



FILED

05-08-12
11:32 AM

RMD/eam/ms6 5/8/2012

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. (U4321C) 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)

ADMINISTRATIVE LAW JUDGE'S RULING DENYING THE EMERGENCY MOTION BY TRACFONE WIRELESS, INC. FOR CLARIFICATION OF COMPLIANCE OBLIGATION SET FORTH IN ORDERING PARAGRAPH 2 OF DECISION 12-02-032 AND FOR INTERIM STAY OF SUCH ORDERING PARAGRAPH PENDING CLARIFICATION AND DENYING THE MOTION BY CONSUMER PROTECTION AND SAFETY DIVISION FOR EXPEDITED BEGINNING OF PHASE II INVESTIGATION

This ruling denies the two motions. The February 24, 2012 *Emergency Motion for Clarification of Compliance Obligation set forth in Ordering Paragraph 2 of D.12-02-032 and For Interim Stay of Such Ordering Paragraph Pending Clarification*, filed by TracFone Wireless, Inc. (TracFone) is denied, and the April 10, 2012 *Motion for Expedited Beginning of Phase II Investigation* filed by the Commission's Consumer Protection and Safety Division (CPSD) is denied.

1. TracFone's February 24, 2012 Motion

On February 24, 2012, TracFone filed the *Emergency Motion for Clarification of Compliance Obligation set forth in Ordering Paragraph 2 of D.12-02-032 and For Interim Stay of Such Ordering Paragraph Pending Clarification*. The motion requests that TracFone be provided with additional time to comply with Ordering Paragraph 2 of D.12-02-032¹ until TracFone is provided clarification from the Commission on how to collect and remit certain fees and surcharges from its customers. Ordering Paragraph 2 provides as follows:

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.²

CPSD filed a response in opposition to TracFone's motion on March 12, 2012.³ In opposing the motion, CPSD states that TracFone presented no rationale to establish a need for a clarification or a stay of Ordering Paragraph 2.

¹ *Modified Presiding Officer's Decision Finding TracFone Wireless, Inc. Acted Unlawfully By Failing to Pay Telecommunication User Fees and Public Purpose Surcharges*, D.12-02-032, (mailed February 24, 2012).

² *Id.* at 55.

³ A reply was filed by TracFone on March 22, 2012.

I agree. TracFone revisits the same arguments unsuccessfully relied upon during Phase I of this proceeding. TracFone states that the “collect and remit” requirement is new and that TracFone should be excused from the “collect and remit” requirement until the Commission explains to TracFone the process for collecting and remitting the fees and surcharges. The Commission rejected these arguments in D.12-02-032. Moreover, the Commission will be addressing these same arguments again because TracFone raises them in pleadings filed on March 26, 2012, an *Application for Rehearing of D.12-02-032 and Request for Oral Argument* and a *Motion for Stay of D. 12-02-032*.⁴ As a result, it is more appropriate to defer to the Commission decision on rehearing rather than address the matter in this ruling.

The motion is denied.

2. CPSD’s April 10, 2012 Motion

On April 10, 2012, CPSD filed a *Motion for Expedited Beginning of Phase II Investigation*. On April 25, 2012, TracFone filed a response. CPSD requests that the assigned Administrative Law Judge expedite the beginning of Phase II by setting a Prehearing Conference to set the scope and schedule for Phase II of this proceeding. CPSD claims that further delay of Phase II of the proceeding compromises the Commission’s processes and the collection of fees and surcharges necessary for the operation of the agency and support of universal service programs. In response, TracFone opposes the motion on the basis that

⁴ CPSD filed a responses to the application for rehearing and motion for stay on April 10, 2012. A reply by TracFone was filed on April 20, 2012.

the Commission's decision in Phase I is flawed and, as a result, further progress in Phase II should be delayed until that decision is revised in accordance with TracFone's March 26, 2012 application for rehearing.

No need exists to delay this proceeding until matters framed for rehearing are resolved. I agree that Phase II should proceed expeditiously but will not grant the motion as many factors influence the pace at which a proceeding moves forward.

The motion is denied.

IT IS RULED that:

1. The February 24, 2012 *Emergency Motion for Clarification of Compliance Obligation set forth in Ordering Paragraph 2 of D.12-02-032 and For Interim Stay of Such Ordering Paragraph Pending Clarification* filed by TracFone Wireless, Inc. is denied.

2. The April 10, 2012 *Motion for Expedited Beginning of Phase II Investigation* filed by the Commission's Consumer Protection and Safety Division is denied.

Dated May 8, 2012, at San Francisco, California.

/s/ REGINA DEANGELIS

Regina DeAngelis
Administrative Law Judge