

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TracFone Wireless, Inc.

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File No.: EB-IHD-22-00033718
NAL/CD Acct. No.: 202432080003
FRN: 0006855639

ORDER

Adopted: November 29, 2023

Released: November 29, 2023

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether TracFone Wireless, Inc. (TracFone or Company), a wholly owned subsidiary of Verizon Communications Inc. (Verizon), violated the Commission’s rules governing the provision of Lifeline service as an Eligible Telecommunications Carrier (ETC), and its provision of broadband internet access service under the Emergency Broadband Benefit (EBB) Program. Specifically, the investigation considered whether TracFone sought and/or obtained Lifeline or EBB support for, or failed to de-enroll, ineligible subscribers without eligibility documentation or whose applications were supported by falsified tax forms; sought and/or obtained Lifeline support for subscribers who should have been de-enrolled and/or not claimed for reimbursement because they lacked qualifying usage of their Lifeline-supported service; sought and/or obtained EBB support for subscribers who should not have been claimed for reimbursement because they lacked qualifying usage of their EBB-supported service; and for directly or indirectly compensating field enrollment representatives based on commission, rather than on an hourly basis. Requiring compliance with these regulations helps to ensure that limited funding support is reimbursed to Lifeline and EBB providers for serving only qualifying subscribers, based on verified eligibility, and using enrollment agents who are not compensated on a commission basis.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding TracFone’s compliance with sections 54.405(e), 54.406(b), 54.407(c), 54.410, 54.416, 54.417(a), 54.1606, 54.1608(a) and (c) of the Commission’s rules.¹

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of TracFone’s basic qualifications to hold or obtain any Commission license or authorization.²

4. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Act³ and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules,⁴ the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

1 47 CFR §§ 54.405(e), 54.406(b), 54.407(c), 54.410, 54.416, 54.417(a), 54.1606, 54.1608(a) and (c).

2 See Id. § 1.93(b).

3 47 U.S.C. § 154(i).

4 47 CFR §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to David L. Haga, Esq., Associate General Counsel, Verizon, on behalf of TracFone Wireless, Inc., 1300 I Street, NW, Suite 500 East, Washington, DC 20005, and Nancy J. Victory, Esq., DLA Piper, 500 Eighth Street, NW, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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In the Matter of)
TracFone Wireless, Inc.) File No.: EB-IHD-22-00033718
) NAL/CD Acct. No.: 202432080003
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CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and TracFone Wireless, Inc. (TracFone), a wholly owned subsidiary of Verizon Communications Inc. (Verizon), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether TracFone violated sections 54.405(e), 54.406(b), 54.407(c), 54.410, 54.416, 54.417(a), 54.1606, 54.1608(a) and (c) of the Commission’s rules (Rules) and orders governing the provision of Lifeline service as an Eligible Telecommunications Carrier (ETC), and its provision of broadband internet access service under the Emergency Broadband Benefit (EBB) Program. Specifically, the Bureau investigated whether TracFone improperly: sought and/or obtained Lifeline or EBB support for, or failed to de-enroll, ineligible subscribers without eligibility documentation or whose applications were supported by falsified tax forms; sought and/or obtained Lifeline support for subscribers who should have been de-enrolled and/or not claimed for reimbursement because they lacked qualifying usage of their Lifeline-supported service; sought and/or obtained EBB support for subscribers who should not have been claimed for reimbursement because they lacked qualifying usage of their EBB-supported service; and for directly or indirectly compensating field enrollment representatives based on commission, rather than on an hourly basis. To resolve this matter, TracFone agrees to (i) implement a compliance plan, (ii) pay a \$17,487,000 civil penalty, and (iii) pay the Commission’s \$6,013,000 Notice of Apparent Liability (NAL) issued to TracFone in 2020 for apparent Lifeline rule violations.¹

I. DEFINITIONS

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
(a) “Act” means the Communications Act of 1934, as amended.²
(b) “ACP Rules” means sections 54.1806, 54.1807(b), 54.1808(c), and 54.1809(c) of the Commission’s rules and other Communications Laws related to the Affordable Connectivity Program (ACP).
(c) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(e) “CD Acct No.” means account number 202432080003, associated with payment obligations described in paragraph 24 of this Consent Decree.

¹ TracFone Wireless, Inc., Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3459 (2020).

² 47 U.S.C. § 151 et seq.

- (f) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (g) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which TracFone is subject by virtue of its business activities, including but not limited to the Lifeline and EBB Rules.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 17.
- (i) “Covered Employees” means all employees and agents of TracFone who perform, supervise, oversee, or manage the performance of duties that relate to TracFone’s responsibilities under the Lifeline and EBB Rules.
- (j) “EBB Rules” means sections 54.1606 and 54.1608(a) and (c) of the Commission’s rules and other Communications Laws related to the Emergency Broadband Benefit program.
- (k) “Effective Date” means the date by which both the Bureau and TracFone have signed the Consent Decree and the Bureau has released an Adopting Order.
- (l) “Investigation” means the investigation commenced by the Bureau in EB-IHD-22-00033718 regarding whether TracFone violated the Lifeline and EBB Rules from January 1, 2019, forward, during which TracFone provided Lifeline-supported services, as well as broadband internet access service under the EBB program.
- (m) “Lifeline Rules” means sections 54.405(e), 54.406(b), 54.407(c), 54.410, 54.416, and 54.417(a) of the Commission’s rules and other Communications Laws related to the Lifeline program.
- (n) “NAL” means the Notice of Apparent Liability for Forfeiture issued to TracFone on April 2, 2020, proposing a \$6,013,000 forfeiture for apparent violations of the Lifeline Rules, *TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3459 (2020).
- (o) “NAL Account No.” means account number 202032080017 associated with payment obligations described in paragraph 23 of this Consent Decree.
- (p) “Operating Procedures” means the standard internal operating procedures and compliance policies established by TracFone to implement the Compliance Plan.
- (q) “Parties” means TracFone and the Bureau, each of which is a “Party.”
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “TracFone” or “Company” means TracFone Wireless, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

II. BACKGROUND

3. *Legal Framework.* The Commission’s Lifeline rules establish specific requirements that ETCs must fulfill in order to claim and receive federal Lifeline support.³ Section 54.407(a) of the Commission’s rules states that Lifeline support shall be paid to an ETC “based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible

³ See 47 CFR §§ 54.400 – 54.422. The Universal Service Administrative Company (USAC) is the administrator of the federal universal service programs, including Lifeline, and it collects and distributes universal service funds in accordance with the Commission’s rules. See 47 CFR §§ 54.701(a), 54.702(b).

telecommunications carrier serves directly as of the first of the month.”⁴ The key tenets of the rules prescribing which customers can be claimed by ETCs for discounted Lifeline service are:

(1) disbursements of Lifeline support can only be based on the number of “actual qualifying low-income consumers” served by an ETC as that term is defined in Commission rules,⁵ (2) such qualifying low-income consumers must be served directly by the ETC as of the first day of the month, and (3) such consumers must have been determined to be eligible by the National Verifier, state Lifeline administrator, or other state agency.⁶

4. The Lifeline Rules require ETCs to “implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.”⁷ Section 54.409 requires Lifeline subscribers to meet certain income-based criteria or to participate in a qualifying program.⁸ In addition, in order to claim reimbursement, a Lifeline subscriber must have used the service during the prior 30 days or cured the non-usage.⁹ Otherwise, the subscriber must be de-enrolled for non-usage of the service.¹⁰ Moreover, ETCs are prohibited from offering or providing to enrollment representatives, or their direct supervisors, any commission compensation that is based on the number of consumers who apply for or are enrolled in the Lifeline program with that ETC.¹¹ Lifeline providers are required to maintain records to document compliance with all Commission and state requirements governing Lifeline.¹²

5. EBB service providers were permitted to claim program support for providing discounted broadband internet access service during the emergency period of the EBB program,¹³ based on the number of actual qualifying low-income households the provider served each month.¹⁴ All participating providers were required to implement policies and procedures for ensuring that their EBB households were eligible to receive the discount benefit.¹⁵ Two possible criteria for EBB qualification were for a

⁴ *Id.* § 54.407(a).

⁵ *Id.*; *see also* 47 CFR §§ 54.409 (establishing the criteria to constitute a “qualifying low-income consumer”); 54.410(b)–(c) (establishing procedural requirements for determining whether a consumer is a qualifying low-income consumer).

⁶ 47 CFR §§ 54.400(a), 54.407(a), 54.409.

⁷ *Id.* § 54.410(a). Each ETC must make annual certifications that, among other things, it has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services. 47 CFR § 54.416(a).

⁸ 47 CFR §§ 54.400(a), 54.409. A consumer’s household income must be at or below 135% of the Federal Poverty Guidelines for a household of that size; or the consumer, one or more of the consumer’s dependents, or the consumer’s household must receive benefits from one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; or Veterans and Survivors Pension Benefit. 47 CFR § 54.409(a). The Federal Poverty Guidelines are updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2). Consumers residing on Tribal lands may also qualify to participate in the Lifeline program if their household participates in certain Tribal-specific federal assistance programs. 47 CFR § 54.409(b).

⁹ 47 CFR § 54.407(c)(2).

¹⁰ *Id.* § 54.405(e)(3).

¹¹ *Id.* § 54.406(b).

¹² *Id.* § 54.417(a).

¹³ *Id.* §§ 54.1602(a), 54.1603(a). The temporary EBB program transitioned to the longer-term ACP effective December 31, 2021, to offer eligible low-income households discounts off the cost of broadband service and connected devices. *See Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (2022).

¹⁴ 47 CFR § 54.1608(a).

¹⁵ *Id.* § 54.1606(b).

household to have income at or below a certain threshold¹⁶ or for at least one member of the household to have experienced a documented substantial loss of income during the emergency period.¹⁷ A provider could not provide a consumer with EBB-supported service or seek reimbursement for such service, unless and until it had confirmed household eligibility, and retained all documentation related to the enrollment.¹⁸ A participating provider had to certify that every subscriber claimed had used the supported service at least once during the service month being claimed in order to claim that subscriber for EBB program reimbursement.¹⁹

6. *Factual Background.* TracFone is a mobile virtual network operator that resells prepaid mobile wireless telecommunications services nationwide, including Lifeline service under its SafeLink Wireless brand.²⁰ In 2020, the Commission issued an NAL against TracFone for apparent Lifeline rule violations for claiming ineligible subscribers in Florida and Texas during 2018.²¹ TracFone submitted a written response opposing the NAL on June 1, 2020.

7. During the period from January 1, 2019, forward examined during the Commission's Investigation, TracFone provided Lifeline-supported services, as well as broadband internet access service under the EBB program until the EBB program ended effective December 31, 2021.²²

8. Following its acquisition by Verizon, TracFone self-identified and reported to the Commission and the Universal Service Administrative Company (USAC) certain instances in which it previously may have violated Lifeline and/or EBB program rules. After certain of those disclosures and having received a referral from USAC,²³ the Bureau issued TracFone an LOI on May 16, 2022,²⁴ and a Supplemental LOI on October 24, 2022,²⁵ to obtain information about TracFone's process for determining customer usage for Lifeline and EBB, as well as other compliance issues. Specifically, the Bureau investigated whether TracFone: (i) claimed program support for Lifeline or EBB subscribers who should have not been claimed for reimbursement because they lacked qualifying usage of their service; (ii) improperly sought and/or obtained Lifeline or EBB support for ineligible subscribers without eligibility documentation or whose applications were supported by falsified tax forms; (iii) improperly certified that EBB customers had used the service to support reimbursement claims; and (iv) indirectly compensated Lifeline field enrollment representatives based on commission, rather than on an hourly basis.

¹⁶ *Id.* § 54.1605(a)(1).

¹⁷ *Id.* § 54.1605(a)(4).

¹⁸ *Id.* § 54.1606(b).

¹⁹ *Id.* § 54.1608(c).

²⁰ See Response to Letter of Inquiry from David Haga, Associate General Counsel, Verizon for Tracfone, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Jun. 15, 2022) (on file in EB-IHD-22-00033718) (Jun. 15, 2022, LOI Response) at 15-16, Responses to Questions 3 and 4.

²¹ *TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3459 (2020) (proposing forfeiture penalty of \$6,013,000 to be paid to the U.S. Treasury).

²² See Jun. 15, 2022 LOI Response at 17, Response to Question 8.

²³ See Letter from Christopher G. Smith, Director, USAC Compliance and Fraud Risk, to Keith Morgan, Deputy Bureau Chief, FCC Enforcement Bureau (May 4, 2022) (updated referral from May 2021 concerning, *inter alia*, TracFone's Lifeline usage rule compliance).

²⁴ Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Richard Salzman, President, TracFone Wireless, Inc. (May 16, 2022) (on file in EB-IHD-22-00033718) (LOI).

²⁵ Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to David L. Haga, Associate General Counsel, TracFone Wireless, Inc. (Oct. 24, 2022) (on file in EB-IHD-22-00033718) (Supplemental LOI).

9. TracFone filed responses to the LOI on June 15, 2022, and October 13, 2022.²⁶ It responded to the Supplemental LOI on December 2, 2022.²⁷ TracFone voluntarily disclosed to the Commission that, during the period at issue in the Investigation, its flawed processes with respect to determining customer usage resulted in improper Lifeline claims for customers who had not used the service in the prior 30 days,²⁸ it improperly considered a subscriber's receipt of an inbound text message to constitute qualifying Lifeline usage,²⁹ and it improperly claimed support for a group of customers who were enrolled jointly in both the Lifeline and EBB programs but lacked qualifying usage of one of the services.³⁰ TracFone further stated that it had a group of field enrollment representatives hired by a subcontractor who apparently relied on falsified tax documents to support enrollments for Lifeline and EBB subscribers.³¹ After TracFone worked with auditors it retained to help determine the extent of the improper claims from the Lifeline and EBB funds, TracFone reimbursed the Universal Service Fund (USF) a total of \$22,654,154 in claim revisions for Lifeline from January 2019 through October 2021 completed December 29, 2022, and it reimbursed the EBB/ACP fund a total of \$17,880,598 by February 28, 2023.³² TracFone also stated it had identified 79 field enrollment agents employed by subcontractors that were engaged by master agents who had commission-based compensation tied to customer enrollments, despite TracFone's contractual prohibitions against such commission-based compensation.³³

10. To resolve these matters, TracFone and the Bureau enter into this Consent Decree and agree to the following terms and conditions, which take into consideration TracFone's voluntary disclosures and its cooperation with the Bureau during the Investigation.

III. TERMS OF AGREEMENT

11. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

12. **Jurisdiction.** TracFone agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

13. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

14. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation with respect to all potential violations of the statute and rules governing

²⁶ See Jun. 15, 2022 LOI Response; Letter from David Haga, Associate General Counsel, Verizon for Tracfone, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Oct. 13, 2022) (on file in EB-IHD-22-00033718) (Oct. 13, 2022 LOI Response).

²⁷ See Letter from David Haga, Associate General Counsel, Verizon for Tracfone, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Dec. 2, 2022) (on file in EB-IHD-22-00033718) (Dec. 2, 2022 LOI Response).

²⁸ See generally Oct. 13, 2022 LOI Response. See also Jun. 15, 2022 LOI Response at 1-9 and 19-21, Response to Question 12.

²⁹ See Dec. 2, 2022 LOI Response at 4-6, Response to Question 44.

³⁰ See *id.* at 6-9, Response to Question 45.

³¹ See *id.* at 25-28, Response to Question 49.

³² For the period September 2021 through October 2021, which were the months at issue in the Bureau's Investigation of TracFone's Lifeline processes for determining customer usage, TracFone reimbursed the USF \$2,244,498.

³³ See Dec. 2, 2022 LOI Response at 11-18, Response to Question 46.

Lifeline and EBB. In consideration for the termination of the Investigation, TracFone agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against TracFone concerning the Lifeline and EBB matters that were the subject of the Investigation, or to set for hearing the question of TracFone's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the Lifeline and EBB matters that were the subject of the Investigation.³⁴ Notwithstanding the foregoing, this Consent Decree is intended to resolve only the Enforcement Bureau's investigation regarding TracFone's compliance with the Lifeline and EBB rules, including specifically the matters described in paragraph 8, and does not terminate any other investigations that have been or might be conducted by other law enforcement agencies or offices.³⁵

15. **Admission of Facts.** TracFone admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 14 herein, that paragraph 9 contains a true and accurate description of the facts underlying the Investigation. No other admissions are made by TracFone.³⁶

16. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, TracFone shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that TracFone complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Lifeline, EBB, and ACP Rules prior to assuming his or her duties.

17. **Compliance Plan.** For purposes of settling the matters set forth herein, TracFone agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Lifeline Rules and with the terms and conditions of this Consent Decree. TracFone may use a combination of any existing and/or new measures and processes to ensure future compliance, but, at a minimum, will have in place the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, TracFone shall establish Operating Procedures that all Covered Employees must follow to help ensure TracFone's compliance with the Lifeline Rules. TracFone's Operating Procedures shall include internal procedures and policies specifically designed to ensure that it does not submit claims for reimbursement for subscribers who are ineligible because they lack qualifying usage of Lifeline service, that ineligible subscribers are timely identified and de-enrolled, that enrollments in Lifeline conform to the customer eligibility determinations made by the National

³⁴ See 47 CFR § 1.93(b).

³⁵ Nothing in this Consent Decree shall prevent the Commission or its delegated authorities from investigating and adjudicating any alleged violations of the Commission's Rules stemming from any potential noncompliance matters that TracFone continues to investigate as of the Effective Date, as specifically referenced in TracFone's November 20, 2023 letter to Commission Staff. See Letter from David Haga, Associate General Counsel, Verizon for Tracfone, to Commission staff (Nov. 20, 2023) (on file in EB-IHD-22-00033718).

³⁶ It is TracFone's position that, while it is paying the 2020 NAL as part of the resolution of the matters set forth in this Consent Decree, TracFone expressly denies any liability in connection with the alleged violations contained in the NAL, including with respect to violations associated with eligible subscribers in the state of Texas. TracFone's position is that those alleged violations stem directly from the Texas Low-Income Discount Administrator ("LIDA") database's failure to accurately identify all eligible subscribers. TracFone states that its payment of the NAL should not be deemed an admission or waiver in connection with any other proceeding involving the same or similar subject matter(s).

Verifier using the National Lifeline Accountability Database (NLAD) or via such other mechanisms for determining customer eligibility as may be contemplated by the program rules, and that field enrollment representatives are not improperly compensated by providing sales-based commissions tied to enrollments. TracFone shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Lifeline Rules.

- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Lifeline Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure TracFone's compliance with the Lifeline Rules. TracFone shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. TracFone shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** TracFone shall establish and implement a Compliance Training Program on compliance with the Lifeline Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of TracFone's obligation to report any noncompliance with the Lifeline or EBB Rules under paragraph 18 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. Compliance training pursuant to the Compliance Training Program shall be an annual requirement. In the first year, TracFone shall require all existing Covered Employees to have been trained within one hundred twenty (120) calendar days after the Effective Date, and any person who becomes a Covered Employee at any time thereafter shall be trained within one hundred twenty (120) calendar days after the date such person becomes a Covered Employee, provided that any Covered Employee must be trained prior to soliciting any customer to enroll in Lifeline. TracFone shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

18. **Reporting Noncompliance.** TracFone shall report any material noncompliance with the Lifeline or EBB Rules and/or with the terms and conditions of this Consent Decree within thirty (30) calendar days of a report made to the Compliance Officer. In complex cases that require additional investigation, TracFone may seek up to an additional thirty (30) calendar days, which shall not be unreasonably denied, to make such a report of material noncompliance. In determining whether such noncompliance is material, any close calls will be resolved in favor of reporting. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that TracFone has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that TracFone has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov with an electronic copy to EnforcementBureauIHD@fcc.gov.

19. **Compliance Reports.** TracFone shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of TracFone's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Lifeline Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of TracFone,

stating that the Compliance Officer has personal knowledge that TracFone: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of material noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 18 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.³⁷
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of TracFone, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of material noncompliance; (ii) the steps that TracFone has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that TracFone has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Georgina Feigen at Georgina.Feigen@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov, with an electronic copy to EnforcementBureauIHD@fcc.gov.

20. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 16 through 19 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

21. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act³⁸ against TracFone or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by TracFone with the Communications Laws.

22. **ACP Rule Compliance.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from investigating and adjudicating alleged violations of the Commission's ACP Rules against TracFone or its affiliates, including potential ACP noncompliance with sections 54.1806, 54.1807(b), 54.1808(c), and 54.1809(c) of the Rules, regardless of when such misconduct took place. The foregoing shall apply to alleged violations of the ACP Rules that accrued prior to or during the period of the Bureau's Investigation. However, any such violations of the ACP Rules shall not be deemed violations of the terms or conditions of this Consent Decree. This Consent Decree will not have the effect of reviving or further extending any statute of limitations period of any alleged violations of the ACP Rules that are otherwise time-barred, except that all applicable tolling agreements between TracFone and the Bureau that were in effect prior to the Effective Date shall remain in effect pursuant to the terms therein, and the Parties are not restricted from entering into additional tolling after the Effective Date.

³⁷ 47 CFR § 1.16.

³⁸ 47 U.S.C. § 208.

23. **Notice of Apparent Liability Payment.** TracFone will pay the Commission's \$6,013,000 Notice of Apparent Liability, FCC 20-45, NAL Account No. 202032080017,³⁹ within thirty (30) calendar days of the Effective Date.

24. **Civil Penalty.** TracFone will pay a civil penalty to the United States Treasury in the amount of \$17,487,000 within thirty (30) calendar days of the Effective Date. TracFone acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).⁴⁰ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. TracFone shall send electronic notification of payment to Patrick McGrath at Patrick.McGrath@fcc.gov and EnforcementBureauIHD@fcc.gov, on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁴¹

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159⁴² or printed CORES form⁴³ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁴⁴ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing

³⁹ See *TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3459 (2020).

⁴⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

⁴¹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

⁴² FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁴³ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

⁴⁴ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

25. **Event of Default.** TracFone agrees that an Event of Default shall occur upon the failure by TracFone to pay the full amount of the Civil Penalty or to pay the Notice of Apparent Liability Payment on or before the due date specified in this Consent Decree.

26. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty and/or Notice of Apparent Liability Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty and/or Notice of Apparent Liability Payment, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys’ fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by TracFone.

27. **Waivers.** As of the Effective Date, TracFone waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. TracFone shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither TracFone nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and TracFone shall waive any statutory right to a trial *de novo*. TracFone hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act⁴⁵ relating to the matters addressed in this Consent Decree.

28. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

29. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

30. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which TracFone does not expressly consent) that provision will be superseded by such Rule or order.

31. **Successors and Assigns.** TracFone agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

⁴⁵ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

32. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation except as otherwise agreed to by the Parties in paragraph 22 of this Consent Decree.

33. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

34. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

35. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

36. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Loyaan A. Egal
Chief
Enforcement Bureau

Date

Andrea Short
Chief Litigation Counsel – Verizon
On Behalf of TracFone Wireless, Inc.

Date