracFone's ability to offer Lifeline service to areas where there is E911 service unnecessarily denies consumers in such areas the option of choosing TracFone's wireless prepaid service. More importantly, as recent events have shown, in areas without E911, access to a wireless telephone to reach basic 911 is an important public safety benefit.

TracFone's procedures for certifying consumer eligibility for Lifeline service and for verifying their continuing eligibility will comply with all applicable state and federal requirements. TracFone customers will receive written information about TracFone's Lifeline program at the point of sale, but will apply for Lifeline service directly with TracFone. As part of the application process, and annually thereafter, Lifeline customers must self-certify under penalty of perjury that they are the heads of their households and only receive Lifeline-supported service from TracFone. The Lifeline enrollment form will require each applicant to list a primary residential address and a contact telephone number. TracFone's customer information data base will be amended to include an information field that identifies whether the customer receives Lifeline-supported service. When processing each Lifeline application, TracFone will search its customer records to determine whether the applicant is attempting to receive Lifeline-supported service for more than one handset associated with the address listed on the enrollment form.

TracFone's Compliance Plan will promote public safety by ensuring that Lifeline customers have access to basic and E911 service, will provide assurances to the Commission that Lifeline program requirements will be met, and will implement the conditions set forth in the Forbearance Order. Therefore, TracFone requests the Commission to approve its plan and grant its pending ETC Petitions.

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## TRACFONE WIRELESS, INC.'S COMPLIANCE PLAN

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby files its plan outlining the measures it will take to implement the conditions described in the Commission's Order, released September 8, 2005, in the above-captioned matter.[1]

## BACKGROUND

TracFone, a non-facilities based Commercial Mobile Radio Services ("CMRS") provider, is the nation's leading provider of prepaid wireless telecommunications service. TracFone filed petitions for Eligible Telecommunications Carrier (ETC) designation in eight states ("ETC Petitions") and limited those petitions to seeking eligibility for federal universal service support for the Lifeline portion of the low-income program.[2] TracFone also filed a petition for forbearance, applicable to its eight ETC Petitions and any subsequently-filed ETC Petitions, requesting that the Commission forbear from the requirements of 47 U.S.C. § 214(e)(1)(A) and

[1] Federal-State Joint Board on Universal Service and Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), FCC 05-165, released September 8, 2005 ("Forbearance Order").

[2] See ETC Petitions for New York (filed June 8, 2004), Florida and Virginia (filed June 21, 2004), and Alabama, Connecticut, Massachusetts, North Carolina, Tennessee (filed November 9, 2004); TracFone Wireless Inc. Reply Comments (filed August 9, 2004 and Amendments to ETC Petitions for Florida, New York, and Virginia (filed August 16, 2004).

47 C.F.R. § 54.201(i) that a carrier designated as an ETC for purposes of federal universal service support provide services at least in part over its own facilities.[3]

In the Forbearance Order, the Commission granted TracFone's petition for forbearance subject to certain conditions. The Commission explained that requiring "TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live."[4] The Commission also stated that grant of TracFone's petition for forbearance "serves the public interest in that it should expand participation of qualifying consumers" in the under-utilized low-income program.[5] TracFone looks forward providing high quality and dependable service to consumers that qualify for Lifeline support and to expanding the level of participation in the federal Lifeline program. Upon grant of its ETC Petitions, TracFone will engage in various marketing and outreach efforts to ensure that as many eligible consumers as possible avail themselves of TracFone's prepaid wireless Lifeline offering.[6]

The Commission's grant of forbearance is subject to the following conditions: (a) TracFone providing Lifeline customers with basic 911 and enhanced 911 ("E911") access regardless of activation status and availability of prepaid minutes; (b) TracFone providing its new Lifeline customers with E911-compliant handsets and replacing any existing customers' non-compliant handsets at no additional charge; (c) TracFone complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) TracFone obtaining a certification from each Public Service Answering Point ("PSAP") where TracFone provides service confirming that

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[3] See TracFone Wireless Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004.
[4] Forbearance Order, ¶ 23.
[5] Id., ¶ 24.
[6] TracFone's plans for marketing its Lifeline program and for reaching those consumers eligible for Lifeline were described in an Ex Parte Supplement to Petition for Forbearance and Petitions for Designation as an Eligible Telecommunications Carrier filed July 15, 2005.

TracFone complies with condition (a); (e) TracFone requiring its customers to self-certify at the time of service activation and annually thereafter that they are the heads of the households and receive Lifeline-supported service only from TracFone; and (f) TracFone establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address. The Commission required TracFone to submit a plan describing the measures it would take to implement each of these conditions.

As described below, TracFone's Compliance Plan suggests several slight modifications of the aforementioned conditions. First, TracFone notes that strict compliance with the condition that it obtain certification from every PSAP regarding 911 and E911 availability would be burdensome and, more importantly, would not provide any greater assurances of emergency service availability than would the approach described below. Second, TracFone requests that it be permitted to offer Lifeline in areas where E911 or 911 service is available. As described more fully in Section IV herein, TracFone believes that basic 911 provides important public safety benefits in areas where E911 has not yet been deployed and that Lifeline customers should be able to reach 911 operators from the wireless handsets when E911 is not available.

## COMPLIANCE PLAN

### I. Policy

TracFone will comply with all conditions set forth in the Forbearance Order, the provisions of this Compliance Plan, and all laws and regulations governing its provision of Lifeline-supported prepaid wireless service to customers throughout the United States. TracFone will also ensure that all persons responsible for implementation of its Lifeline program will comply with the conditions set forth in the Forbearance Order, the provisions of this Compliance Plan, and all applicable laws and regulations.

## II. Unrestricted Access to Basic and E911 Services and Certification of Such Access

In the Forbearance Order, the Commission has required TracFone to provide its Lifeline customers with access to basic and E911 service immediately upon activation of service. The Commission also noted that this condition is consistent with TracFone's representation that its handsets will allow 911 emergency calling irrespective of whether the caller is an active customer, and whether the customer has available prepaid minutes.[7] Moreover, under Section 20.18(b) of the Commission's Rules, TracFone and its underlying carriers must transmit all wireless 911 calls initiated from a TracFone handset even if there are no prepaid minutes remaining on the handset or TracFone's customer is not an active customer.[8] Although Commission rules do not impose an independent obligation on resellers to provide access to basic and E911 service to the extent that such service is available on its underlying carriers' facilities until December 31, 2006, TracFone will be required to provide access to 911 and E911 at the time it commences Lifeline service.[9] As stated in the Forbearance Order, to demonstrate compliance with the condition that basic and E911 service be available to Lifeline customers upon activation, "TracFone must obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service."[10] The Commission and consumers are hereby assured that all TracFone Lifeline customers will have available access to emergency calling services at the time that Lifeline service is initiated, and that such 911 and (where available) E911 access will be available from

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[7] Forbearance Order, ¶ 16.
[8] 47 C.F.R. § 20.18(b) (CMRS providers must transmit "all wireless 911 calls" to a PSAP. "All wireless 911 calls" is defined as "any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier").
[9] Forbearance Order, ¶ 16 & n.41 (citing 47 C.F.R. § 20.18(m)).
[10] Id., ¶ 16.

TracFone handsets irrespective of whether those handsets have remaining unexpired minutes of use.

Relevant information about the availability of basic and E911 service to TracFone's Lifeline customers is publicly available in quarterly reports that TracFone's underlying carriers are required to file with the Commission.[11] The information contained in the underlying carriers' quarterly reports, together with additional certifications regarding TracFone's underlying carriers and/or its handset manufacturers, will enable TracFone to accurately certify to the Commission that it will provide its Lifeline customers with access to basic and E911 service at the time that its Lifeline service is commenced The certifications TracFone will provide to the Commission will promote the public interest by ensuring access to emergency public safety resources and will provide verifiable assurance to the Commission that TracFone's Lifeline customers will at all times have access to emergency services.

The Commission maintains a PSAP Registry, which lists all PSAPs by name, state, county, and city, and a description of any changes to a PSAP's listing. The PSAP Registry also assigns a PSAP identification number to each PSAP.[12] Currently, the PSAP Registry lists over 6,700 operating PSAPs, including more than 1,700 PSAPs in the eight states for which TracFone has to date filed ETC Petitions.

The Commission requires all Tier I (i.e., nationwide) and Tier II (more than 500,000 subscribers as of year-end 2001) carriers to file quarterly reports with the Commission concerning E911 service. The reports assist the Commission and PSAPs in monitoring a

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[11] See Revision to the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Order*, 17 FCC Rcd 14841 (2002); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17422 (2000).

[12] See http://www.fcc.gov/911/enhanced/reports.

carrier's compliance with Phase I deployment of E911 service and Phase II implementation of E911 service requirements set forth in the Commission's rules.[13] Beginning with the August 1, 2003 quarterly filings, Tier I and Tier II carriers are required to include as an attachment to their quarterly reports a spreadsheet in a format specified by the Commission detailing certain elements related to E911 implementation status.[14] The spreadsheet includes the following data elements: PSAP identification number; PSAP name; PSAP state; PSAP county; PSAP city; E911 implementation phase (i.e., Phase I or Phase II); air interface (i.e., CDMA, GSM, TDMA, TDMA/GSM, iDEN, or Other); date PSAP request made;[15] date PSAP withdrawn (if applicable); whether request is valid; whether requested E911 services were deployed; deployment date; projected deployment date (if not deployed); reasons why deployment will not occur within 6 months of PSAP request; and comments.[16] Each carrier's quarterly report must be supported by an affidavit from an officer or director of the carrier attesting to the truth and accuracy of the report.[17] Thus, the Commission has in its records publicly-available verified information regarding the status of E911 deployment provided by each carrier which is updated quarterly.

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[13] See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, *Order to Stay*, 17 FCC Rcd 14841, ¶ 31 (2002).

[14] See Public Notice - Wireless Telecommunications Bureau Standardizes Carrier Reporting on E911 Wireless Implementation, CC Docket No. 94-102, DA 03-1902 (June 6, 2003) ("E911 Public Notice").

[15] Commission Rule 20.18(j)(1) (47 C.F.R. § 20.18(j)) provides that E911 service requirements set forth in sub-sections (d) through (h) "are only applicable if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and the Public Safety Answering Point is capable or receiving and utilizing the data elements associated with the service and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place." The PSAP request date refers to the date the PSAP requested E911 services from the reporting carrier.

[16] See E911 Public Notice.

[17] See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, *Order to Stay*, 17 FCC Rcd 14841, ¶ 29 (2002).

As the Commission has recognized, TracFone is only able to provide its customers with access to basic and E911 service if its underlying carriers have deployed the facilities necessary provide such service.[18] The carriers' quarterly reports, supported by affidavits, disclose whether E911 service has been deployed to each PSAP that has requested such service. TracFone will institute the following procedures to ensure that all Lifeline customers have access to basic and E911 service starting immediately upon activation of service and at all times that the customer owns a handset obtained from TracFone, including when the handset has no remaining prepaid minutes or when the customer is no longer considered to be an active customer. TracFone's proposal accounts for the fact that some of its underlying carriers use a network-based solution to provide E911 service while other underlying carriers use a handset-based solution.

**A. Underlying carrier uses a network-based solution to provide E911 service**

TracFone's underlying carriers that use GSM (Global System for Mobile Communications) technology to provide wireless service (e.g., Cingular Wireless LLC and T-Mobile USA, Inc.), tend to utilize network-based solutions to provide E911 service. In markets where TracFone utilizes the services of an underlying carrier which has deployed a network-based solution, it will do the following prior to offering Lifeline service:

1. TracFone will confirm that the underlying carrier has on file with the Commission a current verified quarterly carrier report that includes the data required by the E911 Public Notice;
2. TracFone will review the underlying carrier's most recent quarterly report to ascertain whether the underlying carrier has deployed basic and E911 service to the PSAPs located in that market;

[18] Forbearance Order, ¶ 16, n. 3.

3. TracFone will certify to the Commission that all Lifeline customers served in that market are being served over the network(s) of underlying carrier(s) who have on file current verified quarterly reports which indicate that 911 and E911 have been deployed.

**B. Underlying carrier uses a handset-based solution to provide E911 service**

TracFone's underlying carriers that use CDMA Code-Division Multiple Access) technology to provide wireless service (e.g., Alltel Communications, Inc., United States Cellular Corporation, Verizon Wireless), tend to utilize handset-based solutions to provide E911 service. In those markets where TracFone offers service to Lifeline customers using the services of underlying carriers which have deployed handset-based E911 solutions, TracFone will do the following prior to offering Lifeline service:

1. TracFone will confirm that the carrier has on file with the Commission a current verified quarterly carrier report that includes the data required by the E911 Public Notice;
2. TracFone will review the underlying carrier's most recent quarterly report to ascertain whether the underlying carrier has deployed E911 service to the PSAPs located in that market;
3. TracFone will certify to the Commission that all Lifeline customers served in that market are being served over the network(s) of the underlying carrier(s) who have on file current verified reports which indicate that 911 and E911 service have been deployed;
4. TracFone will provide the Commission with a certification from the handset manufacturer (e.g., Nokia, Motorola, etc.) that the handsets used to provide Lifeline service contain GPS chips and are E911-compliant; and

5. TracFone will certify to the Commission that all Lifeline customers in markets served by such underlying carriers will be provided with E911-compliant handsets which have been certified as E911-compliant by the manufacturer. Existing TracFone customers who are eligible for Lifeline service and who choose to enroll in TracFone's Lifeline program will be provided with E911-compliant handsets at no additional charge if their existing handsets are not E911-compliant.

TracFone's plan will provide greater assurance to the Commission and to the public that it will offer basic and E911 access to customers than would certifications from PSAPs. A PSAP can only certify that TracFone's underlying carrier has deployed E911 in response to its request – information that is readily available to the Commission and to the public in the underlying carriers' quarterly reports. A PSAP would have no direct knowledge about whether TracFone is providing service over a particular underlying carrier's network and would have to rely on TracFone's representation that it is utilizing a carrier's service. Under TracFone's certification proposal, the Commission would receive a direct certification from TracFone that it is providing service to Lifeline customers using a specific underlying carrier's network, and/or that it is providing E911-compliant handsets, and that the relevant underlying carrier has filed verified quarterly reports disclosing the status of E911 deployment for each PSAP that has requested E911 service. The Commission has determined that the best way for it and PSAPs to monitor carriers' compliance with E911 requirements is to require Tier I and Tier II carriers to file with the Commission verified quarterly reports. TracFone's plan to provide certifications to the Commission regarding its customers' access to basic and E911 service based upon those Commission-required verified quarterly reports of those underlying carriers and TracFone's certified commitment to provide Lifeline service using those carriers' services, will not

compromise public safety or the deployment of E911 service. Indeed, it will provide the Commission and, more importantly, TracFone's Lifeline customers, with assurances that Basic 911 and E911 service will be available to those customers.

## III. E911-Compliant Handsets

The Commission also conditioned its forbearance determination on TracFone providing only E911-compliant handsets to its Lifeline customers and replacing any non-compliant handsets owned by existing customers who obtain Lifeline-supported service from TracFone with an E911-compliant handset, at no charge to the customer.[19] Although Commission rules do not impose an independent obligation on resellers to ensure that all handsets are capable of transmitting E911 information to the appropriate PSAP until December 31, 2006, TracFone will be required to meet the obligation at the time it commences Lifeline service.[20] As explained in Section II of this Compliance Plan, prior to offering Lifeline service in a particular market TracFone will provide the Commission with (1) a certification from the handset manufacturer that the handset used to provide Lifeline service contains a GPS chip and is E911-compliant, and (2) a certification that all Lifeline customers in the market served by such underlying carrier will be provided with E911-compliant handsets which have been certified as E911-compliant by the manufacturer, including existing Lifeline customers. If an existing TracFone customer is Lifeline-eligible and elects to participate in TracFone's Lifeline program, that customer will be provided by TracFone with an E911-compliant handset at no additional charge if its current TracFone handset is not E911 compliant. TracFone knows which handsets have been provided to each of its customers. Any TracFone customer whose existing handset is not E911-compliant

[19] Id., ¶ 16.
[20] Id., ¶ 16 & n.41 (citing 47 C.F.R. § 20.18(m)).

will receive a replacement phone which is E-911 compliant at the time of enrollment in the Lifeline program.

For new customers, TracFone will make available only E911-compliant handsets in markets where TracFone offers service through underlying carriers which have deployed handset-based technology. Under this plan, all TracFone Lifeline customers will be provided with handsets which enable them to use E911 service where E911 is available.[21]

## IV. TracFone Seeks Permission to Offer Lifeline Service Wherever 911 Service is Available, Irrespective of Deployment of E911 by PSAPs

TracFone's plan for compliance with the condition that TracFone's Lifeline customers have access both to 911 and to E911 service is described above. However, TracFone believes that its Lifeline program will offer significant public safety benefits even in markets where only basic 911 service is available. For that reason, TracFone respectfully proposes that it be allowed to offer Lifeline service conditioned on making available basic 911 service in markets where PSAPs have not yet deployed E911. In the Forbearance Order, the Commission stated that if "TracFone's underlying facilities-based licensee has not deployed the facilities necessary to deliver E911 information to the appropriate PSAP, TracFone will not be able to offer Lifeline-supported services to customers residing in that area."[22] For the reasons described herein, availability of E911 should not be a condition precedent to the availability of TracFone's Lifeline service.

TracFone's existing customers that use their handsets in areas in which E911 service is not available have access to basic 911 service. All of TracFone's existing and potential

[21] Recently, several facilities-based wireless carriers (Sprint Nextel and Alltel) petitioned the Commission for waiver of the requirement that 95 percent of handsets be E911-compliant by December 31, 2005. TracFone takes no position on the merits of those waiver requests. However, it hastens to note that under its Compliance Plan, 100 percent of TracFone handsets will be E911 compliant on the date that it commences offering Lifeline service.

[22] Forbearance Order, ¶ 16 n.43.

customers, including those that qualify for Lifeline support, should have the ability to access basic 911 when E911 service is not available. Access to basic 911 provides substantial benefits to an individual seeking emergency assistance. If an individual dials 911 in a location which has basic 911 service (but not E911 service), the individual will have the call answered by a PSAP and can inform the PSAP attendant of his or her location and can request emergency assistance.

"Congress . . . established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911."[23] Limiting TracFone's ability to offer Lifeline supported service only in areas with E911 service unnecessarily will deny consumers in such areas the option of choosing TracFone's wireless prepaid service.[24] Moreover, TracFone's proposal to allow it to offer Lifeline service in areas with basic 911 service is consistent with the Commission's mandate from Congress to "promot[e] safety of life and property through the use of wire and radio communications"[25] and with what TracFone believes to be the purpose underlying the Commission's condition in the Forbearance Order that TracFone provide its Lifeline customers with basic and E911 service.[26]

The recent devastation caused by Hurricanes Katrina and Rita demonstrate why TracFone believes that its service should be available to qualified Lifeline customers in areas where 911 is available, but where E911 service has not yet been deployed. During the hurricanes, many consumers had no sources of emergency communication other than their wireless phones. For

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[23] IP-Enabled Services, *First Report and Order and Notice of Proposed Rulemaking*, WC Docket Nos. 04-36, 05-196, FCC 05-116, ¶ 4 (released June 3, 2005) (citing 47 U.S.C. § 251(e)).

[24] As the Commission noted, "the prepaid feature may be an attractive alternative for such customers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts." Forbearance Order, ¶ 15.

[25] 47 U.S.C. § 151.

[26] See Forbearance Order, ¶ 6.

those many consumers who lost their homes or who had to abandon their homes, the wireline phones in their homes (if they had wireline telephone service) provided no assistance at all. If such consumers had wireless phones, they could have dialed 911, identified where they were and sought help. Whether or not basic 911 provides the same level of public safety as E911 service (clearly it does not), the availability of basic 911 service to persons with wireless phones who are displaced from their homes is a far superior option to having no 911 service at all in emergency situations. Many years ago, the United States Court of Appeals for the District of Columbia Circuit, in an entirely different context, stated that "[t]he best must not become the enemy of the good."[27] So it is with emergency communications. In requesting Commission approval to offer Lifeline service where E911 or basic 911 service is available, TracFone does not seek to weaken or relax the emergency service condition set forth in the Forbearance Order. Rather, it seeks to make its Lifeline service available to consumers who would benefit from the additional protection afforded by basic 911 in areas where E911 has not yet been deployed.

In the Forbearance Order, the Commission quite properly noted that for those Lifeline customers who select TracFone service, that service will be the customer's only means of accessing emergency personnel.[28] In areas where PSAPs are not yet E911-capable and where consumers for whatever reason are unable to utilize wireline phones (even if wireline E911 is available), those customers would not have E911 access irrespective of whether they obtain service from a wireline or wireless provider, or whether their wireless provider is facilities-based or, like TracFone, provides service via resale. As recent events have shown, while availability of E911 service is important to public safety, in the absence of E911, the ability to dial 911 and reach a PSAP provides a measure of protection that is itself highly important. For that reason,

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[27] MCI Telecommunications Corporation v. FCC, 627 F.2d 322, 341 (D.C. Cir. 1980).
[28] Forbearance Order, ¶ 16.

TracFone respectfully urges the Commission to allow it to offer Lifeline service wherever its service can be used to reach a 911 responder.

## V. Certification and Verification of Lifeline Customers' Eligibility.

In the Forbearance Order, the Commission directed TracFone to require its Lifeline customers to self-certify under penalty of perjury upon service activation and annually thereafter that they are the heads of their households and only receive Lifeline-supported service from TracFone.[29] The Commission also required TracFone to track each Lifeline customer's primary address and prohibit more than one supported TracFone service at each residential address. TracFone proposes the following plan to implement these certification and verification conditions:

### A. Policy

TracFone will comply with all certification and verification requirements for Lifeline eligibility established by states where it is designated as an ETC. In states where there are no state-imposed requirements (e.g., Florida), TracFone will comply with the certification and verification procedures in effect in that state as reflected on the website of the Universal Service Administrative Company. However, for any states which do not mandate Lifeline support and/or which do not have established rules or procedures in place, TracFone will certify at the outset and will verify annually consumers' Lifeline eligibility in accordance with the Commission's requirements.

### B. Certification Procedures

TracFone will implement certification procedures that enable consumers to demonstrate their eligibility for Lifeline assistance by contacting TracFone via telephone, facsimile, or the Internet. At the point of sale, consumers will be provided with printed information describing

[29] Id., ¶ 18.

TracFone's Lifeline program, including eligibility requirements, and with instructions for enrolling. Consumers will be directed to toll-free telephone numbers and to TracFone's Internet website (www.tracfone.com) which will contain a link to the Lifeline program. The Lifeline link will describe the program in detail for each state, including state-specific eligibility criteria, and will contain all enrollment forms. In the Forbearance Order, the Commission expressly rejected the proposal that TracFone retail outlets receive Lifeline qualifying information from customers.[30] TracFone understands and accepts the Commission's requirement that TracFone have direct contact with all customers applying for participation in the Lifeline program. As described more fully below, all Lifeline applications will be processed by TracFone. Retailers will have no role in the Lifeline application process other than to provide customers with printed information regarding the program.

Consumers accessing the program through the Internet will be able to access the Lifeline application for their state. Applicants for enrollment in TracFone's Lifeline program will be required to provide proof of residence in that state, including specific residential address information. Consumers may either complete the form "on-line" or print out the form, complete it, and fax it to a toll-free fax number provided by TracFone. Those consumers who prefer to submit the enrollment materials to TracFone via U.S. mail will be allowed to do so. However, that will delay completion of the enrollment process. In states where documentation is required to prove eligibility, either under program-based eligibility or income-based eligibility, applicants will be encouraged to return the completed forms and documentation to TracFone via fax. Processing of consumers' applications, including review of all application forms and relevant

[30] Id., ¶ 19.

documentation, will be performed by TracFone personnel under the immediate supervision of managers specially trained in the Lifeline program.

The enrollment form will include a place where the applicant must certify by his/her signature under penalty of perjury that the applicant meets the relevant criteria. For program-based eligibility, the form will list each of the qualifying programs, and the applicant will be required to check off the program(s) in which he/she participates. For income-based eligibility, the applicant will be required to certify under penalty of perjury that his/her household income does not exceed the relevant threshold (e.g., 135% of the Federal Poverty Guidelines for federal default states) and will be required to provide proof of income-based eligibility.[31] In addition, each applicant will be required to certify under penalty of perjury that he or she is the head of the household and that he or she receives Lifeline-supported service only from TracFone. As required by the Forbearance Order, the penalties for perjury will be clearly stated on the certification form.[32]

Finally, the enrollment form will require each applicant to list a primary residential address and a contact telephone number. TracFone's customer information data base contains information about each of its customers, including name, contact telephone number, and address. Prior to offering Lifeline service, TracFone will add an information field in its data base that identifies whether the customer receives Lifeline-supported service. When a consumer submits a Lifeline service enrollment form, the TracFone employee responsible for processing that application will search TracFone's customer records for the address listed on the form. If the

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[31] For each state with its own Lifeline/Link-Up program where TracFone has been designated an ETC, an appropriate officer of TracFone will certify under penalty of perjury that TracFone is in compliance with each state's income certification procedures and that, to the best of that officer's knowledge, documentation of income for all enrolled Lifeline customers was presented. See Lifeline Order, ¶ 31.

[32] Forbearance Order, ¶ 18.

address is already in TracFone's data base, the TracFone employee will review the name, telephone number and service plan associated with the address to determine whether the applicant is attempting to receive Lifeline-supported service for more than one handset associated with the address. If an address submitted by a Lifeline applicant is associated with a customer that already receives Lifeline service, TracFone will deny the Lifeline application and advise the applicant of the basis for the denial. TracFone shares the Commission's stated concern about abuse of the Lifeline program and that the potential for multiple Lifeline-supported services per consumer is an industry-wide problem.[33] However, TracFone believes that the procedures which it will implement as described herein will prevent TracFone customers from engaging in such abuse of the program. In this regard, it is important to recognize that no applicant for TracFone's Lifeline program will receive Lifeline-supported service until the certification process has been completed and the consumer's eligibility for participation in Lifeline has been confirmed by TracFone using the processes described above.

### C. Verification Procedures

TracFone will require every consumer enrolled in its Lifeline program to verify his/her continued eligibility on an annual basis, or more frequently if required by the applicable state. In states where verification more often than annually is not required, TracFone will notify each participating Lifeline consumer on the anniversary of his/her enrollment that the consumer must confirm his or her continued eligibility in accordance with the state's requirements. In addition, TracFone will send mailings to Lifeline participants notifying them of the need to verify their continued eligibility. Such verification will be required in order for the consumer to continue to purchase prepaid airtime from TracFone at the discounted rates only available to those customers who are enrolled in its Lifeline program.

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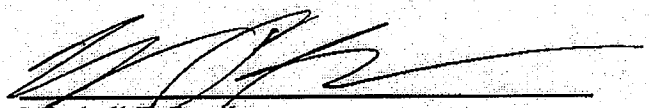
[33] Id.

## CONCLUSION

TracFone's Compliance Plan plans meets the conditions set forth in the Forbearance Order and promotes public safety by ensuring that Lifeline customers have access to 911 service and, if required, access to E911 service. TracFone requests that the Commission approve TracFone's Compliance Plan and grant its pending ETC Petitions so that TracFone may begin providing the benefits of Lifeline service to qualifying low-income consumers.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



Mitchell F. Brecher
Debra McGuire Mercer

GREENBERG TRAURIG, LLP
800 Connecticut Avenue, NW
Suite 500
Washington, DC 20006
(202) 331-3100
*Its Counsel*

October 11, 2005

## CERTIFICATE OF SERVICE

I, Michelle D. Guynn, a Legal Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that a true and correct copy of the foregoing Tracfone Wireless, Inc.'s Compliance Plan has been served via electronic mail, on the following:

**COPY** of the foregoing served via electronic mail to the **FCC's Electronic Comment File Submission** on this 11th day of October, 2005 to:

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

**COPY** of the foregoing served via **Electronic Mail** this 11th day of October, 2005 to:

Ms. Michelle Carey
Office of Chairman Kevin Martin
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Mr. Russell Hanser
Office of Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Ms. Jessica Rosenworcel
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Mr. Thomas Navin, Chief
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Washington, D.C. 20005

Michelle D. Guynn

# ATTACHMENT C

TRACFONE'S PRIVACY POLICY (in PDF)

# Privacy Policy

**Please read the TRACFONE Privacy Policy.**

TRACFONE Wireless has instituted a comprehensive set of privacy policies and procedures to ensure that its Web site visitors' privacy is never compromised. The purpose of this privacy notice is to inform our Web site visitors of the type of information that TRACFONE, or a credit card processing partner acting on its behalf, collects from the Web site, how the information is gathered, how it is utilized, how long it is retained and how visitors can restrict its use or disclosure.

The primary focus of TRACFONE's privacy policy is to ensure that all Web site visitors' customer identification, which we term "customer identifiable information," is kept private at all times. As the term suggests, "customer identifiable information" is information which can be associated with a specific individual or entity, including, for example, a customer's name, address, or telephone number, e-mail address and information about online activities that are directly linked to them.

The collection of customer identifiable information is a critical element in the day-to-day operation of the Web site to allow TRACFONE to maintain the highest level of customer service for all Web site visitors. It is a common practice and often a necessity for companies, governments, or other organizations to collect customer identifiable information in order to conduct business and offer services.

TRACFONE always strives to safeguard the customer identifiable information obtained from its Web site users and visitors (collectively, "customers") from any unauthorized intrusions.

TRACFONE may contact people on the home phone number they enter on our website, input into our automated phone system or give to an agent in case of technical difficulties, promotions and/or reminders.

**General**

TRACFONE will not sell, trade, or disclose to third parties any customer identifiable information derived from the registration for, or use of, a TRACFONE product or service -- including customer names and addresses -- without the consent of the customer. TRACFONE will, however, disclose customer identifiable information as required by subpoena, search warrant, or other legal process or in the event that such customer is engaging in unlawful use of our Web site.

When TRACFONE uses third parties to perform services on its behalf, TRACFONE will request that such third parties protect your customer identifiable information consistently with this privacy policy. However, we cannot ensure that all of your customer identifiable information will never be disclosed, as regulatory and/or other requirements may make disclosure necessary.

**Collection and Use:**

In some instances, TRACFONE may collect information that is not "customer identifiable information." Some examples of this type of information include the type of Internet browser you are using, the type of operating system you have configured on your computer, and the domain name of the Web site and/or Internet Service Provider from which you are linked to our Web site. TRACFONE primarily uses this information for market research and optimizing its systems in order to deliver the best customer experience possible.

TRACFONE may collect and use customer identifiable information for various purposes, including but not limited to, billing purposes, to provide or change service, to anticipate and resolve problems with your service, or to inform you of products and services that better meet your needs. This means that TRACFONE may use your customer identifiable information, in conjunction with information available from other sources, to market new services that may be of interest to you, but TRACFONE will not disclose your customer identifiable information to third parties who want to market products to you.

**Declining e-mail offers:**

TRACFONE will only send our customers e-mail regarding promotional offers or other news if a customer specifically grants us permission. A customer has the right to choose not to receive TRACFONE e-mail direct marketing communications by simply notifying us of their preference. This process is commonly termed opting-out or unsubscribing. At any time, a customer can unsubscribe from our e-mail list by clicking on the unsubscribe link found at the bottom of every message or promotion delivered electronically to our customers. Upon such choice, TRACFONE (a) will not contact that customer directly with TRACFONE promotional messages, and (b) will not use customer identifiable information obtained from that customer's registration to contact that customer with TRACFONE product or service messages. A customer may also choose not to receive such messages by notifying TRACFONE via fax or mail.

**Security:**

TRACFONE has gone to great lengths to implement technology and security features to safeguard the privacy of your customer identifiable information from unauthorized access or improper use, and TRACFONE, based on its judgment, will continue to enhance its security procedures as new technology becomes readily available. However, since there is no such thing as "perfect Internet security", TRACFONE cannot provide any guarantees of 100% security compliance.

**E-mail Contents:**

TRACFONE will not read or disclose to third parties private e-mail communications that are transmitted using TRACFONE services except as required to operate the service or as otherwise authorized by law.

**Improper Conduct:**

TRACFONE may also use customer identifiable information to investigate and help prevent potentially unlawful activity or activity that threatens the network or otherwise violates the customer agreement for that service.

**Account Information:**

TRACFONE honors requests from customers for account information and will correct any such information, which may be inaccurate. Customers may contact TRACFONE to verify that appropriate corrections have been made.

**Cookies**

When you visit our Web site, we may store information on your computer that allows us to identify you immediately. This process is often referred to as "cookie" technology. More specifically, a cookie is a commonly used Internet standard which stores, in a very small text file on the customer's hard disk, information specific to the customer. Our Web site makes limited

use of cookies in an effort to improve our level of service to our Web site visitors. Cookies cannot be accessed by any other Web site other than the Web site issuing the cookie. The private features of our Web site are only accessible when cookies are enabled in the customer's browser. If a customer does not wish to utilize cookies, this feature may be disabled within the customer's Web browser. However, by disabling cookies, a customer will not have access to private areas of our Web site through that browser.

**Other Web sites**

Since TRACFONE's Web site contains links to other Web sites, we are not responsible for the content or privacy practices employed by these other Web sites. It is possible that on some occasions, these third party Web sites may in fact collect personal information from our customers. We recommend that you examine the privacy policies of such third party Web sites prior to submitting any personal information, as they may differ from ours.

In some instances, our Web site content is also featured on other Web sites with differing or non-existent privacy policies. These Web sites may collect personal information from their customers that may or may not be used in conjunction with our Web site information. Prior to supplying any personal information to any third party company linking to our Web site, please read and understand their privacy policy.

**Advertisements**

Advertisements may appear on pages throughout our Web site. Some advertisements may request information directly from our customers or take our customers to Web sites that may request personal information. TRACFONE has no control over its advertisers' privacy policies, so please examine the privacy policy of any company advertising on our Web site prior to submitting any personal information.

**Third Party Advertising Companies**

We may use third-party advertising companies to serve ads on our behalf. These companies mayemploy cookies and action tags (also known as single pixel gifs or web beacons) to measure advertising effectiveness. Any information that these third parties collect via cookies and action tags is completely anonymous. If you would like more information about this practice and your choices, click here. You may also visit the Advertising.com Privacy Policy,click here.

**Surveys**

Occasionally, we may conduct surveys on our Web site. Surveys are conducted at random and are completely voluntary to our Web site visitors. The survey may require a customer to provide customer identifiable information in exchange for the information or services provided by the survey. We may use this information in an aggregate manner to better tailor the type of services, information, and advertising that are provided on our Web site.

**Policy Changes**

TRACFONE reserves the right to change its privacy policy by publishing new terms on its Web site at any time and your access and useof the TRACFONE Web site thereafter constitutes youracknowledgment and acceptance of such amended policy. This privacy policy does not create any legal right for you or any third parties.

**Children**

TRACFONE Web sites are not structured to attract children under the age of 13. TRACFONE believes there is no information on its Web site, which is inappropriate or objectionable for viewing by children.

TRACFONE does not knowingly, directly or passively, collect information from children under the age of 13. If we create offers and products that make it appropriate to collect information from children under the age of 13, we will notify you of the change in this Policy. We also will ask a parent to confirm his/her consent in advance of any collection, use or disclosure of that information. We do not collect any information that is not submitted to us. We only use personally identifiable information so that we may better understand our users' needs and send information to users regarding new services or offerings, including but not limited to any sweepstakes or other offering. We do not sell any personally identifiable information or disclose any personally identifiable information to third parties.

Ordering online products and services from TRACFONE is limited to adults (ages 18+). However you should be aware that wireless devices and services purchased for family use may be used by minors without the knowledge of TRACFONE. If that happens, any information collected from the usage will appear to be the personal information of the actual adult subscriber and treated as such under this Policy.

**Questions?**

Please direct any questions or comments regarding our privacy policy to information@TRACFONE.com.

# ATTACHMENT D

TRACFONE'S LIFELINE CERTIFICATION AND VERIFICATION PLAN (in PDF)

Greenberg Traurig

Mitchell F. Brecher
(202) 331-3152
BrecherM@gtlaw.com

July 13, 2005

**VIA ELECTRONIC FILING**

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation in CC Docket No. 96-45 – Petition of TracFone Wireless, Inc. for Forbearance; Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Florida, Massachusetts, New York, Tennessee and Virginia

Dear Ms. Dortch:

On July 13 2005, F. J. Pollak, President and Chief Executive Officer of TracFone Wireless, Inc., and I met with Narda Jones, Carol Pomponio, Pam Slipakoff, and Mark Seifert, all of the Wireline Competition Bureau's Telecommunications Access Policy Division.

During this meeting, we discussed TracFone's proposal to offer Lifeline service if its petition for forbearance is granted and if its petitions for designation as an Eligible Telecommunications Carrier are approved. Specifically, we discussed TracFone's plans to ensure that it would comply with the certification of eligibility and verification of continued eligibility requirements for Lifeline participation which are codified at Section 54.410 of the Commission's rules. TracFone's certification and verification compliance plan is articulated in a document which was provided to each attendee at today's meeting. A copy of that compliance plan description is enclosed herewith.

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

www.gtlaw.com

Pursuant to Section 1.1206(b) of the Commission's Rules, this notice is being filed electronically in the above-captioned docket. If you have any questions regarding this matter, please feel free to contact undersigned counsel for TracFone.

Sincerely,

Mitchell F. Brecher

Enclosures

cc: Ms. Narda Jones
Ms. Carol Pomponio
Mr. Mark Seifert
Ms. Pam Slipakoff

# TRACFONE WIRELESS, INC.

## PETITION FOR FORBEARANCE

## PETITIONS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATES OF ALABAMA, CONNECTICUT, FLORIDA, MASSACHUSETTS, NEW YORK, TENNESSEE, NORTH CAROLINA, TENNESSEE, AND VIRGINIA

(CC Docket No. 96-45)

## TRACFONE'S PLANS FOR COMPLIANCE WITH THE LIFELINE CERTIFICATION AND VERIFICATION REQUIREMENTS CODIFIED AT SECTION 54.410 OF THE COMMISSION'S RULES

Mitchell F. Brecher
Greenberg Traurig, L.L.P.
800 Connecticut Avenue, NW
Suite 500
Washington, D.C. 20006
(202) 331-3100

## 1. COMPLIANCE POLICY

TracFone will comply with all certification and verification requirements for Lifeline eligibility established by states where it is designated as an Eligible Telecommunications Carrier.

In states where there are no state-imposed requirements (*e.g.*, Florida), TracFone will comply with the certification and verification procedures in effect in that state as reflected on the website of the Universal Service Administrative Company.

None of the states for which TracFone has sought ETC designation are "federal default states" as listed at Appendix G of the FCC's April 29, 2004 Lifeline Order (Lifeline and Link-Up, FCC 04-87). However, for any states which do not mandate Lifeline support and/or which do not have established rules or procedures in place, TracFone will certify and verify consumer eligibility in accordance with the FCC requirements.

## 2. CERTIFICATION PROCEDURES

TracFone will implement certification procedures which enable consumers to demonstrate their eligibility for Lifeline assistance, either at the point-of-sale (*i.e.*, any the retail locations where TracFone handsets and prepaid wireless service are sold), or by contacting TracFone via telephone or via the Internet.

### A. Point of Sale Certification

TracFone retailers will be provided with Lifeline enrollment forms designed for each state where the retailer is located (*e.g.*, Wal-Mart or RadioShack stores in Florida will be provided with the Florida forms; Wal-Mart or RadioShack stores in New York will be provided with the New York forms). Where self-certification is required, the form will contain a place where the applicant must certify by his/her signature under penalty of perjury that the applicant meets the relevant criteria. For program-based eligibility, the form will list each of the qualifying programs, and the applicant will be required to check off the program(s) in which he/she participates. For income-based eligibility, the applicant will be required to certify under penalty of perjury that his/her household income does not exceed the relevant threshold (*e.g.*, 135% of the Federal Poverty Guidelines for federal default states) and will be required to provide proof of income-based eligibility.

In states where documentation of eligibility is required, consumers claiming entitlement to participate in TracFone's Lifeline program will be required to produce the relevant documentation – either proof of participation in qualifying programs or proof of household income. In addition, consumers will be required to produce a photo identification and proof of residency in the applicable state.

All completed forms obtained by TracFone's retail vendors, identification, and documentation of eligibility where required will be transmitted by the vendor to TracFone's corporate offices where properly-trained personnel will review the forms and documentation and enroll the applicant in the Lifeline program.

B. Certification by TracFone

TracFone recognizes that some retail vendors may not want to become involved in the Lifeline certification process and that some customers will choose not to provide information regarding their financial status at a retail outlet. In such circumstances, TracFone will enable customers to submit their applications and eligibility documentation (where required) directly to TracFone.

At point of sale, customers will be provided with information describing the Lifeline program and with instructions for enrolling. Customers will be directed to toll-free telephone numbers and to TracFone's Internet website (www.tracfone.com) which will contain a link to the Lifeline program. The Lifeline link will describe the program in detail for each state and will contain all enrollment forms.

Customers accessing the program through the Internet will be able to access the Lifeline application for their state (they will be required to provide proof of residence in that state). Customers may either complete the form "on-line" or print out the form, complete it, and fax it to a toll-free fax number provided by TracFone. In states where documentation is required to prove eligibility, either under program-based eligibility or income-based eligibility, consumers will be encouraged to return the completed forms and documentation via fax.

Whether consumers choose to enroll in TracFone's Lifeline program at the point of sale or by contacting TracFone, all processing of consumers' applications, including review of all application forms and relevant documentation will be performed by TracFone personnel under the immediate supervision of managers specially trained in the Lifeline program.

## 3. AUTOMATIC ENROLLMENT

TracFone recognizes that the Commission has encouraged states to adopt automatic enrollment procedures. In states which have implemented such procedures, TracFone is prepared to participate with the appropriate state agencies so that customers choosing to do so may be automatically enrolled in the TracFone Lifeline program. For example, in Massachusetts, consumers who qualify for the Low Income Home Energy Assistance Program may elect at the time of enrollment in that program to have eligibility information provided to participating ETCs which enable the consumers to enroll in Lifeline. TracFone is prepared to accept that same information from the state which would facilitate enrollment in its Lifeline program. In short, TracFone will make

enrollment in its program as convenient for consumers as permissible under applicable state law.

## 4. VERIFICATION OF CONTINUED ELIGIBILITY

TracFone will require every consumer enrolled in its Lifeline program to verify his/her continued eligibility on an annual basis, or more frequently if required by the applicable state.

In states where verification more often than annually is not required, TracFone will notify each Lifeline participating consumer on the anniversary of his/her enrollment that they must confirm their continued eligibility in accordance with the state's requirements. Although TracFone does not normally contact its customers via mailings it will send mailings to Lifeline participants notifying them of the need to verify their continued eligibility. Such verification will be required in order for the consumer to continue to purchase prepaid airtime from TracFone at the discounted rates only available to those customers who are enrolled in its Lifeline program.

## 5. TRACFONE OFFICER CERTIFICATION

TracFone will comply with the officer certification requirement set forth at paragraph 31 of the Lifeline Order. Specifically, for each state with its own Lifeline/Link-Up program where TracFone has been designated an ETC, an appropriate officer of TracFone will certify under penalty of perjury that TracFone is in compliance with each state's income certification procedures and that, to the best of that officer's knowledge, documentation of income for all enrolled Lifeline customers was presented.