

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

In the Matter of)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
TracFone Wireless, Inc.)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of New)
York)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of Florida)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Virginia)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Connecticut)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Massachusetts)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Alabama)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of North)
Carolina)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Tennessee)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Delaware for the Limited Purpose of Offering)
Lifeline Service to Qualified Households)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of New)
Hampshire for the Limited Purpose of Offering)
Lifeline Service to Qualified Households)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Pennsylvania for the Limited)

Purpose of Offering Lifeline Service to Qualified)
 Households)
)
 Petition for Designation as an Eligible)
 Telecommunications Carrier in the District of)
 Columbia for the Limited Purpose of Offering)
 Lifeline Service to Qualified Households)

ORDER

Adopted: April 9, 2008

Released: April 11, 2008

By the Commission: Commissioners Copps, Adelstein and Tate issuing separate statements.

I. INTRODUCTION

1. In this Order, we conditionally grant the petitions of TracFone Wireless, Inc. (TracFone) to be designated as an eligible telecommunications carrier (ETC), eligible only to receive universal service Lifeline support, in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ Due

¹ TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 8, 2004) (New York Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45 (filed July 21, 2004) (Virginia Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45 (filed Nov. 9, 2004) (Connecticut Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45 (filed Nov. 9, 2004) (Massachusetts Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (filed Nov. 9, 2004) (Alabama Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45 (filed Nov. 9, 2004) (North Carolina Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45 (filed Nov. 9, 2004) (Tennessee Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Nov. 28, 2007) (Delaware Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Nov. 28, 2007) (New Hampshire Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Dec. 11, 2007) (Pennsylvania Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Jan. 18, 2008) (District of Columbia Petition). TracFone filed an erratum to its New York Petition correcting, from four to five, the number of underlying carriers it uses to serve subscribers in that state. Erratum to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 14, 2004). TracFone later amended its request for ETC designation in New York and Virginia to limit its eligibility for federal universal service support to the Lifeline program only. Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, 2 (filed Aug. 16, 2004); Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, 2 (filed Aug. 16, 2004). TracFone's petitions for ETC designation in the remaining states, other than Florida, as discussed below, were limited to eligibility for Lifeline support as originally filed. TracFone does not seek eligibility for high-cost support.

to the Florida Public Service Commission's assertion of jurisdiction over wireless ETC designations, we dismiss without prejudice TracFone's petition for designation as an eligible telecommunications carrier in Florida.² On September 8, 2005, the Commission conditionally granted TracFone's petition for forbearance from the facilities requirement of section 214(e)(1).³ As discussed below, we now conclude that TracFone has satisfied the remaining eligibility requirements of section 214(e)(1) and the Commission's rules to be designated as an ETC eligible only for Lifeline support (limited ETC).⁴ We also approve TracFone's plan for complying with the conditions imposed in the *Forbearance Order*.⁵

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁶ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁷

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁸ Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."⁹ Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁰ Before

² TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed July 21, 2004) (Florida Petition). TracFone later amended its request for ETC designation in Florida to limit its eligibility for federal universal service support to the Lifeline program only. Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, 2 (filed Aug. 16, 2004); *see* para. 10 *infra* (discussing jurisdiction of the Florida Public Service Commission).

³ *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*Forbearance Order*). Under section 214(e)(1)(A) of the Act, an ETC must offer service using its own facilities or a combination of its own facilities and resale of another carrier's service. 47 U.S.C. § 214(e)(1)(A).

⁴ Lifeline is the universal service low-income program that provides discounts to qualified low-income consumers on their monthly telephone bills. *See* 47 C.F.R. §§ 54.401-54.409.

⁵ *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Compliance Plan (filed Oct. 11, 2005) (TracFone Compliance Plan); *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Erratum to Compliance Plan (filed Oct. 17, 2005) (Erratum to Compliance Plan) (correcting its characterization of Florida to identify it as a state with state-imposed certification and verification requirements for Lifeline eligibility).

⁶ 47 U.S.C. § 254(e).

⁷ 47 U.S.C. § 214(e)(1); *see also* 47 C.F.R. § 54.201(d).

⁸ 47 U.S.C. § 214(e)(2); *see Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

⁹ 47 U.S.C. § 214(e)(6).

¹⁰ *Id.*

designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.¹¹

B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of the [supported] services and the charges therefore using media of general distribution;” and (5) if the petitioner meets the definition of a “rural telephone company” under section 3(37) of the Act, the identity of its study area, or, if the petitioner is not a “rural telephone company,” a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹²

5. In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.¹³ Specifically, consistent with the recommendation of the Federal-State Joint Board on Universal Service, the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.¹⁴ These additional requirements are mandatory for all ETCs designated by the Commission.¹⁵ ETCs already designated by the Commission or ETC applicants that submitted applications prior to the effective date of the *ETC Designation Order* must make such showings in their annual certification filings.¹⁶

¹¹ *Id.*

¹² See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*).

¹³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*); see also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438, paras. 1, 33 (2004) (*Highland Cellular Order*).

¹⁴ See *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, para. 5 (Fed-State Jt. Bd. 2004)).

¹⁵ 47 C.F.R. § 54.202(a). Because TracFone is a pure reseller eligible for Lifeline support only, we do not require TracFone to demonstrate that it satisfies the network build-out and improvement requirements or to provide a certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

¹⁶ 47 C.F.R. §§ 54.202(b); 54.209.

6. In addition, prior to designating an ETC pursuant to section 214(e)(6) of the Act, the Commission determines whether such designation is in the public interest.¹⁷ In the *ETC Designation Order*, the Commission adopted one set of criteria for evaluating the public interest for ETC designations for both rural and non-rural areas.¹⁸ Specifically, in determining the public interest, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering are considered.¹⁹ As the Commission noted in the *ETC Designation Order*, however, the same factors may be analyzed differently or may warrant a different outcome depending on the specifics of the proposed service area and whether it is rural or non-rural.²⁰

C. TracFone's Petitions

7. TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider that offers prepaid wireless telecommunications services.²¹ On June 8, 2004, TracFone filed a petition seeking forbearance from section 214(e)(1) of the Act, which requires that an ETC be facilities-based, at least in part.²² Beginning on that date, TracFone filed with the Commission petitions seeking designation as an ETC only for the purpose of being eligible to receive universal service Lifeline support in its licensed service areas in New York, Virginia, Florida, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.²³

8. In the *Forbearance Order*, the Commission conditionally granted TracFone's request for forbearance from the facilities-based requirements of section 214(e)(1)(A) of the Act and section 54.201(i) of its rules for the purpose of considering TracFone's petitions for limited ETC designation.²⁴ The *Forbearance Order* required that TracFone file a compliance plan with the Commission explaining how TracFone will implement the conditions imposed by the *Forbearance Order*.²⁵ TracFone filed its compliance plan on October 11, 2005.²⁶

¹⁷ 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c). *See also ETC Designation Order*, 20 FCC Rcd at 6388-96, paras. 40-57; *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21. The Commission places the burden on the ETC applicant to demonstrate that the public interest is served. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44.

¹⁸ *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43.

¹⁹ 47 C.F.R. § 54.202(c).

²⁰ *ETC Designation Order*, 20 FCC Rcd at 6390, para. 43. In analyzing the public interest factors in this instance, there is no rural/non-rural distinction because Lifeline support, unlike high-cost support, is not determined based on whether the service area is rural or non-rural. *See* 47 C.F.R. § 54.403.

²¹ *See, e.g.*, Massachusetts Petition at 2, 3.

²² 47 U.S.C. § 214(e)(1).

²³ *See supra* notes 1 and 2.

²⁴ *Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6. Additionally, on its own motion, the Commission forbore from section 54.201(d)(1) of its rules, which mirrors section 214(e) of the Act, requiring that ETCs be facilities-based, at least in part. *Id.* at 15098, n.23.

²⁵ *Id.* at 15105, para. 25.

²⁶ *See generally* TracFone Compliance Plan; Erratum to Compliance Plan.

III. DISCUSSION

A. Commission Authority to Perform the ETC Designation

9. TracFone has demonstrated that, except for the Florida Public Service Commission, the relevant state commissions lack authority to perform the requested limited ETC designations, and the Commission has authority to consider TracFone's petitions under section 214(e)(6) of the Act. Each petition includes an affirmative statement from the relevant state commission providing that ETC designation should be sought from the Commission.²⁷ Accordingly, we find the relevant state commissions lack jurisdiction to designate TracFone as an ETC and that this Commission therefore has authority to perform the requested limited ETC designations under section 214(e)(6).²⁸

10. In April of this year, the Florida Public Service Commission found that, due to a change in Florida state law, it "now ha[s] jurisdiction to consider CMRS applications for ETC designation."²⁹ In light of this development, and because section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations, we dismiss without prejudice the petition filed by TracFone seeking designation as an ETC in Florida. TracFone may re-file its petition with the Florida Public Service Commission. Should the Florida Public Service Commission consider granting a petition by TracFone for designation as a limited ETC in Florida, we would encourage it to require TracFone to adhere to the compliance plan we approve herein.

B. Analysis of the Eligibility Requirements

11. Offering the Services Designated for Support. TracFone has demonstrated, through the required certifications and related filings, that it now offers or will offer upon designation as a limited ETC the services supported by the Lifeline program.³⁰

12. Offering the Supported Services Using a Carrier's Own Facilities. The Commission previously granted TracFone forbearance from the facilities requirement for purposes of this limited ETC designation, permitting TracFone to offer the supported services via resale only.³¹

13. Advertising the Supported Services. TracFone has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the related charges "using media of general distribution."³² TracFone has also stated that, in compliance with the

²⁷ E.g., New York Petition at 4 and Exhibit 2.

²⁸ 47 U.S.C. § 214(e)(6).

²⁹ *Petition of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier (ETC) in Certain Rural Telephone Company Study Areas Located Partially in Alltel's Licensed Area and for Redefinition of those Study Areas*, PSC-07-0288-PAA-TP, Notice of Proposed Agency Action Order Finding Authority to Consider Applications By CMRS Providers For ETC Designation, 2007 WL 1029436 (Fla. P.S.C. Apr. 3, 2007). The April order was a proposed agency action, which was made final by a consummating order on June 7, 2007. See *Petition of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier (ETC) in Certain Rural Telephone Company Study Areas Located Partially in Alltel's Licensed Area and for Redefinition of those Study Areas*, PSC-07-0481A-CO-TP, Amendatory Order, 2007 WL 1774614 (Fla. P.S.C. June 7, 2007).

³⁰ 47 C.F.R. §§ 54.410(a), 54.101(a)(1)-(a)(9); see, e.g., New York Petition at 5-8. In particular, we disagree with commenters who argued that TracFone cannot offer toll limitation service. See, e.g., TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, Comments of TDS Telecommunications Corp., at 9-11 (filed July 26, 2004). We find that the prepaid nature of TracFone's service offering works as an effective toll control. See *infra* para. 15.

³¹ *Forbearance Order*, 20 FCC Rcd at 15098, para. 6.

³² 47 U.S.C. § 214(e)(1)(B); see, e.g., New York Petition at 8.

Commission's Lifeline rules, it will advertise the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for those services.³³

14. Additional Eligibility Requirements. TracFone either satisfies the applicable eligibility requirements set forth in the *ETC Designation Order*, described above,³⁴ or must make such showings in its first annual report under section 54.209 of the Commission's rules.³⁵

C. Public Interest Analysis

15. We find that TracFone's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers including increased consumer choice,³⁶ high-quality service offerings,³⁷ and mobility.³⁸ In addition, the prepaid feature, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts. The Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association Keystone Chapter assert, however, that TracFone is not complying with Pennsylvania's Public Safety Emergency Telephone Act (the Pennsylvania Act), which requires that wireless providers collect a wireless E911 surcharge and remit the money to Pennsylvania's Wireless E-911 Emergency Fund.³⁹ The National Emergency Numbers Association (NENA) further asserts that TracFone's actions in Pennsylvania reflect "patterns of behavior" evidenced "in several other states."⁴⁰ TracFone's reply asserts, *inter alia*, that the allegations set forth in the NENA Keystone/PAOCA Joint Comments are not relevant to TracFone's qualifications to be designated as an ETC and are a question of

³³ 47 C.F.R. § 54.405(b); *see, e.g.*, Petitions for Designation as an Eligible Telecommunications Carrier in the State of Connecticut and the Commonwealth of Massachusetts, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at 10 (filed Dec. 29, 2004).

³⁴ *See supra* para. 5.

³⁵ *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20; 47 C.F.R. §§ 54.202(a), 54.209. For example, TracFone has committed to provide high-quality service, as demonstrated by committing to comply with the Consumer Code for Wireless Service of the Cellular Telecommunications Industry Association (CTIA), and to serve the designated areas within a reasonable time. *See, e.g.*, New York Petition at 13-14. Because TracFone is a pure reseller, eligible for universal service Lifeline support only, we do not require it to demonstrate that it satisfies the network build-out and improvement requirements, or to provide a certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

³⁶ For example, TracFone's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. *See, e.g.*, New York Petition at 12, 14.

³⁷ For example, TracFone committed that it will comply with the Consumer Code for Wireless Service of the CTIA. *See, e.g.*, New York Petition at 13.

³⁸ *See e.g.*, New York Petition at 10-14. As noted in the *PSC Alabama Order*, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. *Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, CC Docket No. 96-45, Order, 20 FCC Rcd 6854, 6861, para. 25 (Wireline Comp. Bur. 2005) (*PSC Alabama Order*). Moreover, the availability of a wireless universal service offering also provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. *Id.*

³⁹ TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Joint Comments of the Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association, Keystone Chapter, CC Docket No. 96-45, 5-6 (filed Feb. 8, 2008) (NENA Keystone/PAOCA Joint Comments).

⁴⁰ *See* Letter from James R. Hobson, Counsel for the National Emergency Numbers Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, 1-3 (filed Apr. 3, 2007) (NENA Apr. 3, 2008 *Ex Parte* Letter).

state law, not commission regulation.⁴¹ TracFone further denies that it is in violation of the Pennsylvania Act, and asserts that the larger question of state 911 funding requirements is more appropriately addressed “at the national level.”⁴²

16. We disagree with TracFone and find compliance with 911/E911 requirements relevant to the public interest in this instance. In the *Forbearance Order*, the Commission expressly conditioned its grant of forbearance from the facilities requirement of section 214(e) of the Act on TracFone’s compliance with E911 requirements applicable to wireless resellers.⁴³ The Commission adopted these conditions because of the unique circumstances presented by TracFone’s petitions for limited ETC designation for Lifeline support.⁴⁴ The Commission further required TracFone to submit a plan outlining measures to implement the conditions imposed in the *Forbearance Order*, and stated the Commission would consider the plan in deciding whether to grant TracFone’s petitions for limited ETC designation.⁴⁵ Given these circumstances, and in light of the concerns raised by NENA and the Pennsylvania Office of Consumer Advocate, we condition TracFone’s designation as an ETC eligible for Lifeline support in each state on TracFone’s certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support, of 911 and E911 service.⁴⁶ Subject to this condition, we find, on balance, that the advantages of designating TracFone as a limited ETC in the designated service areas outweigh any potential disadvantages.⁴⁷

D. Designated Service Areas

17. Based on the foregoing, we hereby designate TracFone as a limited ETC, eligible only for Lifeline support, in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.⁴⁸ In designating TracFone as a limited ETC, we clarify that TracFone’s designated service areas do not encompass federally-recognized tribally-owned lands.⁴⁹

⁴¹ Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Reply Comments of TracFone Wireless, Inc., CC Docket No. 96-45, 2-5 (filed Feb. 25, 2008).

⁴² *Id.* at 5-9.

⁴³ See *Forbearance Order*, 20 FCC Rcd at 15102, para 16; *infra* at paras. 20-22.

⁴⁴ See *Forbearance Order*, 20 FCC Rcd at 15102, para 16. The Commission noted that TracFone’s Lifeline-supported service may well be the customers’ only means of accessing emergency personnel. *Id.* Given the potential gravity of the harm if TracFone’s Lifeline customers cannot obtain access to emergency services, the Commission adopted the conditions to protect Lifeline customers. *Id.*

⁴⁵ *Id.* at 15105, para. 25.

⁴⁶ See NENA Keystone/PAOCA Joint Comments; NENA Apr. 3, 2008 *Ex Parte* Letter.

⁴⁷ The Commission has already found that any effect on the universal service fund would be minimal, limited to the Lifeline program, and outweighed by the benefit of increasing eligible participation in the Lifeline program. *Forbearance Order*, 20 FCC Rcd 15103-04, para. 17. In addition, we need not perform a creamskimming analysis because TracFone is seeking to be eligible for Lifeline support only.

⁴⁸ Under this limited ETC designation, TracFone will not be eligible for support for Link Up or toll-limitation service under the low-income program, nor will it be eligible for high-cost support, or for schools and libraries and rural health care support as an ETC. Non-ETCs, however, may participate in certain aspects of the schools and libraries or rural health care programs. See *Forbearance Order*, 20 FCC Rcd at 15097, para. 3 & n.12.

⁴⁹ TracFone expressly states that it does not request ETC designation for tribal lands. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, North Carolina, and Tennessee, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at n.22 (filed Feb. 2, 2005).

E. Regulatory Oversight and Compliance Plan

18. Under section 254(e) of the Act, TracFone is required to use the specific universal service support it receives “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁵⁰ An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁵¹ Lifeline assistance shall be made available to qualifying low-income consumers as soon as the universal service fund Administrator certifies that TracFone’s Lifeline service offering satisfies the criteria in our rules and complies with the conditions imposed under the *Forbearance Order*.⁵² In addition, TracFone must report certain information to the Commission and the Universal Service Administrative Company (USAC) pursuant to section 54.209 of the Commission’s rules.⁵³

19. We find that reliance on TracFone’s commitments to meet these requirements is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.⁵⁴ These requirements will further the Commission’s goal of ensuring that TracFone satisfies its obligation under section 214(e) of the Act to provide the services supported by the Lifeline program throughout its designated service areas.

20. In addition, we note that, in the *Forbearance Order*, the Commission imposed additional requirements on TracFone, and ordered that TracFone file a compliance plan detailing how it will adhere to these requirements. The additional requirements obligate TracFone to implement certain 911 and E911 requirements and to establish certain administrative procedures to safeguard against waste, fraud, and abuse in the Lifeline program.

21. Specifically, the Commission conditioned forbearance from the facilities requirement for limited ETC designation upon TracFone: (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtaining a certification from each Public Safety Answering 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

⁵⁰ 47 U.S.C. § 254(e). Because TracFone is not eligible to receive high-cost support, we do not require it to provide high-cost certifications under §§ 54.313 and 54.314 of our rules. See 47 C.F.R. §§ 54.313, 54.314.

⁵¹ See *Forbearance Order*, 20 FCC Rcd at 15105-06, para. 26.

⁵² See 47 C.F.R. §54.401(d). As noted above, we find that TracFone’s service offering meets the criteria for service and functionality contained in our rules. See *supra* para. 11 & n.29. We also approve TracFone’s compliance plan, finding that it is adequate to implement the conditions of the *Forbearance Order*. See *infra* para. 21.

⁵³ See 47 C.F.R. § 54.209(a) (specifying the information to be included in the annual reports submitted by ETCs); *ETC Designation Order*, 20 FCC Rcd at 6400-6402, paras. 68-69; see also *Virginia Cellular Order*, 19 FCC Rcd at 1584, para. 46 & n.140 (anticipating that annual submissions will encompass only the ETC’s designated service areas). As noted above, as a pure reseller eligible for Lifeline support only, we do not require TracFone to report on network build-out and improvements or to certify that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. See *supra* note 15.

⁵⁴ In *TOPUC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) (*TOPUC*). Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.⁵⁵

22. The Commission carefully crafted the conditions of the *Forbearance Order* to meet important regulatory goals. We decline, therefore, to modify these conditions as requested by TracFone in granting the ETC designation requests at issue herein.⁵⁶ Consequently, TracFone must obtain the required certification from each PSAP where it will provide Lifeline service.⁵⁷ Moreover, TracFone must continue to provide access to “basic *and* enhanced 911 service” as described in section 20.18(m) of our rules.⁵⁸ Finally, TracFone must “distribute its Lifeline service directly to its Lifeline customers.”⁵⁹

23. After careful review of the compliance plan and the record, we find the compliance plan adequate to implement the original and unmodified conditions of the *Forbearance Order*.⁶⁰ We, therefore, approve the compliance plan as discussed in this Order.

⁵⁵ *Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6.

⁵⁶ In its compliance plan, TracFone requests two modifications to the public safety conditions. First, TracFone requests that, in lieu of obtaining certification from each PSAP confirming access to 911 and E911, that it be permitted to rely on the underlying carrier’s current quarterly E911 report filed with the Commission together with a certification from TracFone that its Lifeline customers in the relevant market will be served only by such carrier(s). TracFone Compliance Plan at 7-10. Second, TracFone requests that it be allowed to offer Lifeline service where either 911 *or* E911 service is available. *Id.* at 11-14. Further, TracFone states in its applications that it will implement, upon designation as an ETC, the Lifeline certification and verification procedures set forth in an *ex parte* presentation dated July 13, 2005. *See, e.g.*, Delaware Petition at 12; District of Columbia Petition at 12-13; Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, WC Docket 96-45, Attach. (July 13, 2005). TracFone does not explicitly note, however, that the procedures set forth in that document were rejected, in part, in the *Forbearance Order*. *See Forbearance Order*, 20 FCC Rcd at 15104, para. 19; District of Columbia Public Service Commission Reply Comments, CC Docket No. 96-45, at 4-5 (filed Mar. 13, 2008) (District of Columbia Reply). Out of an abundance of caution, we treat this omission as a request for modification of the conditions of the *Forbearance Order*.

⁵⁷ *See Forbearance Order*, 20 FCC Rcd at 15102, para. 16. We believe this requirement is sufficient to address the District of Columbia Public Service Commission’s concern that the District of Columbia Office of Unified Communications be notified that TracFone is providing Lifeline service in the District of Columbia. *See* District of Columbia Reply at 4.

⁵⁸ 47 U.S.C. § 20.18(m) (emphasis added). We also note that CMRS providers are required to “transmit all wireless 911 calls without respect to their call validation process. . . .” *See* 47 C.F.R. § 20.18(b). This rule addresses the concerns of the District of Columbia Public Service Commission regarding the 911 capability of TracFone handsets “regardless of activation status or minute availability.” *See* District of Columbia Reply at 3; *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18691-99, paras. 29-46 (1996).

⁵⁹ *Forbearance Order*, 20 FCC Rcd at 15104, para. 19.

⁶⁰ In particular, we disagree with USTelecom, who questions whether TracFone will receive 12 months of Lifeline support if a subscriber who chooses the annual prepaid plan uses all of the initial minutes in the first month or if a subscriber under the “NET10” plan redeems fewer than 12 monthly coupons. *See* Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Comments of the United States Telecom Association, at 3, 4 (filed Nov. 28, 2005) (USTelecom Compliance Plan Comments). We find that TracFone’s plans for seeking reimbursement are consistent with our Lifeline rules and procedures. Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at 6, 7 (filed Dec. 12, 2005). Moreover, despite comments to the contrary, we are satisfied that TracFone will pass though all Lifeline support as required by our rules. *See* USTelecom Compliance Plan Comments at 1-2. Finally, we find that we do not need to clarify how Lifeline support

(continued...)

24. Finally, we note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support an ETC receives is being used for the purpose for which it was intended.⁶¹ TracFone will be required to provide such records and documentation to the Commission and USAC upon request. If TracFone fails to fulfill the requirements of the Act, our rules, the terms of this Order, or the conditions imposed under the *Forbearance Order* after it begins receiving universal service Lifeline support, the Commission may revoke its limited ETC designation.⁶² The Commission may also assess forfeitures for violations of its rules and orders.⁶³

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

25. Under section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued under section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.⁶⁴ TracFone has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁶⁵ We find that TracFone has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.⁶⁶

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), TracFone Wireless, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER eligible only for Lifeline support in its licensed

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will be calculated and distributed because we are confident that USAC is capable of handling any administrative issues presented by TracFone's Lifeline offering. *See Forbearance Order*, 20 FCC Rcd at 15104, para. 20 (stating that the ETC designation order would address how Lifeline support will be calculated and distributed if the prepaid nature of the offering requires such clarification). The *Forbearance Order* also addressed the issue of double recovery, noting that, although the Commission has in the past declined to extend ETC status to pure resellers due to concerns about double recovery of universal service support, TracFone's CMRS wholesale providers are not subject to section 251(c)(4) wholesale obligations and so the resold services presumably do not reflect a reduction in price due to Lifeline support. *See id.* at 15100-01, para. 12. We, therefore, dismiss comments to the contrary. *See, e.g.*, Comments of Verizon, Federal-State Joint Board on Universal Service, TracFone Wireless Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, Petition for Forbearance from Application of Section 214, CC Docket No. 96-45 at 9 (filed July 26, 2004).

⁶¹ 47 U.S.C. §§ 220, 403.

⁶² *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); 47 U.S.C. § 254(e); *see also Forbearance Order*, 20 FCC Rcd at 15099, para. 6, n.25.

⁶³ *See* 47 U.S.C. § 503(b).

⁶⁴ 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)-(b). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of the petitioner; and (3) If the application is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C. F. R. § 1.2002(b). *See Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

⁶⁵ *See e.g.*, New York Petition at Exhibit 1.

⁶⁶ 47 C.F.R. §§ 1.2001-2003.

service areas in New York, Virginia, Connecticut, Massachusetts, North Carolina, Alabama, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia to the extent described in this Order and subject to the conditions set forth herein.

27. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), TracFone Wireless, Inc.'s petition for eligible telecommunications carrier designation in the state of Florida IS DISMISSED WITHOUT PREJUDICE to the extent described herein.

28. IT IS FURTHER ORDERED that TracFone Wireless, Inc. WILL SUBMIT additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2008, as part of its annual reporting requirements.

29. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

For quite some time the public debate has centered on whether and how the Universal Service system's high-cost fund should support wireless CETCs. While an important policy discussion for sure, sometimes we lose sight of the fact that there is an entire segment of consumers who would lack a phone at all and would easily become disconnected from society were it not for the support of the Lifeline program. I am very pleased that today the Commission takes a moment to focus on making it easier for low-income consumers to receive wireless phone service. The Petitioner is now eligible for Lifeline support to provide wireless phone service in ten states and the District of Columbia. To some who own multiple phones of every size and shape, such a decision may seem inconsequential; but to the many working poor in this country phone service remains essential to staying connected with family, employers, and the communities in which they live. A wireless option will only make it easier for these consumers to stay connected. The Order recognizes both the importance of providing consumers with a wireless option and at the same time ensures that consumers have essential emergency services available to them. For these reasons, I am pleased to approve this item.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

For most of us, living without telephone service is almost unimaginable. It is a link to our jobs, to commerce, to healthcare and emergency services, not to mention friends and family. For that reason, Congress and the Commission have long recognized the importance of ensuring that consumers have affordable access to telecommunications services. We have succeeded through Federal universal service programs, including Lifeline and Link Up, in achieving extraordinarily high levels of telephone penetration in the U.S. Despite that progress, millions of consumers lack even the most basic connectivity. For many of these consumers, the cost of maintaining telephone service is prohibitively expensive, keeping even the most basic connections out of reach. This is particularly so for low-income consumers, who are much less likely to have access to telephone service.

Our Lifeline program forms the backbone of our efforts to reach low income consumers. Through this Order, the Commission takes a modest step to expand the options available for low income consumers. By designating a provider that actively targets low-income consumers for Lifeline support, this Order should expand choice for these consumers. This is particularly important, given the Commission's estimate that only about one third of households eligible for Lifeline support actually subscribe to the program. Greater competition for low-income customers should lead to better service offerings, lower costs, and, most importantly, greater participation.

I would like to thank the staff of the Wireline Competition Bureau for their hard work to address these petitions and the proposed compliance plan. Given the unique circumstances of designating a prepaid provider as eligible to receive universal service support, it is important that the Commission carefully monitor its implementation and I look forward to working with both the Bureau and my colleagues should any questions arise.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

Just as we improved utilization of the separate rural health care mechanism of the universal service program with our recent Rural Health Care Pilot Program, we now take action to enhance the Lifeline Program. The Lifeline program is a key component of the national universal service goal set out by Congress to ensure that consumers in all corners of the nation – no matter their economic status – have access to telecommunications services. Since its inception, Lifeline has provided support for millions of low-income consumers.

In our decision we grant a very narrow and limited Eligible Telecommunications Carrier (ETC) designation to TracFone's Lifeline program which provides eligible consumers increased choice and mobility, especially citizens in rural areas who often must drive significant distances for employment, education and healthcare. In addition the prepaid feature may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts.

Significantly, under this limited ETC designation, TracFone will not be eligible for support for Link Up or toll-limitation service under the low-income program, nor will it be eligible for high-cost support, or for schools and libraries and rural health care support. In addition, we impose additional requirements on TracFone that obligate it to implement certain 911 and E911 requirements, including administrative procedures to safeguard against waste, fraud, and abuse.