

Decision 10-05-021 May 6, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of TracFone Wireless,
Inc. (U-4231-C) for Rehearing of
Resolution T-17235

A.10-01-015
(Filed January 19, 2010)

**ORDER GRANTING REHEARING OF RESOLUTION T-17235,
DENYING THE ADVICE LETTER, VACATING RESOLUTION T-17235
AND MODIFYING INVESTIGATION 09-12-016**

I. INTRODUCTION

TracFone Wireless, Inc. (TracFone) timely applied for rehearing of Resolution T-17235, which denies its Advice Letter (AL) Number 1 request for designation as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving federal Lifeline support.¹ The resolution also determined that it is not in the public interest to designate TracFone as an ETC because it failed to collect and remit, and refuses to collect and remit, public purpose program surcharges and user fees. Resolution T-17235 rejected TracFone's contention that it did not have to collect such fees because it was not a public utility. In addition, Resolution T-17235 found that TracFone violated state and federal laws, and Commission orders. Thus, the resolution ordered the Communications Division (CD) to prepare an Order Instituting Investigation (OII) and Order to Show Cause (OSC) as to why TracFone should not be ordered to collect and remit all alleged outstanding user fees and public purpose surcharges. Because the matters raised by TracFone's AL and

¹ TracFone also requested oral argument. The Utility Reform Network (TURN), the local exchange carriers (LECs) and the Division of Ratepayer Advocates (DRA) all filed timely responses to the application for rehearing, supporting Resolution T-17235. On March 2, 2010, TracFone filed a reply to these responses, with a motion requesting permission to file the reply. On April 2, TracFone filed a request to take official notice and on April 5, 2010, TracFone filed a "motion to defer." On April 20, 2010, the DRA filed an opposition to TracFone's motion to defer.

Resolution T-17235 are controversial, we find good cause to grant rehearing of Resolution T-17235, and to deny the AL, without prejudice, pursuant to General Order 96-B.

However, because we are denying the AL, without prejudice, and there is a pending Investigation (I.) 09-12-016), we find it unnecessary to conduct a hearing in this docket, Application 10-01-015. However, we shall modify I.09-12-016 to include the allegations made in Resolution T-17235. As a result, we vacate Resolution T-17235. In addition, we find TracFone has not presented good cause to grant its requests for oral argument and to take judicial notice, or motions to file a reply and to defer.²

THEREFORE, it is ordered that:

1. Rehearing of Resolution T-17235 is granted.
2. The requests for oral argument and to take judicial notice are denied.
3. The pending motions requesting permission to file a reply and to defer are denied as moot.
4. The Advice Letter Number 1, filed by TracFone Wireless, Inc., is denied without prejudice.
5. Investigation 09-12-016 is modified to include the following factual and legal allegations set forth in Resolution T-17235, which include but are not limited to the following questions:
 - a. Whether TracFone failed to collect and remit public purpose program surcharges and user fees, and if so, for what period of time, and the laws, rules, orders, and directions that were impacted?
 - b. If found in violation, should TracFone be fined pursuant to the provisions of the Public Utilities Code, section 2101, et seq.?
6. Resolution T-17235 is vacated.

² Tracfone cites rule 45 of the Commission's Rules of Practice and Procedure in support of its motion; however, there is no rule 45. Former rule 45 concerning motions was revised in 2005. Rule 11.1 et seq., of the Commission's Rules of Practice and Procedure concerns motions.

7. Parties on the service lists for Resolution T-17235, Application 10-01-015, and Investigation 09-12-016 shall be served with today's decision.

8. With the addition of these new issues, the assigned Administrative Law Judge in Investigation 09-12-016 shall conduct a prehearing conference to consider amendments to any Scoping Memo and Hearing Schedule for Investigation 09-12-016.

This order is effective today.

Dated May 6, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners