

*Draft***PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA****Communications Division
Prog. Mgmt and Implementation Branch****RESOLUTION T-17175
December 4, 2008****R E S O L U T I O N****Resolution T-17175. To grant the request of TracFone Wireless, Inc. (U-4231-C) to be designated as an Eligible Telecommunications Carrier in California.**

Summary

This Resolution grants the request of TracFone Wireless, Inc. (U-4231-C) ("TracFone") to be designated as an Eligible Telecommunication Carrier ("ETC"). TracFone has satisfied the requirements for ETC designation pursuant to Resolution T-17002 and the California Public Utilities Commission's ("CPUC") requirements for Commercial Mobile Radio Service ("CMRS") providers¹.

Background

ETCs are telephone carriers designated by state commissions and authorized by the FCC to receive federal Universal Service Fund ("USF") support for providing local telephone service in high cost areas and to low income customers.

The ETC program was established to satisfy the statutory requirement of the Telecommunications Act of 1996. The federal USF support creates an incentive for the telephone carriers to provide quality residential telephone services at an affordable rate to low income consumers and/or those living in designated high cost areas, i.e., rural areas.

The CPUC has adopted comprehensive ETC guidelines and reporting requirements in Resolution T-17002 consistent with the FCC orders 97-157 and 05-46 to designate a telephone carrier as a qualified ETC. In addition, all carriers seeking ETC designation are required to comply with the applicable requirements as a CPUC certificated carrier as specified in the decision or registration granting their CPCN.

¹ Decision 94-10-031 and Decision 95-07-064.

On August 20, 2008, TracFone filed Advice Letter # 1 requesting designation as ETC in California for the limited purposed of offering federal Lifeline and Link-Up service to qualified households.

TracFone is certificated through registration with the CPUC as a reseller of CMRS offering prepaid wireless telecommunication service. TracFone obtains service from the following underlying carriers: Alltel, AT&T, Golden State Cellular, T-Mobile, US Cellular, and Verizon.

The CPUC has the authority to designate TracFone as an ETC in California. According to Federal Communications Commission ("FCC") order 97-157 section 145, "...that any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under section 214(e)(1)." Also, section 146 stated that:

"We note that not all carriers are subject to the jurisdiction of a state commission. Nothing in section 214(e)(1), however, requires that a carrier be subject to the jurisdiction of a state commission in order to be designated an eligible telecommunications carrier. Thus tribal telephone companies, CMRS providers, and other carriers not subject to the full panoply of state regulation may still be designated as eligible telecommunications carriers."

Therefore, the CPUC, without jurisdiction to regulate CMRS, has the authority to address a petition by a CMRS, i.e., TracFone, seeking designation as an ETC in California.

Because TracFone is a pure-reseller, it requested and was subsequently granted by the FCC on September 8, 2005, forbearance from the facilities-based requirement for ETC designation, which require an ETC provide service either using its own facilities or using a combination of its own facilities and resale of other providers' facilities². The Forbearance Order required TracFone to file a compliance plan with the FCC described how it will implement the conditions imposed by the Forbearance Order³.

On October 11, 2005, TracFone filed its compliance plan with the FCC (Attachment B of this Resolution). The compliance plan was to outline the measures it will take to implement the following:

- (a) providing Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status or availability of prepaid minutes;

² 47 U.S.C § 214 (e)(1)(A) and 47 C.F.R. § 54.201(i)

³ FCC 05-165

- (b) providing Lifeline customers with 911 and E911 compliant handsets, and replacing non-compliant handsets at no additional charge;
- (c) complying with conditions (a) and (b) prior to providing Lifeline service;
- (d) obtaining certification from each Public Service Access Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a);
- (e) requiring its customers to self-certify at time of service activation and then annually thereafter that they are the head of household and receive Lifeline-support service only from TracFone; and
- (f) establishing safeguards to prevent customers from receiving multiple TracFone Lifeline subsidies at the same address.

Also, TracFone has been granted ETC designation by the FCC in several states: New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia, between July 2004 and December 2007. TracFone has also been granted ETC designation in the State of Florida⁴ and State of Georgia⁵. These authorities have performed the necessary compliance analysis that granted TracFone ETC designation.

Notice/Protests

There were no protests received for TracFone's Advice Letter # 1. However, on September 9, 2008, Verizon California, Inc. ("Verizon") filed a response to TracFone's Advice Letter # 1 that was not a protest or opposition to the advice letter but provided cautionary points to help foreclose possible future problems and identified deficiencies in the advice letter.

Verizon's response stated that TracFone's Advice Letter # 1 did not comply with the provisions of Resolution T-17002, Appendix A, Section II-D: Consumer Protection and II-E: Local Usage. Verizon states that TracFone must provide additional information regarding its Lifeline service and identify the benefits to the Lifeline customers to comply with Section II-D: Consumer Protection. Verizon believes that while TracFone states that its Lifeline service is free, the absence of any mention of regular rates and the unreliability of its estimate of free minutes raises consumer protection questions. Verizon also stated that TracFone did not comply with Section II-E: Local Usage, which states that the carrier should demonstrate that it offers a local usage plan to comparable

⁴ Order, Docket Number 26282 (Georgia Public Service Commission, May 6, 2008)

⁵ Order No. PSC-08-0418-PAA-TP, Docket No. 070586-TP (Florida Public Service Commission, June 23, 2008)

to the one offered by the Incumbent Local Exchange Carrier ("ILEC"). Verizon asserts that TracFone failed to state how it will comply with California's requirements governing certification of customer' eligibility to participate in Lifeline.

On September 16, 2008, TracFone replied to Verizon's response and stated that Verizon has incorrectly alleged that TracFone's ETC petition does not comply with certain Commission procedures for ETC designation. TracFone has emphasized that its ETC petition meets all the statutory and regulatory requirements for designation as an ETC in California.

The Communications Division ("CD") staff has reviewed Verizon's concerns regarding TracFone's Advice Letter # 1 and believes that TracFone has adequately addressed these concerns in both their Advice Letter # 1 and reply to Verizon's response. CD staff concurs with TracFone and believes that TracFone has met all the provisions in Resolution T-17002 to be designated as an ETC in California.

Discussion

TracFone's Advice Letter # 1 addressed Appendix A of Resolution T-17002: *The Comprehensive Procedures and Guidelines for ETC designation* because TracFone only seeks to participate in the federal Lifeline and Link-Up program subsidies and does not intend to draw from the federal High Cost Fund program. Thus, TracFone is not required to complete Appendix B of Resolution T-17002: *Comprehensive Reporting Requirements for ETCs to receive Federal High Cost Support*.

TracFone's advice letter has been reviewed and evaluated by CD staff for compliance with Resolution T-17002 and applicable CPUC requirements for CMRS. See Attachment A of this Resolution for a summary evaluation of TracFone's compliance with ETC and CPCN requirements.

CD Staff emphasizes that TracFone, a CMRS, is not allowed to draw any state Lifeline support pursuant to D.96-10-066.

CD staff analysis has identified that TracFone's Advice letter # 1 has not complied with the provisions of Resolution T-17002, Appendix A, section I-A: *Service Areas*, which requires an ETC to provide a List of Geographic Service Areas and a map in .shp format showing the proposed service area. For wireless petitioners, the map should identify the location of cell sites and shade the area where the carrier provides commercial radio service or similar service.

TracFone has requested a waiver for the service area requirement. TracFone, a non-rural telephone company, is required to describe the geographic area(s) within which it requests designation as an ETC. TracFone's coverage areas encompass the aggregate

coverage areas of its underlying carriers in California. According to TracFone, it does not have access to the underlying carriers' list of geographic service areas or maps of service area showing the location of cell sites.

CD staff believes that TracFone should be granted the waiver for this requirement. CD staff interprets that the service area requirement is used to identify where the USF support will be used. TracFone do not intend to receive federal High Cost Fund subsidies. Therefore, there is no reason to deny TracFone's waiver for providing service area maps.

TracFone's Federal Lifeline and Link-Up Program

In the Advice Letter # 1, TracFone has provided an extensive federal Lifeline and Link-Up program plan. TracFone's ETC designation is for the limited purpose of offering Lifeline to qualified households.

1. TracFone's Service Offering

TracFone will provide all the designated services⁶. TracFone will be providing free monthly service fee, free monthly airtime minutes and free E911 compliant wireless telephone handsets⁷ to eligible Lifeline customers. The free monthly airtime minutes is based on the amount of the federal Lifeline program subsidy. The free E911 compliant wireless telephone handset will be funded through the Link-Up program.

TracFone has pledged that 100% of the federal support it receives will be flowed through its Lifeline customers in the form of free usage. TracFone stated that it plans to provide Lifeline customers with fifty (50) minutes of free airtime per month, consistent with the federally subsidized discount of \$10 per month, per qualified household customer. TracFone's per minute rate is \$0.20. Unused minutes will roll over from month-to-month.

In addition, TracFone will allow eligible Lifeline customers to purchase special low volume usage cards sold in denominations of \$3.00, \$5.00 and \$10.00.

2. Public Interest

⁶ Designated voice services are defined in Resolution T-17002, Appendix A section I-B as: Voice-grade access to the public switched network; Local Usage; Dual Tone Multi-Frequency (DTMF) signaling or its functional equivalent; Single-party service or its functional equivalent; Access to emergency services; access to operator services; Access to interexchange service; Access to directory assistance; and Toll Limitation.

⁷ *TracFone Wireless Compliance Plan*, Attachment B of this Resolution.

a. Increased Competitive Choice

TracFone's designation will increase the number of ETCs in California. TracFone's prepaid wireless service alternative will provide consumers with convenient and affordable telecommunications service.

b. Unique Advantages of TracFone's Service Offerings

TracFone stated that its entire business model is predicated on providing easy-to-use, pay-as-you-go, affordable wireless telecommunications services to consumers to whom wireless service would be otherwise unavailable or unaffordable. In addition to a free phone and free minutes, TracFone's service do not require term contracts, minimum service periods or volume commitments, credit checks and no early termination fee.

3. Service Quality Commitment

TracFone stated that it will demonstrate its commitment to high service quality by complying with the CTIA – The Wireless Association® Consumer Code for Wireless Service in accordance with 47 C.F.R. § 54.202 (a)(3). In addition, TracFone has made its Privacy Policy available to all customers on its website at <http://www.tracfone.com>. (Attachment C of this Resolution).

4. Advertise Availability of Supported Services

TracFone's Advice Letter # 1 has provided an extensive advertisement plan including sample advertisements. TracFone will advertise the availability of its Lifeline and Link-Up services and associated charges using media of general distribution this includes but not limited to print, radio, and television advertisement. TracFone will also utilize its network of retail outlets (e.g., Walgreens, Wal-Mart, etc.) to help promote the availability of its Lifeline and Link-Up plans.

5. Verification and Certification

TracFone has stated that it will certify and verify consumer eligibility in accordance with FCC's requirements and with applicable Commission rules governing certification and verification of Lifeline and Link-Up eligibility. TracFone's certification and verification compliance policy was filed with the FCC on July 13, 2005. (Attachment D of this Resolution).

Additionally, TracFone stated in their reply to Verizon's response that it will comply with California state requirements governing certification of customers' eligibility as set forth in the General Order (G.O.) 153 if the CPUC requires it to do so, even though G.O. 153 only covers wireline service.

Universal Service Administrative Company (USAC) Certification Requirements

Pursuant to Section 54.401 of Title 47 of Code of Federal Regulations (C.F.R), ETC requesting for FCC support in Tier 2 (\$1.75 per customer per month) have to certify to the federal Universal Service Administrator, the USAC, that it will pass through this entire amount to qualifying low-income customers. A copy of TracFone's certification with the USAC shall be provided to the CD Director.

Comments

In compliance with PU Code § 311 (g), a notice letter was e-mailed on October 14, 2008 to all Eligible Telecommunications Carriers informing these parties that this draft resolution is available at the Commission's website <http://www.cpuc.ca.gov/static/documents/index.htm> and is available for public comments. In addition, CD informed these parties of the availability of the conformed resolution at the same website.

Findings

1. On August 20, 2008, TracFone (U-4231-C) filed Advice Letter # 1 requesting designation as an Eligible Telecommunications Carrier in California for the limited purposed of offering Lifeline and Link-Up service to qualified households. TracFone do not intend to receive federal high cost support.
2. TracFone is an FCC licensed, CPUC certificated Commercial Mobile Radio Service within the service territories Alltel, AT&T, Golden State Cellular, T-Mobile, US Cellular, and Verizon.
3. TracFone, a CMRS, is not allowed to draw any state Lifeline support pursuant to D.96-10-066.
4. TracFone, a pure-reseller, requested and was subsequently granted by the FCC on September 8, 2005, forbearance from the facilities-based requirement for ETC designation, which require an ETC provide service either using its own facilities or using a combination of its own facilities and resale of other providers' facilities⁸.

⁸ 47 U.S.C § 214 (e)(1)(A) and 47 C.F.R. § 54.201(i)

5. TracFone has been granted ETC designation in the following states: New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, the District of Columbia, Florida and Georgia.
6. TracFone requests a waiver for the Resolution T-17002, Appendix A, section I-A service area requirement.
7. TracFone will provide all the designated services⁹. TracFone will provide its federal Lifeline customers in California free monthly service fee, free monthly airtime minutes and free E911 compliant handset.
8. TracFone has pledged that 100% of the federal support it receives will be flowed through its Lifeline customers in the form of free usage.
9. TracFone has stated that it will certify and verify consumer eligibility in accordance with FCC's requirements and with applicable Commission rules. TracFone's certification and verification compliance policy was filed with the FCC on July 13, 2005 (See Attachment D of this Resolution).
10. TracFone shall certify to the federal Universal Service Administrator, the USAC, that it will pass through the entire federal subsidy amount to qualifying low-income customers. A copy of TracFone's certification with the USAC shall be provided to the CD Director.
11. In compliance with PU Code § 311 (g), a notice letter was e-mailed on October 14, 2008 to all Eligible Telecommunications Carriers informing these parties that this draft resolution is available at the Commission's website <http://www.cpuc.ca.gov/static/documents/index.htm> and is available for public comments. In addition, CD informed these parties of the availability of the conformed resolution at the same website.
12. CD staff recommends that TracFone's Advice Letter # 1 seeking ETC designation be granted.

THEREFORE, IT IS ORDERED that:

1. The request of TracFone for a waiver for the Resolution T-17002, Appendix A, section I-A: Service Area requirement is granted.

⁹ Voice-grade access to the public switched network; Local Usage; Dual tone multi-frequency (DTMF) signaling or its functional equivalent; Single-party service or its functional equivalent; Access to emergency services; access to operator services; Access to interexchange service; Access to directory assistance; and Toll limitation.

2. The request of TracFone Wireless, Inc. to be designated as an ETC in California for the limited purposed of offering Lifeline and Link-Up service to qualified households is granted.
3. TracFone shall certify to the federal Universal Service Administrator, the USAC, that it will pass through the entire federal subsidy amount to qualifying low-income customers. A copy of TracFone's certification with the USAC shall be provided to the CD Director.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 4, 2008. The following Commissioners approved it.

PAUL CLANON
Executive Director

ATTACHMENT A
COMPLIANCE WITH RESOLUTION T-17002

Company Name:	TracFone Wireless, Inc.
Utility Number:	U-4231-C
Advice Letter #:	1
Date Filed:	08/19/08

Item	Complied? Yes or No
1. Did the applicant comply with the requirements as a CPUC certificated carrier? a. Local Exchange Tariff b. Reports (Annual Report (GO104-A) & Affiliate Transaction Report (D.93-02-019) c. User Fee Payment history d. Surcharge Remittance for the Public Programs (DDTP, CTF, CHCF A&B)	TracFone is a CMRS and received CPCN through registration. CMRS do not file tariffs. CMRS are exempt from filing an Annual Report. Affiliate Transaction - Yes User Fee Payment - Yes Surcharge Remittance - Yes
2. Resolution T17002 compliance.	FCC granted TracFone forbearance from the facilities-based service requirement. TracFone submitted a compliance plan as a condition in the forbearance order
3. Did Applicant submit a response to Resolution T-17002, Appendix A and Appendix B? (Yes/No)	Appendix A - yes Appendix B - Not Applicable, because TracFone do not request High Cost Fund subsidies.
a. Resolution T-17002, Appendix A	Yes
i. <u>Section I.A. Service Area Map</u>	TracFone requests a <u>waiver</u> to this requirement because they do not have access to the service area maps and cell sites of its underlying carriers.
ii. <u>Section I.B. Designated Services</u> • <u>Single party service</u> • <u>Voice grade access to the public switched network</u> • <u>Local usage</u> • <u>Dual Tone multi-frequency signaling or its functional equivalent</u> • <u>Access to operator services</u> • <u>Access to interexchange services</u> • <u>Access to directory assistance</u> • <u>Toll limitation for qualifying low-income consumers</u>	Yes to all
iii. <u>Section I.C. List of services that they propose not to offer and extension of time.</u>	Not applicable
iv. <u>Section I.D. Waiver of the requirement that an ETC not disconnect lifeline for non-payment of toll.</u>	Not applicable

Item	Complied? Yes or No
v. <u>Section I.E. Advertising plan</u>	Yes
vi. <u>Section I.F. Implement tariff changes via advice letter filing process.</u>	Not applicable
vii. <u>Section I.G. Request additional time to perform network upgrades.</u>	Not applicabl
viii. <u>Section II.A. Commitment to Provide service</u>	Yes
ix. <u>Section II.B. 2-year service quality improvement plan</u>	Not Applicable
x. <u>Section II.C. Ability to Remain Functional</u>	Yes
xi. <u>Section II.D. Consumer Protection</u>	Yes
xii. <u>Section II.E. Local Usage</u>	Yes
xiii. <u>Section II.F. Equal Access</u>	Yes
xiv. <u>Section II.G. Public Interest Determination</u>	Yes
b. Resolution T-17002, Appendix B	Not Applicable
i. <u>Section I.A. Carrier information</u>	Not Applicable
ii. <u>Section I.B. Basic Residential Service Rate</u>	Not Applicable
iii. <u>Section I.C. Filing Dates</u>	Not Applicable
iv. <u>Section II.A. A two-year service quality improvement plan, including, as appropriate, maps detailing progress towards meeting its prior two-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why network improvement targets, if any, have not been met. If a designated ETC has submitted a five-year plan in a GRC application that has been approved by the Commission and is still in effect, the carrier may refer to its GRC filing and submit a progress report on the plan covered by the GRC.</u>	Not Applicable
v. <u>Section II.B. Detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future. If an ETC has submitted a Major Service Interruptions report in accordance with CPUC Memorandum dated October 5, 1977, the ETC need not submit the same report. However, in their self-certification letter, the ETC should cite the date(s) of submission of the report; and</u>	Not Applicable
vi. <u>Section II.C. Information on the number of unfulfilled requests for service from potential customers for the past year and the number of complaints per 1,000 handsets or lines. If an ETC has submitted the Held Primary Service Order and Customer Trouble Reports in accordance with Sections 3.1 and 3.3 of G. O. 133-B, the ETC need not submit the same reports. However, in their self-certification letter, the ETC should cite the date(s) of submission of the reports.</u>	Not Applicable

ATTACHMENT B
TRACFONE'S COMPLIANCE PLAN (in PDF)

ATTACHMENT C
TRACFONE'S PRIVACY POLICY (in PDF)

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