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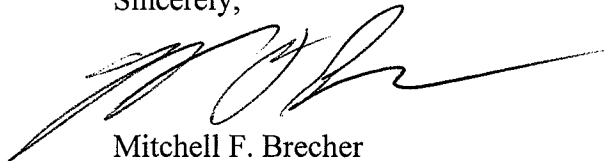
Ms. Beth Salak  
Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**RE: Docket No. 070586-TP, TracFone Communications  
Petitions for ETC Status in the State of Florida**

Dear Ms. Salak:

Attached to this letter are the responses of TracFone Wireless, Inc. ("TracFone") to the Staff's second data request seeking additional information regarding TracFone's Application for Designation as an Eligible Telecommunications Carrier in the State of Florida for the Limited Purpose of Offering Lifeline Service to Qualified Households. If you have questions regarding these responses or if you would like additional information regarding any aspect of TracFone's Eligible Telecommunications Carrier ("ETC") application, please contact undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher  
*Counsel for TracFone Wireless, Inc.*

cc: Ms. Catherine Beard  
Mr. Robert Casey

Attachment

**26) In Order FCC 05-165, released September 8, 2005, the FCC used the term "limited ETC status" to describe what may be granted to TracFone.**

- a. Did the FCC provide TracFone with an explanation of what the term "limited ETC status" means?**
- b. Does forbearance from the facilities requirement relieve TracFone of the ETC obligation to serve?**
- c. Did the FCC provide TracFone with an explanation of what requirements would be imposed on a carrier granted "limited ETC status" vs. a carrier granted regular ETC status?**
- d. What is TracFone's interpretation of "limited ETC status" and the requirements which come along with receiving that status?**

a. In the FCC's September 8, 2005 order granting TracFone's forbearance petition (Federal-State Joint Board on Universal Service and Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.20(i), FCC 05-165), the FCC explained its concept of limited ETC status." At paragraph 5 of that order, after noting that TracFone would only be eligible for Lifeline support, the FCC stated as follows: "As a limited ETC, TracFone would not be eligible to receive support for the other supported services under the low-income program nor would it be eligible, as an ETC, to receive support for services supported by other universal support mechanisms."

b. Nothing in the FCC's order granting TracFone forbearance from the facilities-based requirement indicates any correlation between that requirement and an obligation to serve. By limiting TracFone's eligibility for receipt of Universal Service support to Lifeline support, the FCC specified that TracFone's only obligation as an ETC would be to provide Lifeline service since that would be the only universal service-supported program in which it could participate: At para. 14 of the FCC order, it stated as follows:

Where as here, the wireless reseller is foregoing all universal service support but Lifeline, which is customer-specific and is designed to make telecommunication service affordable to eligible consumers, the facilities-based requirement is not necessary to ensure that TracFone's charges, practices, and classifications are just and reasonable.

c. As noted in the response to a., above, the FCC indicated that TracFone's designation as an ETC would be limited to being an ETC for the purpose of offering Lifeline service only. Therefore, TracFone would be required to offer its Lifeline service in conformance with the requirements applicable to all Lifeline programs. In addition, the FCC expressly conditioned its grant of TracFone's forbearance petition for the limited purpose of offering Lifeline service on a series of conditions specifically applicable to its Lifeline offerings. Those conditions are set forth at paragraph 6 of the FCC's order and are identified at page 7 of its ETC application on file with the Commission.

d. TracFone's interpretation of "limited ETC status" and the applicable requirements is consistent with the FCC's description of that status. If designated as an ETC, TracFone's designation would be limited to providing Lifeline service only and it would be required to conform with all requirements applicable to Lifeline (plus the specific conditions imposed by the FCC). As a limited ETC, TracFone would not be entitled to receive support from the Universal Service Fund for any other USF-supported programs. Thus, it would not be entitled to high cost support, nor would it be entitled to receive support from the Schools and Libraries or Rural Health Care programs. Since its status as a limited ETC would not make it eligible for those non-Lifeline programs, it would not be subject to any of the rules and policies applicable to those other programs.

- 27) Referencing TracFone's September 4, 2007, ETC post-workshop comments, in response to the question "What are the differences in the requirements to be an ETC versus the requirements of a carrier of last resort," (Page 16, ¶22) TracFone responded that:

**The concept of ETCs is a creation of federal law. The concept of COLR is a creation of state law. Designation as an ETC entitles a carrier to receipt of USF funds. Designation as a COLR obligates carriers to serve all consumers within a geographic area. Most COLRs, probably all COLRs, are also designated ETCs. However, the state-imposed COLR obligations are separate from those of an ETC.**

**In Order No. DA 00-2896, released December 26, 2000, the FCC stated its belief "that Congress was concerned that consumers in areas served by rural telephone companies continue to be adequately served should the incumbent telephone company exercise its option to relinquish its ETC designation under section 214(e)(4)." Further, the FCC stated that an ETC "has the statutory duty to offer service to every customer within the designated service area." (DA 00-2896, ¶ 20)**

- a. **How is this requirement different from a COLR requirement?**
- b. **Should Florida differentiate between COLR requirements to serve and ETC requirements to serve when considering ETC designation?**

As TracFone noted in its application for ETC designation, the concept of Eligible Telecommunications Carrier is codified in the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Florida Statutes defines and imposes specific service obligations on telecommunications carriers designated as Carriers of Last Resort in Florida. Having said that, there is overlap in the service obligations of entities designated as COLRs under Florida law and full service ETCs so designated under federal law. However, as acknowledged by Staff in Data Request No. 26, the FCC used the term "limited ETC status" with respect to TracFone. Unlike traditional ETCs who are entitled to receive funding from all the USF programs and are obligated to participate in those programs, TracFone's forbearance petition was granted for the limited purpose of allowing TracFone to provide Lifeline service to qualified low income households. As explained by the FCC in its September 2005 order, the public interest would be served by having new providers, including prepaid wireless companies like TracFone, offer innovative Lifeline programs. TracFone encourages the Commission to reach a similar conclusion and to designate ETCs in Florida for the limited purpose of providing affordable Lifeline service to low income Florida households.

The FCC order referenced above (Western Wireless Corporation, Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, DA 00-2896, released December 26, 2000) involved the FCC's approval of Western Wireless Corporation's application to be designated as an ETC in Wyoming. Unlike TracFone, Western Wireless was a facilities-based carrier which proposed to provide all Universal Service Fund-supported services over its own facilities. It did not need and did not petition for forbearance from the facilities-based requirement. Neither did it seek ETC designation solely to provide Lifeline service. Thus, the scope of Western

Wireless's ETC designation make it readily distinguishable from the limited (Lifeline-only) ETC designation sought by TracFone. It is significant, however, that the FCC noted the absence of any empirical information indicating that incumbent rural telephone companies might relinquish their ETC designation and withdraw service if Western Wireless was granted ETC designation and the FCC declined to conclude that there was any serious risk to consumers (§ 20).

While historically there may have been some overlap between ETC designation under federal law and COLR designation under state law, that has been changed by the FCC's recognition of a limited ETC designation in the September 2005 TracFone Forbearance Order. In that order, the FCC concluded that the public interest would be served by allowing qualified providers to be designated as ETCs for the sole purpose of offering Lifeline service. No doubt, that conclusion reflects, among other things, the FCC's concern with the low rate of participation in the Lifeline program among qualified low income households. According to FCC data, nationally less than thirty-four percent of eligible households receive Lifeline assistance. (See Lifeline and Link-Up (Report and Order and Further Notice of Proposed Rulemaking), 19 FCC Rcd 8302 (2004) at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002)). In Florida, the situation is substantially worse. Commission data indicate that participation rate among Florida Lifeline-eligible low income households is only 12.7 Percent (See A Report to the Governor, President of the Senate, Speaker of the House of Representatives - Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation, December 2006, at p. 11, Table 2). If the Commission shares the concern that the existing ETCs are not effectively reaching out to low income Floridians, the Commission should encourage additional ETCs to offer Lifeline service, even if those carriers are not recipients of high cost support and therefore not required to operate as COLRs.

- 28) **Section 364.025, Florida Statutes, provides that "Until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory." If these COLR requirements sunset after January 1, 2009, ETC requirements to serve would still be in effect for those carriers designated ETCs in Florida. Essentially, the existing COLR requirements would be assumed by those carriers who have received ETC status. Would TracFone have the ability to assume carrier of last resort responsibilities?**

TracFone is not a local exchange telecommunications company as that term is defined in Florida Statutes. Nonetheless, TracFone has applied for statewide designation as an ETC so that it may offer Lifeline service throughout the state. TracFone would be willing to assume carrier of last resort responsibilities, provided that it was designated as an ETC in a manner which entitled it to receive high cost funds in order to serve consumers in areas which it serves, but where no other COLR was operational. However, TracFone has not sought designation as an ETC for receipt of high cost support either from the FCC or from the Commission. If the Commission follows the FCC's approach of limiting TracFone's ETC designation to Lifeline service only, there would be no means for TracFone to obtain high cost support needed for it to act as a COLR.

- 29) **In Order FCC 97-157, released May 8, 1997, the FCC rejected proposals to impose COLR obligations as a condition of being designated an eligible telecommunications carrier pursuant to section 214(e) because 214(e) does not grant the FCC authority to impose additional eligibility criteria. Does TracFone believe the PSC has authority to require ETCs to assume COLR obligations as a condition of granting ETC status?**

Section 214(e)(3) of the Communications Act authorizes state commissions, with respect to intrastate services, to determine which common carrier or carriers are best able to provide such intrastate service to a requesting unserved community or portion thereof and to order such carrier or carriers to provide service for that unserved community or portion thereof. Thus, Section 214(e)(3) gives the Commission and commissions in other states limited authority to impose service obligations (akin to COLR obligations) on ETCs, but only with respect to unserved areas. Further, it would be necessary to construe and apply that provision in a manner consistent with the other universal service provisions of the Communications Act. If a carrier has been designated as an ETC for Lifeline service only with no right to obtain high cost support, a state commission could not impose COLR obligations on such carrier since that carrier would have no right under the terms of its ETC designation to receive high cost support from the Universal Service Fund necessary to perform COLR obligations.

- 30) Does TracFone believe any additional waivers from federal rules beyond what was granted in FCC 05-165 are necessary to be designated as a Lifeline-only ETC in Florida?**

No.



**31) In response to data request No. 9 which asked if TracFone is aware of the 12-month transitional Lifeline requirement for Lifeline customers no longer receiving Lifeline benefits, TracFone replied that the statute only applies to local exchange companies and TracFone is not such a company.**

- a. Is TracFone stating that it will not provide the 12-month transitional Lifeline service for Lifeline customers no longer receiving Lifeline benefits?**
- b. Would TracFone have the ability to provide the 12-month transitional Lifeline service if it was a condition of your ETC designation?**

a. In its response to data request no. 9, TracFone stated that it would comply with all laws and regulations related to Lifeline service that are applicable to ETCs. Please note that Florida Statutes § 364.10 contains a lengthy list of requirements which are statutorily applicable all eligible telecommunications carriers. In contrast with those Lifeline requirements applicable to all ETCs, the mandatory discount for former Lifeline subscribers codified at § 364.105 is applicable only to those ETCs which are local exchange telecommunications companies. If the obligation to provide discounted basic local telecommunications service to former Lifeline subscribers were to be extended by the legislature to all ETCs, TracFone would provide such discounted service in accordance with that obligation.

b. The specific Lifeline programs described in TracFone's ETC application do not provide for discounted service to former Lifeline customers. However, if Florida law were changed to impose such a transitional service requirement on those ETCs who are not local exchange telecommunications companies, TracFone would modify its offerings as necessary to provide such a transitional discount to former Lifeline customers.

**32) Please describe the process TracFone will use with USAC for reporting Lifeline and Link-Up customers, and the amount and duration of reimbursement TracFone will seek for each Lifeline customer.**

TracFone will do what other ETCs must do in order to be reimbursed by the Universal Service Administrative Company (USAC) for its Lifeline customers. TracFone will periodically submit to USAC completed FCC Form 497. Those reports will contain information regarding the number of Lifeline customers served and the support levels per subscriber. Reimbursement will be based on that information as is the case with every other ETC providing Lifeline service. As for the amount and duration of reimbursement which TracFone will seek for each Lifeline customer, TracFone would only seek the amount of Lifeline support per customer currently permissible by the applicable rules of the FCC and the Commission. It would seek reimbursement for providing supported Lifeline service to customers only so long as the customers remain eligible to participate in Lifeline. A detailed description of the policies and procedures which TracFone will follow to verify its Lifeline customers' continued eligibility to receive Lifeline benefits is set forth in a submission to the FCC dated July 13, 2005. That description is attached at Exhibit 5 to TracFone's ETC application on file with the Commission.

**33) Does TracFone maintain separate books / general ledgers for each state that it operates in?**

No. There is no requirement that TracFone maintain separate books/general ledgers for each state in which it operates.

- 34) Provide detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least thirty (30) minutes in duration for each service area in which TracFone is requesting designation as an ETC for any facilities it owns, operates, leases or otherwise uses that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 9-1-1 special facility, as defined in 47 C.F.R. § 4.5(e).**

As explained in TracFone's ETC application, TracFone offers service in Florida as in other states through a "virtual network" of services obtained from licensed wireless service providers. TracFone's underlying carriers in Florida include Alltel, AT&T Mobility, T-Mobile, U.S. Cellular, and Verizon Wireless. To the extent that those providers have experienced outages in Florida, TracFone customers served on those underlying carrier networks have experienced outages. Although occasional network outages are a "fact of life" in wireless telecommunications, TracFone's experience has been that such outages rarely occur and that, when they do occur, they are promptly corrected. Specific information regarding those underlying carriers' Florida outages should be available from those carriers.

- 35) Provide the number of requests for service from potential customers that were unfulfilled by TracFone in the previous calendar year.**

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- 36) ETCs must demonstrate that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. Please explain how TracFone will accomplish this requirement.**

TracFone is a mobile virtual network operator. It owns and operates no licensed wireless telecommunications network facilities. Rather, it provides service through a "virtual network" comprised of services which it acquires on a wholesale basis from underlying facilities-based carriers. In Florida, TracFone's underlying carriers include Alltel, AT&T Mobility, T-Mobile, U.S. Cellular, and Verizon Wireless. These are among the most reliable wireless networks in the United States. Each of those providers is required to maintain sufficient back-up power to ensure functionality. Thus, TracFone, and more importantly, TracFone's customers (including Lifeline customers), may be assured of service even during traffic spikes which occur in emergency situations.