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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's own motion into the alleged failure of TracFone Wireless, Inc. (U4231C) to collect and remit public purpose program surcharges and user fees on revenue from its sale of intrastate telephone service to California consumers, in violation of the laws, rules and regulations of this State; Order to Show Cause why Respondent should not immediately be ordered to pay all such outstanding sums plus interest, and be subject to penalties for such violations.

Investigation 09-12-016  
(Filed December 17, 2009)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S  
SCOPING MEMO AND RULING**

Pursuant to Rule 7.3(a),<sup>1</sup> this ruling sets forth the procedural schedule, assigns a presiding officer, and addresses the scope of the proceeding.

**1. Summary**

TracFone Wireless, Inc. (TracFone) is a telecommunications company that sells prepaid wireless services in California. The phase 1 decision in this proceeding, Decision (D.) 12-02-032 (Phase 1 Decision), found that TracFone operates within California as a public utility and a telephone corporation under

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<sup>1</sup> All references to Rules are to the Commission's Rules of Practice and Procedure.

Cal. Const., art. XII, § 3; Pub. Util. Code §§ 216, 233, and 234.<sup>2</sup> The Phase 1 Decision also found that user fees and public purpose program surcharges<sup>3</sup> apply to the prepaid wireless services provided by TracFone and that TracFone is ultimately responsible for the payment of these user fees and surcharges. Phase 2 of this proceeding will consider the amount owed by TracFone in connection with past user fees and surcharges, and whether a penalty is appropriate for lack of payment.

## **2. Procedural Background**

The Phase 1 Decision was issued on February 24, 2012. TracFone filed a rehearing request, including a request for oral argument, on March 26, 2012. Concurrently with the rehearing request, under Rule 16.1(e), TracFone filed a motion for stay of the Phase 1 Decision. The rehearing request and motion are still pending.

The assigned Administrative Law Judge (ALJ) convened a prehearing conference (PHC) for phase 2 on July 3, 2012, where the procedural schedule and scope set out below were discussed.

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<sup>2</sup> All statutory references are to the Public Utilities Code unless otherwise stated.

<sup>3</sup> As used herein, the term “user fees” refers to those fees described in §§ 401-410, 431-435 and the term “surcharges” refers to the public purpose program surcharges including the Universal Lifeline Telephone Service § 879 and §§ 270 et seq.; the Deaf and Disabled Telecommunications Program § 2881 and §§ 270 et seq.; California High Cost Fund-A § 275, § 739.3 and §§ 270 et seq.; California High Cost Fund-B § 276, § 739.3 and §§ 270 et seq.; California Teleconnect Fund § 280 and §§ 270 et seq.; California Advanced Services Fund § 281.

### **3. Scope of the Proceeding**

The focus of this proceeding is set out in D.12-02-032.<sup>4</sup> Additional issues were raised and discussed at the PHC.

The scope of phase 2 is not intended to revisit or disturb any conclusions, authorizations or outcomes of the Phase 1 Decision.

Accordingly, the issues to be addressed are:

1. The amount of user fees and surcharges owed by TracFone. This issue includes determining what reasonable methodologies are available for calculating the user fees and surcharges. Evidence regarding what methodologies have been accepted by the Commission in the past is within the scope of this issue. However, evidence regarding the content of Commission communications with other prepaid wireless carriers is not within the scope of this issue.
2. Whether TracFone is subject to penalties pursuant to the provisions of Pub. Util. Code §§ 2100, et seq. for failure to pay the user fees and surcharges on its prepaid wireless services provided prior to the effective date of the Phase 1 Decision, and, if so, the amount of penalties. This issue includes identifying any mitigating factors. However, evidence regarding whether other prepaid wireless carriers paid user fees and surcharges is not within the scope of this issue.

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<sup>4</sup> The Phase 1 Decision stated, "In phase 2 of Investigation 09-12-016, the Commission shall determine the amount of user fees and surcharges owed, if any, by TracFone Wireless, Inc. (TracFone) and whether TracFone is subject to penalties pursuant to the provisions of Pub. Util. Code §§ 2100, et seq. for failure to pay the user fees and surcharges on its prepaid wireless services provided prior to the effective date of this decision." (D.12-02-032, ordering paragraph 3.)

#### 4. Schedule

The following schedule was adopted at the PHC:

<b>Event</b>	<b>Date</b>
PHC	July 3, 2012
Joint Statement of Stipulated Facts, filed	September 7, 2012 (Friday)
Concurrent Opening Testimony, served	October 12, 2012 (Friday)
Concurrent Reply Testimony, served	November 16, 2012 (Friday)
Discovery Cutoff	November 21, 2012 (Wednesday)
Evidentiary Hearing	December 12 - 14, 2012 10:00 a.m. Commission Courtroom, State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Opening Briefs, filed concurrently	January 4, 2013 (Friday)
Reply Briefs, filed concurrently and submission unless otherwise noted by ALJ	January 25, 2013 (Friday)
Proposed Decision (60 days after submission)	March 25, 2013

If so required, the presiding officer may alter this schedule as required to promote the efficient and fair resolution of the investigation. Pub. Util. Code § 1701.2(d) provides that adjudicatory matters, such as this proceeding, shall be resolved within 12 months of its initiation unless the Commission makes findings as to why that deadline cannot be met and issues an order extending that deadline. The Commission has previously extended the statutory deadline to December 17, 2012. Given the schedule set forth above, a further extension order will be prepared to extend the deadline to July 1, 2013.

At the PHC, the Commission's Consumer Protection and Safety Division stated that it was unwilling to consider settlement of phase 2 until TracFone

complied with ordering paragraph 2 of the decision.<sup>5</sup> That ordering paragraph requires TracFone to pay user fees and surcharges on a going forward basis.

## **5. Need for Hearing and *Ex Parte* Rules**

Pursuant to Rule 7.1(c), the Commission categorized this matter as adjudicatory. The parties believe that hearings will be necessary for phase 2 of this proceeding. *Ex parte* communications are prohibited in adjudicatory proceedings pursuant to Rule 8.3(b).

## **6. Assignment of the Presiding Officer**

ALJ Jeanne M. McKinney will be the presiding officer.

**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule is as set forth herein, and may be modified by the Administrative Law Judge (ALJ) if needed.
3. The presiding officer will be ALJ Jeanne M. McKinney.

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<sup>5</sup> The Phase 1 Decision stated “TracFone Wireless, Inc. shall immediately begin collecting and remitting the user fees, §§ 401-410, 431-435, and the public purpose program surcharges, the Universal Lifeline Telephone Service § 879 and §§ 270 et seq., the Deaf and Disabled Telecommunications Program § 2881 and §§ 270 et seq., California High Cost Fund-A § 275, § 739.3 and §§ 270 et seq., California High Cost Fund-B § 276, § 739.3 and §§ 270 et seq., California Teleconnect Fund § 280 and §§ 270 et seq., California Advanced Services Fund § 281, on its prepaid wireless services provided after the effective date of this decision.” (D.12-02-032, ordering paragraph 2.)

4. This proceeding is categorized as adjudicatory, pursuant to Rule 7.1(c) of the Commission's Rules of Practice and Procedure, and hearings are necessary.

Dated August 2, 2012, at San Francisco, California.

/s/ MICHEL PETER FLORIO

Michel Peter Florio  
Assigned Commissioner

/s/ JEANNE M. MCKINNEY

Jeanne M. McKinney  
Administrative Law Judge