PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division **RESOLUTION T- 17467**
Carrier Oversight & Programs Branch **May 7, 2015**

R E S O L U T I O N

Resolution T-17467. This Resolution conditionally grants the request of TracFone Wireless, Inc. doing business as "*SafeLink Wireless*" to be designated as an Eligible Telecommunications Carrier and a California LifeLine Provider to offer pre-paid wireless telephone services supported by both the federal Lifeline program and the California LifeLine Program throughout California, excluding Tribal Lands.

Summary

By this Resolution, the California Public Utilities Commission (CPUC or Commission) conditionally grants the request of TracFone Wireless, Inc. (TracFone) (U-4231-C), a wireless reseller doing business as "*SafeLink Wireless*," to be designated as an Eligible Telecommunications Carrier (ETC). Additionally, the CPUC approves TracFone as an authorized California LifeLine Provider to provide discounted pre-paid wireless telephone services to eligible California households throughout California, including service areas of the Uniform Regulatory Framework (URF) carriers[1] and the Small Local Exchange Carriers'[2] (Small LECs) service areas,[3] but excluding federally recognized Tribal Lands.[4] TracFone requests approval of five pre-paid Lifeline wireless service plans. The CPUC rejects two plans and approves the following three California LifeLine wireless service plans:

1) *SafeLink Unlimited Talk and Text - No charge, unlimited minutes and texts. Free handset and activation fee discounted to $0;*

[1] The URF carriers are AT&T California, Verizon California, SureWest Telephone, Frontier Communications of California, and Frontier of the South West.
[2] The Small LECs group is composed of Calaveras Telephone Co. (U-1004-C), Cal-Ore Telephone Co. (U-1006-C), Ducor Telephone Co. (U-1007-C), Foresthill Telephone Co. (U-1009-C), Happy Valley Telephone Co. (U-1010-C), Hornitos Telephone Co. (U-1011-C), Kerman Telephone Co. (U-1012-C), Pinnacles Telephone Co. (U-1013-C), Ponderosa Telephone Co. (U-1014-C), Sierra Telephone Co. (U-1016-C), Siskiyou Telephone Co. (U-1017-C), Volcano Telephone Co. (U-1019-C), Winterhaven Telephone Co. (U-1021-C), and Frontier Communications West Coast (U-1020-C). These telephone companies generally operate in rural areas and have regulated rates.
[3] *See* TracFone Wireless AL 3A (filed April 1, 2014) which includes the Small LEC territories, updating AL 3 (February 3, 2014), which excluded these territories.
[4] *See* TracFone Wireless AL 3B (filed January 12, 2015), which excludes federally recognized Tribal Lands.

2) *Unlimited 2.5 GB Plan – $27.60 charge, unlimited voice and text with 2.5 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0; and*

3) *Unlimited 1 GB Plan – $17.60 charge, unlimited voice and text with 1 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0.*

These three California LifeLine wireless plans are eligible for both federal Lifeline and California LifeLine support.

TracFone's Advice Letters

On February 3, 2014, TracFone submitted Tier 3 Advice Letter 3 (AL 3) to the CPUC requesting ETC designation for the purposes of receiving federal Lifeline support and authorization to be a California LifeLine provider to offer discounted pre-paid wireless telephone services to eligible households in California, under the brand "*SafeLink Wireless*." On April 1, 2014, TracFone submitted AL 3A to modify AL 3 price plans and service territories. It also provided supplemental information of its service offerings. On January 12, 2015, TracFone submitted AL 3B to provide further clarification of AL 3 following discussions with Communications Division (CD) staff and to revise attachments submitted with AL 3 and AL 3A.

TracFone requests approval of five pre-paid wireless telephone service plans. One is a federal-only Lifeline wireless plan and the other four plans are California LifeLine wireless plans. The federal-only plan will be eligible for federal Lifeline support only and the California LifeLine plans will be eligible for both federal and California LifeLine support. California LifeLine plans have a $39 activation fee discounted to $0 because they are supported by the California LifeLine Fund, and the federal-only plan has no activation fee.

Following are summaries of TracFone's five proposed wireless telephone service plans:

- *Federal-only Plan* – No charge, 250 minutes and 1000 texts with $.10 per minute over limit and $.10 per minute nationwide long distance over 250 minutes. Free handset and no activation fee.
- *SafeLink Unlimited Talk and Text* - No charge, unlimited minutes and texts. Free handset and activation fee discounted to $0.
- *SafeLink Home Phone* – No charge, unlimited minutes. Home wireless connection device with RJ-11connector and telephone provided by customer, the wireless connection device is free. Activation fee discounted to $0.
- *Unlimited 2.5 GB Plan* – $27.60 charge, unlimited voice and text with 2.5 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0.

- *Unlimited 1 GB Plan* – $17.60 charge, unlimited voice and text with 1 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0.

TracFone states that the federal-only plan would be offered only if its California LifeLine plans are not approved or if a customer specifically chooses this plan.

Background

Federal ETC Designation Requirements

In order to receive federal universal service support, an applicant must be designated as an ETC. Section 254(e) of the Communications Act, as amended (the Act), states that "only an eligible telecommunications carrier under section 214(e) shall be eligible to receive specific federal universal service support."[5] Section 214(e)(2) of the Communications Act provides that a State commission "shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission."

Under Section 214(e)(2) of the Act, state commissions are given the primary responsibility for designating ETCs in their states. This section states that, "[u]pon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission" so long as the requesting carrier meets the requirements of Section 214(e)(1).

Section 214(e)(1) provides that, a common carrier designated as an ETC must offer services supported by the federal Universal Service Fund (USF) throughout the designated service area either by using its own facilities, resale, or by a combination of its own facilities and resale of another carrier's services and must advertise the services and the related charges using advertising media of general distribution throughout the designated service area. Advertising must include the availability of federal Lifeline services in a manner reasonably designed to reach those likely to qualify for those services.

In addition, the FCC's rules require that a carrier requesting ETC designation must:

1. Certify that it will comply with the service requirements applicable to the support that it receives;
2. Submit a five-year plan that describes proposed improvements or upgrades to the applicant's network throughout its proposed service area;
3. Demonstrate its ability to remain functional in emergency situations;

[5] 47 C.F.R. §§ 54.400 *et seq*. contains the FCC's Lifeline rules issued to implement § 254 of the Act. Section 54.401 defines Lifeline as a non-transferrable retail service offering for which qualifying low-income consumers pay a reduced charge for voice telephony service after applying the federal Lifeline support amount.

4. Demonstrate that it will satisfy applicable consumer and service quality standards;
5. Demonstrate that it is financially and technically capable of providing the federal Lifeline service; and
6. Submit information describing the terms and conditions of any voice telephone service plans offered to federal Lifeline participants.[6]

Before granting an ETC status to a carrier, state commissions must determine that it is in the public interest to do so.

The federal Lifeline program reimburses ETCs for providing discounts to eligible low-income households of $9.25 per month and provides additional reimbursements for serving enhanced Lifeline participants living on Tribal Lands.[7]

CPUC ETC Designation Requirements

A carrier seeking an ETC designation must also comply with the CPUC's ETC rules. In Resolution T-17002 (May 25, 2006), the CPUC adopted *The Comprehensive Procedures and Guidelines for ETC Designation and Requirements for ETCs* that are consistent with FCC Order 97-157 regarding designation of a telephone carrier as a qualified ETC. Pursuant to this Resolution, applicants seeking ETC designation in California are required to provide the following:

1. A description of the proposed service offerings and attached service area maps; description of the advertising plan(s);
2. A statement of commitment to provide service;
3. Submission of the 2-year service quality improvement plan;
4. A showing of the ability to remain functional;
5. A statement of commitment to consumer protection;
6. Demonstration that a carrier's usage plan is comparable to that of the incumbent LEC in the proposed service area; and
7. A public interest determination.

Carriers must also comply with CPUC User Fee and surcharge obligations. The CPUC User Fee is levied on all telecommunications carriers providing services directly to customers and the amount of fees is a percentage calculation based on all intrastate customer billings for telecommunications services. All telecommunications carriers that provide basic telephone service are also required to collect and remit Public Purpose Program (PPP) surcharges from end-users that fund the CPUC's universal service program.

California LifeLine Program Requirements

A carrier seeking to be a California LifeLine provider must comply with the CPUC's LifeLine rules and requirements set forth in Public Utilities Code §871 *et seq.*, General

[6] 47 C.F.R. § 54.202(a).
[7] 47 C.F.R. § 54.403.

Order (GO) 153 and various CPUC decisions including D.14-01-036 and D.10-11-033. The carrier must also comply with all applicable CPUC rules, orders, decisions, resolutions, the Public Utilities Code and federal Lifeline rules. The purpose of the California LifeLine Program is to provide high quality, residential telephone service at affordable rates to low-income citizens of California. The California Legislature directed the CPUC to ensure that the program has essential consumer protections and is competitively neutral.

In order to become a California LifeLine provider, a carrier must generally demonstrate the following:

1) It has a valid, active operating authority issued by the CPUC;[8]
2) It is current in its remittance of CPUC User Fees and public purpose program surcharges;[9]
3) Its proposed offerings meet the CPUC's California LifeLine service elements;[10]
4) Its disclosures, schedule of rates and charges, and terms and conditions are thorough and consistent with state and federal rules;
5) Its marketing and selling methods are consistent with D.14-01-036 and 47 C.F.R. §54.405(b); and
6) Its provisioning process is consistent with and in compliance with the California LifeLine Administrator's enrollment process, validation checks, transmission requirements, and efforts to prevent waste, fraud, and abuse.[11]

If a carrier is seeking to offer discounted wireless services in California, the carrier must demonstrate that its proposed offerings meet the CPUC's LifeLine wireless service elements. The CPUC adopted the California LifeLine wireless service elements in D.14-01-036, set forth in GO 153, Appendix A-2. Some of the key service elements are as follows:

1. The provider must offer participants the ability to place and receive voice-grade calls over all distances using the public switched telephone network or successor network;
2. The provider must offer free, unlimited access to public safety N11s (211, 311, 511, 711, and 811) for California LifeLine eligible plans with 1,000 or more voice minutes, and to 911 emergency services for all California LifeLine eligible plans;
3. The provider must offer services on a non-discriminatory basis to any customer residing in the service territory;

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[8] *See* OP 3 of D.14-01-036.
[9] *See* GO 153 §§ 9.5.3.1., 9.8.5, 9.8.6, 9.9.2, 10, and 11 and Ordering Paragraph 21 of D.13-05-035.
[10] *See* OP 26.a. of D.14-01-036, Attachment D, *See also* GO 153, Appendix A as adopted in D.14-01-036.
[11] On February 14, 2014, the CPUC's Communications Division issued an administrative letter titled "Guidance for Service Providers Interested in Offering California LifeLine Wireless Services Consistent with Decision 14-01-036."(Administrative Letter) (http://www.cpuc.ca.gov/NR/rdonlyres/AEBD2120-0BE4-4811-B545-64AF0349382F/0/CDAdvice_Letter_Filing_Components_CaLLWireless_APPROVED_021414.pdf.). This Administrative Letter provides instructions and guidance for a carrier seeking to become a California LifeLine provider to offer California LifeLine wireless services.

4. The provider offer at least one California LifeLine plan that meets or exceeds the California LifeLine service elements, and is not bundled with any video or data services (Unbundled Service Obligation);
5. The provider must offer to California LifeLine participants all handsets on the same basis as it offers to retail customers;
6. The provider must offer all plans that meet or exceed the California LifeLine service elements and are consistent with the rules on a discounted basis; and
7. The provider must provide free, unlimited access to customer service representatives in the same language in which the California LifeLine service was originally sold or marketed.

In addition, the carrier must comply with the California LifeLine wireless service terms and conditions adopted in D.14-01-036, set forth in GO 153, Appendix A-2, including, but not limited to:

1. The provider must exempt participants from paying CPUC user fees, surcharge and taxes;
2. The provider must not assess a fee to participants for paying their bills in person by cash, check or other form of payment;
3. The provider must allow participants to terminate service without incurring early termination fees;
4. The provider must allow participants to return their handsets within three days of service activation for free, without incurring a restocking fee; and
5. The provider must allow participants to purchase additional voice minutes at the lowest rate that is offered to retail customers.

To ensure that participants are adequately informed of the service plans, the California LifeLine provider must prominently disclose and disseminate terms and conditions, program information, and enrollment process to potential and existing participants in compliance with rules including, but not limited to, GO 153, sections 4 and 5, D.14-01-036, Public Utilities Code §876, and 47 C.F.R. §54.405(c). Additionally, the service providers must submit their marketing materials, including scripts to the Communications Division (CD) for review and approval prior to dissemination and/or availability to the public.[12]

Notice/Protests

TracFone served its AL filing via email on all parties on the ETC service list and the AL appeared in the Commission's Daily Calendar on February 6, 2014. No protests were received. Three letters of support were filed, from Molina Healthcare, Community Action Partnership, and Consumer Action.

Discussion

Company Overview and Proposed Federal Lifeline and California LifeLine Rate Plans

[12] *See* OP 24.c of D.14-01-036.

TracFone Wireless, Inc., doing business as *"SafeLink Wireless"* for its federal Lifeline and California LifeLine wireless telephone service plans, is a reseller of commercial mobile radio service with corporate offices at 9700 NW 112th Ave, Miami, FL 33178. TracFone is the fifth largest wireless carrier in the United States, with more than 23 million subscribers.[13] Through its arrangements with Verizon Wireless, AT&T Mobility, Sprint Wireless, and T-Mobile, TracFone plans to offer discounted wireless services to eligible low-income households throughout these carriers' service territories in California. TracFone does not request authority to provide federal or California LifeLine service on Tribal Lands. TracFone currently has been granted ETC designation in forty states, and has nearly 7 million federal Lifeline subscribers enrolled nationwide.

On July 18, 1997, the CPUC issued TracFone's predecessor company, Topp Telecom, Wireless Registration Number U-4231-C allowing it to operate as a reseller of commercial mobile radio service (CMRS) to the public in California. TracFone currently operates prepaid retail wireless services under the brands Straight Talk and NET10 in California.

On August 20, 2008, TracFone filed Advice Letter 1 seeking ETC designation in California. Draft Resolution T-17175 granting this designation was withdrawn by staff,[14] and TracFone filed numerous supplements to its original advice letter in 2008 and 2009. In December of 2009, Resolution T-17235 was issued denying TracFone ETC designation because "[T]he Commission finds that it is not in the public interest to designate as an ETC a telephone carrier that: (a) has failed to pay - and refuses to pay – public purpose program surcharges and user fees on its non-subsidized California intrastate revenue;[15] and (b) argues that it does not have to pay such fees because it is not a public utility."[16]

A staff report was released and an investigation was launched (I.09-12-016) in December of 2009. In May of 2010, Decision 10-05-21 granted a rehearing of Resolution T-17235, denied AL 1, vacated Resolution T-17235, and modified Investigation I. 09-12-016. Decision 12-02-032 was issued in February 2012, finding that TracFone acted unlawfully by failing to pay user fees and surcharges, and Phase 2 of this decision remains open. In January of 2014, D.14-01-037 ordered TracFone to remit past due surcharges with interest and user fees in the amount of $24,397,441.17 and closed the proceeding. TracFone paid the funds in February of 2014. On February 21, 2014, TracFone filed an Application for Rehearing of D.14-01-037

TracFone states that it will "remit payment to the Commission of the amounts by the due date for payment and will be in good standing as to all payments for user fees and public purpose program surcharges past and present."[17] As of the date of this

[13] AL 1, p. 3.
[14] Due to late filed comments and TracFone's intention to file a supplementary AL to address the issues.
[15] Public purpose programs include the following: California High Cost Fund (CHCF) – A & B, California Teleconnect Fund (CTF), California Advanced Services Fund (CASF), Deaf and Disabled Telecommunications Program (DDTP) and California LifeLine. User Fees are described in California P.U. Code §§ 431-35.
[16] Resolution T-17235.
[17] AL3, p. 26.

resolution, TracFone is current with its payments for CPUC user fees and public purpose program surcharges.

Compliance with Federal ETC Rules

Federal ETC Requirements:

A carrier must satisfy all federal ETC requirements in order to receive an ETC designation. TracFone has met the following federal ETC requirements:

Demonstration that the services intended to be offered comply with the voice telephony definition - Pursuant to 47 U.S.C. § 214(e)(1) and (6), TracFone submits that it is a common carrier and is able to provide telephone exchange and exchange access through its arrangements with its underlying facilities-based providers, Verizon Wireless, AT&T Mobility, Sprint, and T-Mobile.

Advertise using media of general distribution – TracFone demonstrates that its proposed wireless telephone services meet the definition of voice telephony and commits to advertise in a manner reasonably designed to reach those likely to qualify using any California-specific advertising requirements such as media of general distribution which may include advertising via newspaper, mail circular, web media, and radio, among other media, and target residential customers with its advertising efforts.

Commitment to provide supported service throughout the designated service area – TracFone commits to provide service to all requesting customers in the areas that it is designated an ETC, and expanding that service as the underlying facilities-based carriers expand service. TracFone has not requested authority to provide federal or state wireless LifeLine service on Tribal Lands.

Demonstration of ability to remain functional – TracFone asserts that the company has the same ability to remain functional in emergency situations as currently provided by the underlying carriers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, the ability to reroute traffic around damaged facilities and the capability of managing traffic spikes resulting from emergency situations according to applicable regulations. AT&T Mobility, Sprint, Verizon Wireless, and T-Mobile have redundancies, back-up generator power, and disaster recovery programs.

Reseller's submission of FCC-approved *Compliance Plan* – TracFone submitted a compliance plan on October 11, 2005, which was approved by the FCC.

Demonstration of financial and technical capability – TracFone is financially and technically capable of providing its proposed wireless telephone services. TracFone is the fifth largest wireless carrier in the US, with more than 23 million subscribers and has been granted ETC designation in forty states. The company has nearly 7 million federal Lifeline subscribers enrolled.

TracFone is financially able to provide proposed wireless telephone services; it does not intend to offer exclusively federal and California LifeLine supported services and is, therefore, not exclusively dependent on universal service funds for its revenue. Senior management of the company has depth in the telecommunications industry and offers extensive telecommunications business technical and managerial expertise. Also, as a reseller of wireless service, TracFone relies on the technical expertise of its underlying carriers, AT&T Mobility, Sprint, Verizon Wireless, and T-Mobile.

Commitment to meet public interest requirements for the proposed service areas – TracFone asserts that it meets the FCC public interest criteria because as an ETC, it will help to ensure that eligible California households will enjoy wireless benefits at a low cost, will advance customer service through "state of the art" handsets and customers will use its vertical features. TracFone asserts that its market differentiator is that usage information and remaining airtime balance information are stored in the handset and is thus available to customers on a real-time basis.

Commitment to satisfy all applicable consumer protection and service quality standards – TracFone agrees to abide by all applicable state and federal consumer protection and commits to comply with the Cellular Telecommunications and Internet Association's (CTIA) *Consumer Code for Wireless Service*.[18] CD staff notes that this code is amended from time to time and among other things, provides direction for carriers regarding unlocking of phones, to which TracFone has asserted that it will comply.[19] CD staff recommends that the Commission direct TracFone to comply with the *Consumer Code for Wireless* Service, as it is amended. TracFone also asserts that it will comply with CPUC GO 168, which is the Consumer Bill of Rights Governing Telecommunications Services.[20] TracFone has indicated that it will not impose fees based on consumers' payment method.

Agreement to apply the Lifeline support discount to residential retail plans – TracFone states that it will offer several rate plans to eligible California households, and that the pricing assumes state support at the levels approved in D.14-01-036[21] and the current FCC approved USF support amount of $9.25 per participant per month.

CD staff notes that TracFone did not assert that it would demonstrate compliance with the following federal ETC requirements and makes these recommendations:

1) TracFone did not specifically address its commitment to file federal compliance reports, including but not limited to Form 481 and 47 C.F.R § 54.422 annually. CD staff recommends that the Commission direct TracFone to file federal compliance

[18] The Consumer Code for Wireless Service can be found on the CTIA web page: http://www.ctia.org/policy-initiatives/voluntary-guidelines/consumer-code-for-wireless-service, visited 17 December 2014.
[19] AL 3, fn. 14. "TracFone will comply with all applicable requirements regarding unlocking of handsets."
[20] AL 3, p. 16. "TracFone will comply with CPUC Order 168 (the Consumer Bill of Rights)."
[21] D.14-01-036, issued January 27, 2014. *See* Slip Opinion § 4.5 for support amounts.

reports with the FCC and USAC and provide copies of these reports to this Commission.

2) TracFone did not specifically address that, when approved for ETC designation, it will submit specific information to USAC. Federal law, specifically 47 C.F.R. § 54.401(d), requires that when a state commission designates a carrier an ETC status, the state commission shall file or require the ETC to file information with USAC that demonstrates that the ETC's Lifeline plan meets the universal service support criteria for low-income consumers, including the terms and conditions of voice telephony service plans and the plan details.[22] To comply with § 54.401(d), CD recommends that the Commission direct TracFone to file the applicable information directly with USAC. Once USAC approves the service plans, TracFone shall provide to the Communications Division Director a copy of the information submitted to USAC and a copy of TracFone's certification of approval from the USAC within 30 days of receipt from USAC.

With implementation of the recommendations above, CD staff will be satisfied with TracFone's compliance to FCC ETC requirements.

Compliance with CPUC D.12-02-032[23]

Ordering Paragraph 2 of this Decision ordered TracFone to immediately begin collecting and remitting CPUC User Fees and public purpose program surcharges. TracFone submits that it is in compliance with the decision and has remitted to the Commission all fees and surcharges for all periods after February 24, 2012.

CD staff has verified that TracFone is current with payment of the annual CPUC User Fees and public purpose program surcharges and TracFone must continue to remain current with its payments. The Commission may revoke TracFone's ETC designation, suspend its participation in California LifeLine and/or operating authority if the company does not remit timely fees and surcharges and the Commission will notify the USAC and the FCC of the revocation.

Compliance with California LifeLine Program Requirements

CD staff finds that three of TracFone's four proposed California LifeLine wireless telephone service plans meet the California LifeLine Program requirements, and are eligible for reimbursement from the California LifeLine Fund. CD staff recommends approval of the following California LifeLine wireless service plans:

1) *SafeLink Unlimited Talk and Text - No charge, unlimited minutes and texts. Free handset and activation fee discounted to $0.*

[22] USAC requires a copy of a new ETC's designation order issued by its state utility regulator, http://usac.org/li/telecom-carriers/step03/default.aspx. Site last visited October 20, 2014.

[23] Issued 2/24/12, Modifying Presiding Officer's Decision Finding TracFone Wireless, Inc. Acted Unlawfully by Failing to Pay Telecommunication User Fees and Public Purpose Program Surcharges.

2) *Unlimited 2.5 GB Plan – $27.60 charge, unlimited voice and text with 2.5 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0.*

3) *Unlimited 1 GB Plan – $17.60 charge, unlimited voice and text with 1 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0.*

TracFone requests a waiver of the California LifeLine pre-qualification requirement for its California LifeLine wireless telephone service plans since it will offer them on a pre-paid basis. CD staff recommends that the Commission grant TracFone's request because it is consistent with D.14-01-036. However, this waiver does not apply to post-paid telephone service plans. If TracFone decides to offer any California LifeLine wireless telephone service plans on a post-paid basis in the future, it must comply with the pre-qualification requirement unless it is granted a waiver.

Additionally, under federal Lifeline rules, an ETC that offers federal Lifeline services on a pre-paid basis must require every participant to 1) activate service; or 2) complete an outgoing call before the ETC may *begin* to seek or to receive universal service support for the participant.[24] The FCC's objectives with this requirement are to validate that the "consumer is actually using the Lifeline-supported service" and to prevent waste of federal Lifeline funds.[25] In harmony with this federal requirement, CPUC D.14-01-036 requires that the discount for the pre-paid telephone service begin with the date of approval notification or the service activation date, whichever is later.

TracFone proposes to ship a handset to consumers with service already activated because it believes it will benefit consumers "who find activating a service difficult to do."[26] Consequently, TracFone does not propose to require the consumer to personally activate the service (and, in effect, to confirm receipt of the handset) by contacting TracFone's call center after receipt of the shipped handset. In contrast, other ETCs offering pre-paid services combine both elements into one event so that a consumer must make an outbound call to the respective ETCs' call center for the consumer to personally activate service. Hence, TracFone's chosen approach creates these four types of corresponding dates in their order of occurrence: 1) TracFone's Handset and Service Activation Date, 2) TracFone's Handset Ship Date, 3) Participant's Handset Receipt Date, and 4) Participant's Service Start Date.

Although TracFone will activate the service prior to shipping the handset, it will still require the consumer to make an outbound call[27] before it sends the required update[28] to

[24] *Lifeline Reform Order* ¶260.
[25] *Id* at ¶255.
[26] TracFone Advice Letter Supplement 3B at 4 (Filed January 12, 2015)(AL 3B).
[27] *Id*. In TracFone's AL3B, it indicated the consumer must "place his or her first call" to trigger the service initiation date. Although, TracFone uses the term, "service initiation date," CD staff deems this term as equivalent to the term, "Service Start Date," in §2.48 of GO 153.
[28] The Administrator developed a special process, "Status Code 53 Process," for telephone service providers offering pre-paid telephone services waiving the pre-qualification requirement. The Status Code 53 Process requires

the California LifeLine Administrator (Administrator) and seeks or receives universal service support for that consumer. Therefore, while TracFone's proposal is different than the method used by other ETCs', CD staff finds that TracFone's proposal is consistent with both the Administrator's Status Code 53 Process and the FCC's requirement.

In addition, TracFone seeks an exemption[29] from the All Plans Requirement for its retail wireless telephone service plans that do not offer more than 500 voice minutes and that "require substantial monetary outlays by consumers" for devices. The California LifeLine providers must offer all plans, including bundled service, promotional service, and family plans, which meet or exceed the minimum California LifeLine service elements and are consistent with California LifeLine rules ("All Plans Requirement") to eligible low-income households.[30] CD staff finds as reasonable TracFone's justification for its request to exempt TracFone's retail plans with less than 501 voice minutes, Straight Talk retail plans, and NET10 retail plans from the All Plans Requirement.[31] However, this exemption from the All Plans Requirement does not apply to TracFone's existing retail plans for which it neither sought exemption nor identified in AL 3, AL 3A, and/or AL3B. Additionally, any of TracFone's future retail plans are also not exempt from the All Plans Requirement unless granted an exemption from the CPUC.

Pursuant to D.14-01-036, the CPUC requires California LifeLine providers, among other things, to 1) prominently disclose and disseminate terms and conditions and 2) submit marketing materials,[32] including scripts used by customer service representatives for review and approval[33] by CD staff prior to distribution. Consistent with these requirements, and in light of recent Federal Trade Commission's finding that TracFone engaged in false advertising for its unlimited data plans, CD recommends that TracFone submit terms and conditions, disclosures, and marketing materials for the three California wireless plans approved in this Resolution for review and approval by CD staff before dissemination and/or availability to the public.

Since December 2010, the CPUC has required carriers with limited ETC designation offering federal Lifeline services in California to clearly label its service, which is consistent with the FCC's requirement.[34] Therefore, CD also recommends that TracFone to clearly label the three wireless telephone service plans approved in this Resolution as California LifeLine wireless service plans, and refer to the California LifeLine Program, where applicable, in TracFone's terms and conditions, disclosures, and marketing materials.

California LifeLine providers to send an update record with the Service Start Date and telephone number to the Administrator. LifeLine providers are only supposed to send this particular type of update record after confirming the consumer has made an outbound call.

[29] In D.14-01-036, OP 26.c, the CPUC authorized California LifeLine wireless providers to seek exemption from the All Plans Requirement.

[30] *See* OP 26.c of D.14-01-036 and Appendix A of GO 153 (as adopted in D.14-01-036).

[31] AL 3A at 7 (Filed April 1, 2014).

[32] *Lifeline Reform Order* ¶275 and *See* Footnote 15 and Ordering Paragraph 24.c of D.14-01-036.

[33] *See* Ordering Paragraph 24.c of D.14-01-036.

[34] 47 C.F.R. § 54.405(c).

Compliance with the California LifeLine Administrator's Requirements

The California LifeLine Administrator is the sole entity responsible for determining eligibility and enrollment process for both the California LifeLine Program and the federal Lifeline program. Therefore, service providers that participate in the federal and/or state program must comply with the eligibility requirements and the Administrator's enrollment process.

TracFone agrees: 1) to comply with the Administrator's enrollment and de-enrollment process, transmission requirements, eligibility rules, and validation checks; and 2) to facilitate, participate in, and comply with the Administrator's enrollment process to eliminate waste, fraud and abuse.[35]

In addition, TracFone agrees to assist applicants during the application process through its pre-screening method. TracFone plans to pre-screen applicants (using Lexis Nexis tools, CASS address validation, and a duplicate check within TracFone's database) before sending applicants' information and/or submitting any of the official California LifeLine forms to the Administrator. Once TracFone submits the official California LifeLine forms to the Administrator, TracFone agrees to comply with the Administrator's applicable notifications and eligibility decisions. The Administrator has a communications protocol called the Direct Application Protocol[36] to enable telephone service providers such as TracFone to receive and submit official California LifeLine application forms. CD staff finds that TracFone's proposed pre-screening process will be beneficial to consumers and serve as a quality control for the program against waste, fraud and abuse.

TracFone lacks experience with the California LifeLine Program and the Administrator's enrollment process, protocols, transmission requirements, etc. and is only in the preliminary stages of becoming and operating as a California LifeLine provider. Therefore, CD staff recommends TracFone notify the Administrator, and obtain prior approval from CD staff of any future changes TracFone may propose for its provisioning process and operations including, but not limited to, TracFone's pre-screening process and service activation method.

Compliance with Resolution T-17002

TracFone has satisfied the applicable requirements set forth in Resolution T-17002 including, but not limited to: providing Lifeline-only services within the proposed service area; providing the designated services; and, complying with advertising rules as required by the FCC.

TracFone states it has the ability to remain functional in emergency situations by working with its underlying carriers, Verizon Wireless, AT&T Mobility, Sprint, and T-

[35] TracFone AL 3B at 2-4 and at Attachment 1.
[36] *See* Resolution T-17366.
(http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_RESOLUTION/170652.PDF).

Mobile. TracFone commits to satisfy all applicable state and federal requirements related to consumer protection and service quality standards.

Providing Federal Lifeline Wireless Service to Customers in Small LEC Service Areas and on Tribal Lands

TracFone seeks ETC designation in all the areas where it has wireless coverage, including the service areas of the Small LECs,[37] but does not request authority to provide federal Lifeline or California LifeLine service in federally-recognized Tribal Lands.[38]

Public Interest Determination:

Before recommending designation of a carrier as an ETC, CD staff must determine that doing so would be in the public interest for California consumers.[39] In the Lifeline Order, the FCC clearly states the importance of promoting universal service principles[40] and in that context that the federal Lifeline program includes a public interest determination particularly for federal Lifeline-only ETCs where forbearance of the facilities-based requirement exists.[41] Since the federal Lifeline program adopted a technology-neutral definition for supported service, TracFone proposes to provide increased competition in the approved service area which is in the public interest. In addition, as a reseller with expanded area, TracFone often will serve a larger local calling area than a traditional wireless provider and will afford consumers the convenience of telephony mobility. Federal Lifeline participants will have another provider choice which likely may expand participation of qualifying customers in the federal Lifeline program.

Upon review, CD staff finds that TracFone meets the federal ETC criteria for public interest determination including providing the benefits of increased competitive choice, convenience, security with mobility, ability to purchase additional usage, and the ability to send and receive text messages in a prepaid plan.

Price Analysis

When analyzing Lifeline plan pricing, CD staff considers non-Lifeline retail plan prices, relying on competitive forces to determine what plan prices are reasonable, as well as currently available federal and California LifeLine plans. CD staff evaluated TracFone's proposed offerings using the expected monthly cost to a low-income consumer based on mobile average minutes of use[42] and other Lifeline wireless plans.

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[37] AL 3A, p. 2 and Part C.
[38] AL 3B.
[39] *In the Matter of Federal-State Joint Board on Universal Service,* Report and Order, CC Dkt 96-45 (FCC 05-46), released Mar 17, 2005 ¶ 40 and CPUC Resolution T-17002, *Appendix A, Section II-G: Public Interest Determination.*
[40] 47 U.S.C. § 254(b)(c)(e)(2).
[41] *Lifeline Reform Order* at ¶¶ 219, 378, 362, and fn 968.
[42] *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Dkt. No. 11-186 (FCC 13-34) (*Sixteenth Report on Mobile Competition).* The FCC annually

The *Federal-only Plan* with free 250 minutes is compared to similar plans in Chart 1 below.

Chart 1 -- Comparison of Proposed Federal Lifeline Wireless Plans to Other Prepaid Federal Lifeline Wireless Plans in Service Area (Assuming Average Wireless MOU)

Comparable ETC Wireless Plans, 1/7/2014	Budget Mobile 250	Boomerang 250 Minute Basic Plan +25MB	SafeLink 250 Plan
Imputed or Comparable Retail Plan Price	$ 9.25	$ 9.25	$ 9.25
Federal Lifeline	$ 9.25	$ 9.25	$ 9.25
Tribal Lands	-	-	-
California LifeLine	-	-	-
Plan Price to Customer per advice letter	$0.00	$0.00	$0.00
Avg. MOU*	615	615	615
Basic Plan Minutes (allowance)	250	250	250
Texts included	50	-	1000
Data included	-	25 MB	-
MOUs in excess of average	365	365	365
Cost per Min in excess of allowance	$0.033	$0.040	$0.100
Total Cost to Lifeline Customers with 615 MOU	**$12.05**	**$14.60**	**$36.50**

CD staff does not find in the public interest to approve the *Federal-only Plan* even though the cost is $0 if 250 minutes or less were used. Factoring in that the average minutes of use for a customer is 615 minutes, this *Federal-only Plan* would cause a subscriber to pay $36.50 if the usage level were at the average. Further, alternative plans are available to customers at significantly lower prices from both TracFone and other providers. CD staff recommends that the Commission reject the *Federal-only Plan* for use in California.

Regarding the *SafeLink Unlimited Talk and Text and SafeLink Home Phone,* Chart 2 compares these two unlimited voice and text plans to similar existing plans.

issues a mobile competition report which reflects analysis of 2011 data submitted by carriers. CD staff analysis uses the 615 average minutes of use (MOU) for wireless voice as a base to evaluate Lifeline plan offerings (Table 38).

Chart 2 -- Comparison of Proposed Federal Lifeline Wireless Plans to Other Prepaid Federal Lifeline Wireless Plans in Service Area (Assuming Average Wireless MOU)

Comparable ETC Wireless Plans, 1/7/2014	Budget Unbundled Plan 2	Telscape Unbundled Plan 1	Air Voice Unbundled Plan 1	Virgin Mobile Unbundled Plan 1	Nexus Unbundled Plan 2	SafeLink Unlimited Voice and Text	SafeLink Home Phone
Imputed or Comparable Retail Plan Price	$ 40.00	$ 40.00	$ 21.90	$ 21.90	$ 34.45	$ 25.00	$ 17.99
Federal Lifeline	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25
Tribal Lands						$0.00	$0.00
California LifeLine	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65
Implicit Company Subsidy	$ 18.10	$ 18.10	$ -	$ -	$ 12.55	$ 3.10	$ (3.91)
Plan Price to Customer per advice letter	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Avg. MOU*	615	615	615	615	615	615	615
Basic Plan Minutes (allowance)	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Texts included	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	-
Data included	-	-		-	-	-	-
Total Cost to Lifeline Customers with 615 MOU	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**

CD staff finds these unlimited plans as proposed by TracFone to be reasonable compared to other plans offered in California.

Regarding the *Unlimited 2.5 GB Plan* and *Unlimited 1 GB Plan,* Chart 3 compares these two unlimited voice and text plans to similar existing plans.

Chart 3 -- Comparison of Proposed Federal Lifeline Wireless Plans to Other Prepaid Federal Lifeline Wireless Plans including data in Service Area (Assuming Average Wireless MOU)

Comparable ETC Wireless Plans, 1/7/2014	Air Voice Bundled Plan 3	SafeLink Unlimited with 1 GB	Nexus Bundled Plan 2	Nexus Bundled Plan 3	i-wireless Bundled Plan 3	Budget Bundled Plan 1	SafeLink Unlimited with 2.5 GB
Imputed or Comparable Retail Plan Price	$ 40.00	$ 40.00	$ 48.00	$ 58.30	$ 50.00	$ 50.00	$ 50.00
Federal Lifeline	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25
Tribal Lands		$0.00					$0.00
California LifeLine	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65
Implicit Company Subsidy	$ 18.10	$ 18.10	$ 26.10	$ 36.40	$ 28.10	$ 28.10	$ 28.10
Plan Price to Customer per advice letter	$ 18.10	$17.60	$ 26.10	$36.40	$ 25.00	$27.60	$27.60
Avg. MOU*	615	615	615	615	615	615	615
Basic Plan Minutes (allowance)	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Texts included	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Data included	1 GB	1 GB	2 GB	5 GB	2 GB	3 GB	2.5 GB
Total Cost to Lifeline Customers with 615 MOU	**$18.10**	**$17.60**	**$26.10**	**$36.40**	**$25.00**	**$27.60**	**$27.60**

CD staff finds these plans as proposed by TracFone to be reasonably priced compared to other plans offered in California.

Due Diligence Review

An integral part of CD's processing of an ETC designation request is a due diligence review of the requesting carrier as a supplement to the public interest analysis to determine if the carrier has engaged in behavior that may call into question its fitness to

be granted ETC designation to serve California consumers. The due diligence review includes, but is not limited to, CD's conducting independent research about a carrier's past operations to provide the Commission with information that may be pertinent in deciding whether or not to grant the ETC designation request. Typical research methods include performing Lexis/Nexis legal resource searches, internet searches, reviewing industry and trade publications, querying other governmental agencies, contacting the FCC and USAC, reviewing a company's history of operations, and contacting the Commission's Safety and Enforcement Division and Consumer Affairs Branch.

Federal Enforcement Actions:

On September 30, 2013, the FCC issued TracFone a *Notice of Apparent Liability for Forfeiture* (NAL) for $4.5M for "apparently willfully and repeatedly violated Sections 54.407, 54.409, and 54.410 of the Commission's rules by requesting and/or receiving support from the Lifeline program of the Universal Service Fund (USF or Fund) for 842 ineligible consumers between the months of September 2012 and February 2013," resulting in a request for $7,792 in overpayments from USAC. [43] TracFone responded to the FCC on December 1, 2013, seeking cancellation or significant reduction of the forfeiture, denying the allegations, and providing evidence as to why the NAL was incorrect, not well investigated, and stating that the proposed forfeiture was excessive and unnecessarily punitive. To date, the FCC has not acted on TracFone's response to the NAL.

CD staff does not find this FCC action to be cause for denial of TracFone's advice letter seeking ETC designation in California because TracFone has asserted that it will comply with the California LifeLine Administrator enrollment process. Further, the FCC has not adopted a threshold for an acceptable level of duplicates. To assess TracFone's current error rate, CD staff relied upon the Federal *Improper Payments Elimination and Recovery Act of 2010* (IPERA)[44] as a guideline for an acceptable level of error for duplicate enrollments.[45] Absent an FCC threshold, CD staff finds that the 1.5% threshold provides a reasonable guideline for an acceptable level of duplication based on this benchmark. TracFone provided CD with its actual rate, and that number was significantly less than 1%, and therefore, CD finds that TracFone's duplicate rate does not rise to the level of a "significant" risk that justifies a denial of their ETC designation request.

The CPUC has a California LifeLine Administrator as the sole entity responsible for the enrollment process and determining eligibility. The Administrator maintains

[43] Notice of Apparent Liability, *In the Matter of TracFone Wireless, Inc.* File no: EB-IHD-13-00010668, NAL/Acct No: 201332080029, FRN: 0006855639. Rel. Sept. 30, 2013.
[44] 31 U.S.C.3321 note, July 22, 2010.
[45] IPERA requires that all federal programs and activities that may be susceptible to significant improper payments be identified, which aids in the prevention of the loss of taxpayer dollars through wrongful payments to individuals, organizations, and contractors by defining standards and setting limits to reduce improper payments. The IPERA asserts that "significant" risk exists when improper program payments exceed $10,000,000 of all payments made in a fiscal year or 1.5% of a fiscal year's program outlay.

the database of federal Lifeline and/or California LifeLine participants in California. Therefore, this independent third-party entity ensures among its various responsibilities that only eligible households receive the discounted services and that duplicate enrollments are minimized.

On January 28, 2015, TracFone settled a complaint with the Federal Trade Commission (FTC) for $40M. The complaint alleged that TracFone "participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 USC § 45, in connection with the advertising and sale of 'unlimited' mobile data service."[46] CD staff had previously addressed data throttling procedures with TracFone,[47] and determined that the LifeLine plans being offered in California are for either 1 GB or 2.5 GB and that the customer has continued access to data services after their monthly plan allocation is used. CD staff notes that adequate disclosures shall be provided and verified according to California LifeLine procedures.

CD staff notes that TracFone's history of regulatory actions for enforcement of state rules for remittance of regulatory and 911 fees and surcharges in approximately 16 other states,[48] and existing state tax liens, causes some concern. However, regarding California enforcement actions, the company asserts that "TracFone will remit payment to the Commission of the amounts by the due date for payment and will be in good standing as to all payments for user fees and public purpose program surcharges past and current." As of the date of this resolution, TracFone's payments are up to date.

CD staff researched both litigation and consumer complaints regarding TracFone and its brands, both as a federal Lifeline provider and as a prepaid wireless company. TracFone provided complaint data nationwide, including California, which revealed complaint data for the past two years. Complaints to the CPUC's Consumer Affairs Bureau covered several areas, which CD categorized into customers who had difficulty with local number portability, billing, reaching customer care, hardware failure, cell phone unlocking, advertising representations, and miscellaneous.

Because these complaints raise concerns with TracFone's customer interactions, CD staff recommends that the Commission direct TracFone to provide an annual report of the number of customer complaints it has received to the Director of the Communications Division, or its successor division, for two calendar years, beginning with the year that it receives its ETC designation. The reports are due by February 1st of the year following the year being reported and include the number complaints the company received in California for federal LifeLine and California LifeLine service and describe *in detail* the nature of the complaints, including, but not limited to: charges for service, use of

[46] FTC v. TracFone Wireless, also dba Straight Talk Wireless, Net10 Wireless, Simple Mobile, and Telcel America, Case3:15-cv-00392 (US Dist. Ct., Northern Div. of CA, filed January 28, 2015).

[47] TracFone letter dated Dec 11, 2015 "…Once a customer reaches that threshold, the speed will be reduced to a lower speed (*e.g.*, 2G speed) for the remainder of the usage period. High speed data service will resume at the beginning of the following monthly service period…"

[48] See I.09-12-016 Opening Post-Hearing Brief of the Safety and Enforcement Division (Formerly Known as the Consumer Protection & Safety Division), dated February 6, 2013.

minutes, customer service, problems with wireless coverage, poor sound quality, and quality of handsets, and the resolution of the complaint.

Aside from the concerns herein, CD staff did not uncover any fitness issues which would lead to a denial of TracFone's requests for ETC designation and authority to become a California LifeLine provider. CD staff finds TracFone's advice letters consistent with the public interest at this time and recommends that the Commission grant the company ETC designation for California and authority to become a California LifeLine provider. If substantive issues emerge after this ETC designation and California LifeLine provider authorization are approved, which raise public interest questions about TracFone's ability to offer California LifeLine services in compliance with the authorities granted in this Resolution, the Commission may pursue an enforcement action against the company, which may include, but is not limited to, fines, penalties, rejected California LifeLine reimbursements, and the revocation of ETC designation, wireless identification registration, and/or authority to operate as a California LifeLine provider.

Safety Concerns:

CD staff has safety concerns in two main areas of wireless phone service: the coverage of wireless mobile phone service and the ability of emergency first responders to find the location of the caller when using a mobile phone.

Where there is a lack of coverage, poor signal strength, or atmospheric or terrain conditions that affect connections, emergency calls may not be completed. In rural areas, for example, with spotty connectivity or interference (e.g. due to geographic or structural obstacles), wireless mobile resellers of wholesale facilities service cannot guarantee full, accessible emergency connections for their own customers. An incomplete emergency call can have devastating results.

Given that safety and emergency communications are common concerns for all of California's wireless customers, CD staff recommends that TracFone be required to fully and clearly inform prospective federal Lifeline and California LifeLine participants that coverage limitations may affect wireless mobile phone service access to E-911 and/or 911 in the event of an emergency. Such disclosures include, but are not limited to, clear statements on marketing materials and conspicuous placement on the public website in the form of information content on webpages, footnotes, and/or listings on a frequently asked questions (FAQ) webpage.

In addition to general concerns regarding wireless coverage, CD staff has a number of concerns about the *SafeLink Home Phone* plan for federal Lifeline and California LifeLine service. TracFone's *SafeLink Home Phone* service uses carrier wireless capability inside a fixed wireless device into which customers plug a standard home telephone. This fixed wireless unit has an electrical plug for power, a backup battery, and two RJ-11 telephone jacks.

The product operates with familiar home telephone sets, but does not have the same functionality. The underlying technology providing the call capability is a carrier

wireless network and yet, to the consumer, it looks like, and can be confused with, familiar wireline service. The *SafeLink Home Phone* will be used by customers with a traditional wireline telephone but it operates using wireless service. CD staff tests of the product demonstrated that it does not appear to operate consistently to provide basic service,[49] and introduces multiple problems for the Lifeline particpant.

- First, the location information for 911 calls for this product does not provide the billing address of the location of the call, as with a wireline telephone, and so emergency responders may have difficulty finding the caller.[50] CD staff made test calls on the device in December of 2014,[51] and found that the location information that the PSAP operator saw was not the address from which the call was made. Further, staff made the calls from a multi-story building, and no floor or height information was seen at the 911 call center, therefore the actual location of the caller could not be provided to the first responders even if they had the right address from the PSAP systems.
- Second, staff made multiple calls to 911 which did not connect to a 911 call center.[52] For many of these calls, instead of connecting to emergency responders, staff heard a message from the facilities-based wireless carrier that indicated the caller should "please check the number and dial again."
- Third, when staff did connect with the 911 call center, the call quality was sometimes so poor that the agent could not hear the conversation and CD staff had to shout to be heard by the operator.
- Fourth, staff attempted to make calls to a variety of other telephone numbers,[53] and some of the calls did not connect to those devices. The underlying facilities-based wireless carrier played a message that indicated the caller should "please check the number and dial again." Staff does not find that it is appropriate to approve for federal Lifeline and California LifeLine service, a wireless service that does not reliably make calls and does not deliver basic service.

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[49] Basic service is defined in Decision 12-12-038 through elements, the first of which is "the ability to place and receive voice-grade calls over all distances utilizing the public switched telephone network…" Federal rules also require that "[E]ligible voice telephony services must provide voice grade access to the public switched network…"47 CFR § 54.101.

[50] Indoor location accuracy for wireless devices is currently the subject of an FCC NPRM partially because "[I]n 2011, the Commission found indoor location accuracy to be a significant public safety concern because indoor incidents may not be visible to first responders, and a location accuracy of 100/300 meters . . . would only identify the city block in which a building is located." *In the Matter of Wireless E911 Location Accuracy Requirements,* Third Further Notice of Proposed Rulemaking, PS Dkt 07-114 (FCC 14-13), Rel. Feb 21, 2014. ¶ 10.

[51] TracFone provided CD staff with a Straight Talk Wireless Home Phone Device, which TracFone asserted was the same device that was proposed to be offered for California LifeLine service. This is the device which CD staff used to make test calls. Letter from TracFone counsel to CD staff, November 7, 2014.

[52] CD staff made at least 13 calls to 9-1-1 from the device, only 5 of which connected to a Public Service Answering Point (PSAP).

[53] CD staff made test calls to Verizon wireless phones, local telephone numbers, internal Commission numbers and random numbers, in addition to 9-1-1 calls.

- Finally, the unit contains a backup battery for power when power is not available from the household. If the battery is not maintained, then the unit will not operate in a power outage. Traditional wireline telephone network design provides for backup power at the central office and/or remote unit that will power a wireline telephone in a power outage.

Staff again notes that the handset being used by the unit looks like a traditional wireline telephone and yet does not function in the same manner. This could be misleading for participants, and for some populations who participate in the programs, consumer education campaigns might not be sufficient to fully inform the participant of the risks and differences in this product.

In summary, the *SafeLink Home Phone* will be used by customers with a traditional wireline telephone but it does not operate in the same manner as a traditional telephone for important functionality such as 911 calling. It operates as a wireless handset, which has documented difficulties in providing consistent location information for first responders. Further, CD staff tests of the product demonstrated that it does not appear to operate consistently to provide basic service.

Given these reasons, CD staff does not find it in the public interest that this product is offered for federal Lifeline or California LifeLine. Accordingly CD staff recommends that the Commission reject the *SafeLink Home Phone* plan and product for use in California.

Final Conclusions and Staff Recommendations:

CD staff recommends conditional approval of TracFone's request for an ETC designation and authority to become a California LifeLine provider throughout the state, excluding Tribal Lands. CD staff specifically recommends conditional approval for TracFone to offer these three plans:

- *SafeLink Unlimited Talk and Text - No charge, unlimited minutes and texts. Free handset and activation fee discounted to $0.*
- *Unlimited 2.5 GB Plan – $27.60 charge, unlimited voice and text with 2.5 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0.*
- *Unlimited 1 GB Plan – $17.60 charge, unlimited voice and text with 1 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0.*

CD staff does not recommend approval of TracFone's *Federal Only Plan* because it would cost a federal Lifeline participant with average usage more than subscribing to other higher-minute federal Lifeline wireless plans currently available. CD staff does not recommend approval of TracFone's *SafeLink Home Phone* because it uses a standard home telephone and does not operate in the same manner for emergency calling, potentially

misleading customers. CD staff does not recommend this product also because it does not operate consistently to make basic telephone calls.

Additionally, CD staff recommends approval of TracFone's request for a waiver of the pre-qualification requirement for only its pre-paid telephone service plans.

CD staff recommends that TracFone's retail plans with less than 501 voice minutes, Straight Talk retail plans, and NET10 retail plans identified in its Advice Letter Supplement 3A filed on April 1, 2014, be exempt from the All Plans Requirement.

CD staff recommends that TracFone submit its terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, for review and approval by CD staff before dissemination and/or availability to the public. Additionally, CD staff recommends that TracFone clearly label the three wireless telephone service plans approved by CD staff in this Resolution as California LifeLine wireless service plans, and refer to the California LifeLine Program, where applicable, in TracFone's terms and conditions, disclosures, and marketing materials.

Although TracFone's proposal to ship an activated handset with activated service to consumers differs from how other ETCs activate the services they offer, CD staff finds that TracFone's service activation proposal is consistent with both the Administrator's Status Code 53 Process and the FCC's requirement.

CD staff concludes that TracFone's proposed pre-screening process will be beneficial to consumers and serve as a quality control for the program against waste, fraud and abuse. However, CD staff recommends TracFone notify the Administrator, and obtain approval of any proposed changes to TracFone's provisioning process and operations including, but not limited to, TracFone's pre-screening process and service activation method.

As conditions of providing its California LifeLine supported wireless operations in California, TracFone must comply with all of the following:

- File required annual reports and compliance reports with the FCC and the Commission;
- 47 C.F.R. § 54.401(d) by filing the required information directly with USAC to certify that its federal Lifeline wireless plans meet federal requirements under the USAC administration. Within 30 days of receipt of certification from USAC, TracFone shall report send a letter to the Director of the Communications Division, or its successor organization, a copy of the information submitted to USAC and a copy of USAC's certification;
- Provide terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, to the CPUC California LifeLine staff for review and approval prior to dissemination and/or availability to the public;
- Continue to comply with CPUC User Fee and universal service public purpose program surcharge requirements. Failure to comply with fee and surcharge remittance requirements may lead to enforcement action including, but not

limited to, revocation of TracFone's ETC designation, wireless identification registration, and/or authority to operate as a California LifeLine Provider;

- Post safety related information about wireless telephone service coverage limitations on distributed terms and conditions, disclosures, marketing materials, including scripts used by customer service representatives, and on its company website;
- For two years following its ETC designation, TracFone will file with the Director of the Communications Division, an annual report of California LifeLine participant complaints. The reports are due by February 1st of the year following the year being reported and include the number complaints the company received in California for California LifeLine service and describe the nature of the complaints, including, but not limited to: charges for service, use of minutes, customer service, problems with wireless coverage, poor sound quality, and quality of handsets.
- Abide by all applicable state and federal consumer protection, including CPUC General Order 168, which is the Consumer Bill of Rights Governing Telecommunications Services, and comply with the Cellular Telecommunications and Internet Association's (CTIA) *Consumer Code for Wireless Service*, as it is amended, and comply with directions to carriers regarding unlocking of phones.

COMMENTS

In compliance with P.U. Code § 311(g), the Commission emailed a notice letter on February 6, 2015, informing all parties on the eligible telecommunications carrier service list of the availability of this resolution for public comments at the Commission's website www.cpuc.ca.gov. The notice letter also informed parties that the final conformed resolution adopted by the Commission will be posted and available at this same website.

FINDINGS AND CONCLUSIONS

1. TracFone Wireless Inc., doing business as "*SafeLink Wireless*," is a prepaid wireless service provider that resells the services of AT&T Mobility, Sprint, Verizon Wireless and T-Mobile. Its principal offices are located at 9700 NW 112th Ave, Miami, FL 33178.
2. On July 18, 1997, the Commission issued TracFone Wireless's predecessor company, Topp Telecom, its Wireless Identification Registration number U-4231-C allowing it to operate as a reseller of commercial mobile radio service (CMRS) to the public in California.
3. On August 20, 2008, TracFone Wireless filed Advice Letter (AL) 1 seeking ETC designation in California.
4. In December of 2009, the Commission issued Resolution T-17235 denying TracFone Wireless's request for ETC designation in California.

5. In December of 2009, a staff report was released and an investigation was launched (I.09-12-016) of TracFone Wireless.
6. In May of 2010, the Commission issued D.10-05-21 and granted a rehearing of Resolution T-17235, denied AL 1, vacated Resolution T-17235, and modified Investigation I. 09-12-016.
7. In February of 2012, the Commission issued D.12-02-032 finding that TracFone Wireless acted unlawfully by failing to pay CPUC User Fees and remit public purpose program surcharges.
8. In January of 2014, the Commission issued D.14-01-037 ordering TracFone Wireless to remit past due amounts for CPUC User Fees and remit public purpose program surcharges.
9. In February of 2014, TracFone Wireless paid outstanding CPUC User Fees and remit public purpose program surcharges according to D.14-01-037.
10. On February 3, 2014, TracFone Wireless filed Tier 3 AL 3 requesting ETC designation to offer California LifeLine and federal Lifeline prepaid wireless service to eligible low-income households.
11. In AL 3, TracFone Wireless proposed one federal-only Lifeline wireless plan to which it would apply the $9.25 federal support amount and four California LifeLine wireless plans to which it would apply both the $9.25 federal support amount and $12.65 of California LifeLine support.
12. On March 28, 2014, TracFone Wireless filed AL 3A incorporating information requested by the CD LifeLine team in a guidance document. AL 3A revised price plans, added the Small LECs' service territories to its proposed service area, and added clarifying information.
13. On January 9, 2015, TracFone Wireless submitted AL 3B, which provided further clarification on marketing, enrollment process, handset activation, coverage areas, and updates to its comparison chart and terms and conditions.
14. In AL 3B, TracFone Wireless proposes to offer its wireless service plans throughout California, excluding Tribal Lands.
15. On September 30, 2013, the FCC issued TracFone Wireless a *Notice of Apparent Liability for Forfeiture (NAL)* for $4.5M.
16. On December 1, 2013, TracFone Wireless responded to the NAL, and the FCC has not acted on this response.
17. TracFone Wireless's currently reported level of duplicates for Lifeline enrollees does not rise to the level of "significant" risk.
18. On November 13, 2014, TracFone Wireless provided a sample of the StraightTalk Home Phone device and service, which served as the model for the *SafeLink Home Phone* service, for CD staff to evaluate as part of the ETC due diligence.

19. TracFone Wireless should file all federal compliance reports, including but not limited to the FCC Form 481 and 47 C.F.R § 54.422 annually as required, and provide copies of these reports to this Commission when they are filed with the FCC and Universal Service Administrative Company (USAC).
20. TracFone Wireless should file the required service plan information pursuant to 47 C.F.R. § 54.401(d) with USAC. Once accepted by USAC, a copy of the information submitted to USAC and a copy of TracFone Wireless's certification of approval from the USAC should be provided to the Communications Division Director within 30 days of receipt from USAC.
21. TracFone Wireless meets the FCC's Eligible Telecommunications Carrier requirements.
22. TracFone Wireless commits to comply with all General Order 153 rules and with the California LifeLine Administrator's (Administrator) processes, and to cooperate with the California LifeLine team in the review and approval of its California LifeLine disclosures and marketing materials.
23. TracFone Wireless commits to comply with the Administrator's enrollment and de-enrollment processes, transmission requirements, eligibility rules, and validation checks and to facilitate, participate in, and comply with the Administrator's enrollment process to eliminate waste, fraud and abuse.
24. TracFone Wireless shall label clearly its wireless offerings to include adequate information about the potential coverage and service quality issues, and to provide copies to Communications Division of all terms and conditions, disclosures, and marketing materials including, but not limited to, customer service representative scripts, internet marketing, and posters and brochures, for California LifeLine staff to review and approval prior to publication and distribution.
25. Since December 2010, the CPUC has required carriers with limited ETC designation for the purposes of offering federal Lifeline services in California to clearly label its service as federal Lifeline service.
26. The FCC requires ETCs to identify the Lifeline supported service as Lifeline service, and that Lifeline is a government assistance program.
27. TracFone should clearly label the three wireless plans approved in this Resolution as California LifeLine wireless service plans and refer to the California LifeLine Program, where applicable, in TracFone's terms and conditions, disclosures, and marketing materials.
28. TracFone Wireless commits to comply with CPUC User Fee and universal service public purpose program surcharge requirements. Failure to comply with these requirements may lead to enforcement action including, but not limited to, revocation and/or suspension of TracFone Wireless's Eligible Telecommunications Carrier designation, wireless identification registration,

and/or authority to operate as a California LifeLine Provider, and denial and/or suspension of California LifeLine reimbursements.

29. TracFone Wireless agrees to abide by all applicable state and federal consumer protection, including CPUC General Order 168, which is the Consumer Bill of Rights Governing Telecommunications Services and commits to comply with the Cellular Telecommunications and Internet Association's (CTIA) *Consumer Code for Wireless Service*. This code is amended from time to time and TracFone should abide by the most current version.

30. TracFone Wireless's *SafeLink Unlimited Talk and Text, Unlimited 2.5 GB Plan, and Unlimited 1 GB Plan* meet federal ETC criteria for public interest determination with the benefits of increased competitive choice, convenience, security with mobility, ability to purchase additional usage, and ability to send and receive text messages in a prepaid plan.

31. TracFone Wireless's *SafeLink Unlimited Talk and Text, Unlimited 2.5 GB Plan, and Unlimited 1 GB Plan* meet California LifeLine Program requirements.

32. TracFone's Wireless *Federal only Lifeline wireless plan* does not have equal or better value from plans offered by other providers or TracFone's other plans. CD does not recommend that the Commission adopt this plan.

33. The *SafeLink Home Phone* service uses a regular landline telephone, but did not operate as a landline telephone for 911 location information or in power outages. CD staff found problems with the capability of the device to provide basic service consistently and reliably, and recommends that this plan be rejected.

34. Communications Division conducted due diligence review to determine TracFone Wireless's fitness as it relates to business practice behavior and customer protection that may call into question its fitness to be granted ETC designation to serve California consumers. Communications Division has concerns, and recommends that the Commission order the company to provide an annual report of California LifeLine complaints for two years following its ETC designation. The reports are due by February 1st of the year following the year being reported and include the number complaints the company received in California for federal Lifeline and California LifeLine supported service and describe *in detail* the nature of the complaints, including, but not limited to: charges for service, use of minutes, customer service, problems with wireless coverage, poor sound quality, and quality of handsets, and the resolution of the complaint.

35. The Commission may pursue an enforcement action which may include fines, penalties, revocation and/or suspension of ETC designation, wireless identification registration, and/or authority to operate as a California LifeLine Provider should substantive issues emerge after this ETC is approved which raises public interest questions about TracFone Wireless's operations.

36. For public safety reasons, TracFone Wireless should clearly inform California LifeLine participants that coverage limitations may affect wireless mobile service including E-911/911 emergency calls. Safety related information should be included, but are not limited to, in all terms and conditions, disclosures, California LifeLine related materials, and the company website.
37. In D.14-01-036, the Commission exempted pre-paid telephone service plans from the pre-qualification requirements.
38. It is reasonable to grant a waiver of the California LifeLine pre-qualification requirement for TracFone Wireless's California LifeLine wireless plans because these will be offered on a pre-paid basis.
39. TracFone Wireless's proposed method for service activation of handsets is consistent with both California LifeLine Administrator's process and the FCC rules.
40. It is reasonable to grant TracFone Wireless's request for exemption from the California LifeLine "All-Plans Requirement" for its retail wireless telephone plans with less than 501 voice minutes, Straight Talk retail plans, and NET10 retail plans identified in its Advice Letter Supplement 3A filed on April 1, 2014.
41. TracFone Wireless's pre-screening process benefits consumers and serves as a quality control for the California LifeLine Program.
42. TracFone Wireless should file a Tier 2 Advice Letter to request approval for any future changes, including but not limited to terms and conditions, to the California LifeLine wireless plans approved in this Resolution.
43. On February 6, 2015, the Commission emailed a draft of this resolution to the eligible telecommunications carrier and California LifeLine proceeding service lists for public comments.
44. TracFone lacks experience with the California LifeLine Program and the Administrator's enrollment process, protocols, transmission requirements, etc., and is only in the preliminary stages of becoming and operating as a California LifeLine provider.

THEREFORE, IT IS ORDERED that:

1. The Commission conditionally approves TracFone Wireless, Inc.'s (U-4231-C), doing business as "*SafeLink Wireless*," as an Eligible Telecommunications Carrier (ETC) and a California LifeLine Provider to provide California LifeLine prepaid wireless services throughout California, excluding Tribal Lands.
2. TracFone Wireless, Inc.'s ETC designation approval shall be contingent upon the following: 1) TracFone Wireless, Inc. shall file required annual reports and compliance reports with the Federal Communications Commission and this Commission, as directed; 2) TracFone Wireless, Inc. shall submit to the

Communications Division Director a copy of the information submitted to the Universal Service Administrative Company and a copy of TracFone Wireless, Inc.'s certification of approval from the USAC within 30 days of receipt from USAC of its compliance with 47 C.F.R. § 54.401(d) related to its federal Lifeline wireless plan; 3) TracFone Wireless, Inc. shall submit its terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, to the California LifeLine staff for approval prior to distribution and publication; 4) TracFone Wireless, Inc. shall submit an annual report of California LifeLine complaints to the Director of the Communications Division for two years following its ETC designation, and 5) TracFone Wireless, Inc. shall include safety related information in all terms and conditions, disclosures, California LifeLine related materials, and the company website.

3. TracFone Wireless, Inc. shall be authorized to offer the following three California LifeLine pre-paid wireless service plans doing business as "*SafeLink Wireless*:"

   - *SafeLink Unlimited Talk and Text* - No charge, unlimited minutes and texts. Free handset and activation fee discounted to $0;
   - *Unlimited 2.5 GB Plan* – $27.60 charge, unlimited voice and text with 2.5 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0; and
   - *Unlimited 1 GB Plan* – $17.60 charge, unlimited voice and text with 1 GB data at 4G speed (remaining data at 2G speed). Free or discounted handset and activation fee discounted to $0.

4. TracFone Wireless, Inc. shall use a Tier 2 Advice Letter to request approval for any future changes, including but not limited, to terms and conditions, to the approved California LifeLine wireless service plans.

5. TracFone Wireless, Inc. shall comply with General Order 153 and the California LifeLine Administrator's enrollment process, including, but not limited to validation checks, transmission requirements, and efforts to prevent waste, fraud, and abuse.

6. TracFone Wireless, Inc. shall notify the California LifeLine Administrator, and obtain prior approval from CD staff of any changes to TracFone Wireless, Inc.'s provisioning process and operations including, but not limited to, its unique pre-screening process and service activation method.

7. TracFone Wireless, Inc. shall include adequate information about the potential coverage and service quality issues in all of its terms and conditions, disclosures, and marketing materials.

8. TracFone Wireless, Inc. shall submit all terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, for Communications Division's California LifeLine staff review and approval prior to dissemination and/or availability to the public.

9. TracFone Wireless shall clearly label its California LifeLine pre-paid wireless plans approved in this Resolution as California LifeLine wireless service plans and refer to the California LifeLine Program, where applicable, in TracFone's terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives.
10. TracFone Wireless, Inc. shall comply with all CPUC rules, orders, decisions, and resolutions, the California Public Utilities Code, and federal ETC and Lifeline rules. Failure to do so may result in penalties, fines, denial, suspension, and/or revocation of its ETC designation, wireless identification registration, and/or authority to operate as a California LifeLine provider in California and denial and/or suspension of its California LifeLine reimbursements.
11. TracFone Wireless, Inc. shall comply with all applicable California Public Utilities Commission rules and regulations including the reporting and payment of User Fees and universal service public purpose program surcharges.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 7, 2015, the following Commissioners voting favorably thereon:

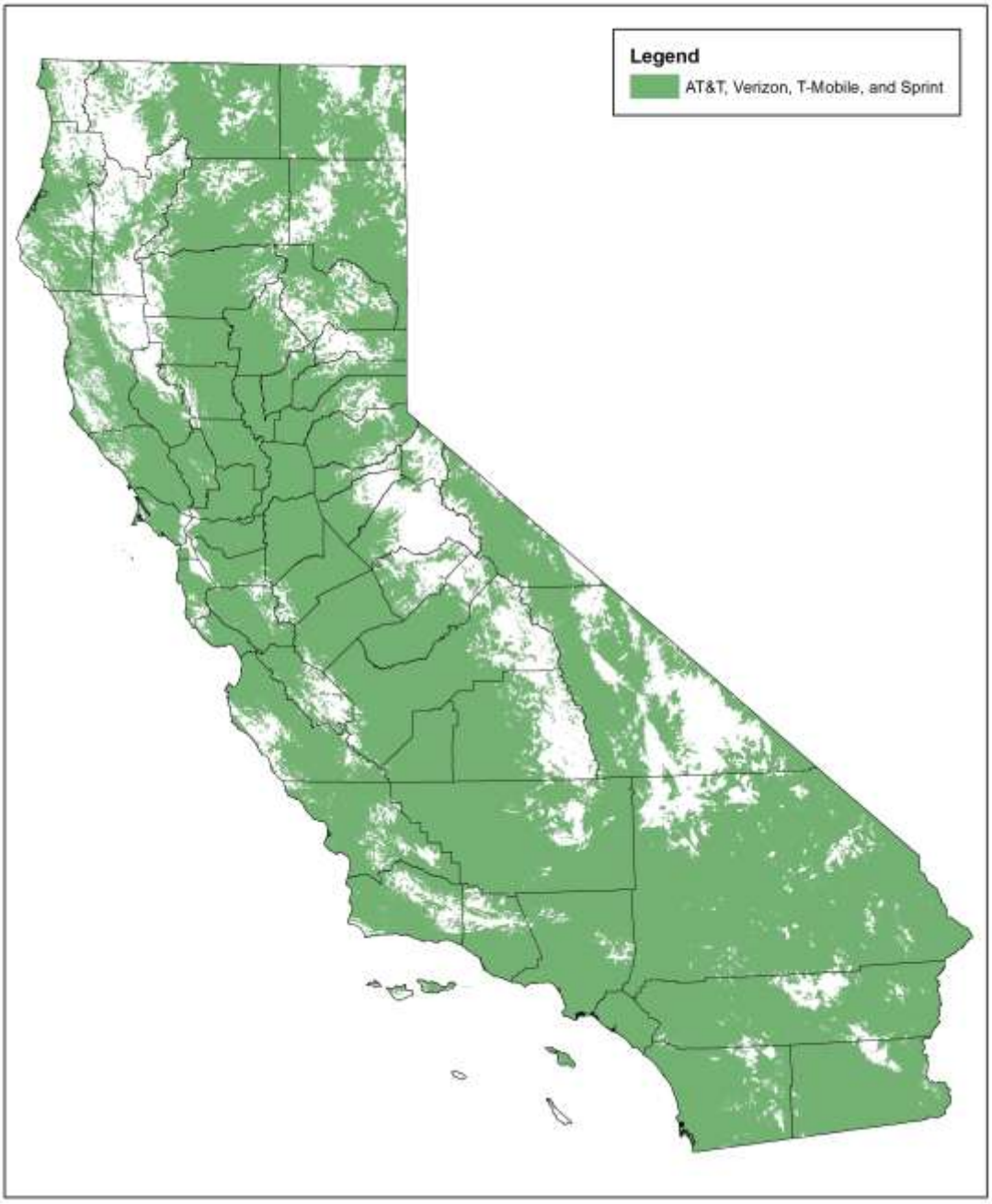
_____

TIMOTHY J. SULLIVAN
Executive Director

APPENDIX A

Attachment A, Resolution T-17467
TracFone Wireless doing business as *SafeLink Wireless*
Proposed Service Area for Federal Lifeline and California LifeLine Wireless ETC Service in California

TRACFONE WIRELESS SERVICE AREA



End of the Attachment