

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of )  
TracFone Wireless, Inc. dba SafeLink ) Case No. 10-614-TP-UNC  
for Designation as an Eligible )  
Telecommunications Carrier. )

ENTRY ON REHEARING

The Commission finds:

- (1) Pursuant to its May 21, 2009, Supplemental Finding and Order and July 8, 2009, Entry on Rehearing, the Commission granted TracFone Wireless, Inc. dba SafeLink Wireless (TracFone or company) a conditional designation as an eligible telecommunications carrier (ETC) for the limited purpose of provisioning federal Lifeline service for an interim one-year period of time. The Commission indicated that at the conclusion of the interim period, it will review the company's operations for compliance with the Federal Communications Commission's (FCC) ETC requirements, including those set forth in CC Docket 96-45, *In the Matter of the Federal-State Board on Universal Service*, and the requirements delineated in the Commission's Orders pertaining to TracFone's request for ETC designation (Supplemental Finding and Order at 9). The Commission clarified that:

[I]t is not our intent that TracFone's operations and service to customers would automatically cease at the end of the one-year time frame. Rather, we intend that the company will continue to provide its Lifeline service without interruption, subject to verification of compliance, until the Commission orders otherwise. To this end, the company should work with the Commission staff to verify its compliance with the FCC's ETC requirements and the Commission's Order of May 21, 2009.

(Entry on Rehearing at 4).

- (2) Pursuant to its Entry of May 13, 2010, the Commission stated that, based on the limited volume of information provided to date, the Commission determines that it is not yet able to draw any reliable

conclusions regarding the TracFone's certification and verification processes based on the information filed pursuant to the company's Compliance Plan. The Commission noted that, while the Commission continues to review TracFone's performance, the company must continue to submit the requisite quarterly report data until ordered otherwise.

TracFone was also directed to continue to provide the Commission staff with all data presented to the FCC for the purpose of recertifying or verifying subscriber Lifeline eligibility.

Finally, TracFone was directed to provide all records and documents requested by the Commission staff for the purpose of monitoring the company's provision of Lifeline service and compliance with the terms and conditions of the Commission's Orders regarding TracFone's ETC designation.

- (3) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing an application within 30 days after the entry of an order upon the journal of the Commission.
- (4) On June 14, 2010, the office of the Ohio Consumers' Counsel (OCC) filed an application for rehearing of the Commission's Entry of May 13, 2010. OCC objects to the Commission continuing TracFone's ETC status without setting a procedural schedule or other process for the review of that status. Specifically, OCC submits that the Commission's Entry of May 13, 2010, was unjust, unreasonable and unlawful for allowing TracFone's conditional ETC designation to continue absent a proper record pursuant to Section 4903.09, Revised Code, and for failing to establish a procedural schedule, including discovery and a hearing, and a deadline for a final decision (Application for Rehearing at 2; Memorandum in Support at 10, 11).

In support of its application for rehearing, OCC submits that, even after a year of experience, there are still real questions about whether TracFone's Lifeline service is consistent with the public interest, convenience and necessity (*Id.* at 2). Specifically, OCC submits that TracFone's claimed assistance to low-income customers may be inadequate, and possibly even harmful, given the limitations on the minutes offered by TracFone's Lifeline service and the prices paid by some customers for additional

minutes (*Id.* at 11). OCC advocates that the Commission's investigation should include the holding of public hearings that are broader in scope beyond an analysis of TracFone's certification and verification processes (*Id.* at 2).

Relying upon TracFone's quarterly report data provided to the Commission staff, OCC posits that, based on the number of TracFone customers that utilize their 68 minutes of included service by the middle of the month, TracFone's Lifeline service is not comparable to the flat-rate local service available from incumbent local exchange companies (ILECs) in the state of Ohio (*Id.* at 7). In comparison to TracFone's offering of 68 "free" minutes, OCC points out that in Case No. 10-429-TP-UNC, *In the Matter of Virgin Mobile USA, L.P. for Limited Designation as a Nonrural Eligible Telecommunications Carrier*, Virgin Mobile proposes to offer 200 "free minutes" and the opportunity to purchase additional minutes at \$.10 per minute (*Id.* at 8).

As further support for its position, OCC highlights the number of TracFone Lifeline customers that purchase additional minutes of service within a benefit month (*Id.* at 7). OCC submits that, for these TracFone customers, TracFone's Lifeline offering has "limited utility" (*Id.*). OCC also questions the value of TracFone's Lifeline service from the perspective of those consumers who pay into the Universal Service Fund for the purpose of funding TracFone's Lifeline service. Specifically, OCC notes that in February 2010, TracFone received \$2.431 million in federal support in Ohio (*Id.* at 7).

- (5) On June 15, 2010, The Edgemont Neighborhood Coalition and The Appalachian Peace & Justice Network (collectively, Edgemont) filed an application for rehearing.<sup>1</sup> Edgemont submits that the Commission's Entry of May 13, 2010, was unjust and unreasonable because it failed to establish a procedural schedule for the review of TracFone's interim designation as an ETC, including the setting of a hearing (Application for Rehearing at 1).
- (6) On June 25, 2010, TracFone filed its memorandum contra the applications for rehearing filed by OCC and Edgemont. TracFone submits that the issues raised have already been addressed by the Commission in its Entry on Rehearing of July 8, 2009, and its Entry of May 13, 2010, and that there are no issues raised that justify the

---

<sup>1</sup> A copy of the application for rehearing was previously faxed to the Commission on June 14, 2010.

granting of rehearing (Memorandum Contra at 1-4, 7). In particular, TracFone notes that the Commission designated the company as an ETC on an interim basis after reviewing its petition for ETC designation and its responses to three sets of data requests. TracFone points out that, while the Commission noted in its Supplemental Finding and Order of May 21, 2009, that OCC had advocated for the Commission consider conducting a hearing regarding TracFone's application, the Commission failed to establish a public hearing requirement in either its Supplemental Finding and Order of May 21, 2009, or its Entry on Rehearing of July 8, 2009, (*Id.* at 4-6).

Regarding OCC's argument that the Commission erred by failing to establish a specific deadline for making a determination as to whether TracFone's interim ETC designation may be extended, TracFone responds that there is no requirement that the Commission establish a deadline for making a determination on whether the interim ETC designation should be extended (*Id.* at 6). In particular, TracFone asserts that there has been no demonstration that the Commission will not diligently pursue its review of TracFone's interim designation. Rather, TracFone opines that the Commission's actions evidence its intent to review TracFone's interim designation consistent with the procedural guidelines established in the Commission's prior orders (*Id.* at 7).

With respect to the issue of the adequacy of the 68 "free minutes," TracFone states that the Commission, in its Supplemental Finding and Order, expressed no concerns about the adequacy of the number of airtime minutes being provided to TracFone's Lifeline customers. Therefore, TracFone concludes that there is no basis for the Commission to now hold a public hearing to re-examine whether 68 minutes is adequate (*Id.* at 8). Further, TracFone contends that the quarterly report data provided to the Commission staff actually supports the adequacy of the airtime minutes provided to Ohio Lifeline subscribers (*Id.* at 8). Additionally, TracFone avers that, based on Universal Service Administrative Company data, TracFone is serving more Lifeline subscribers than any other ETC in Ohio (*Id.* at 9). TracFone notes that this would not be the case if Lifeline subscribers found the company's Lifeline service to be inadequate (*Id.* at 9).

- (7) In regard to the Edgemont application for rehearing, the Commission finds that the application for rehearing is not timely filed and, therefore, should be denied. Specifically, the

Commission notes that, although the application for rehearing was faxed to the Commission's Docketing Division on June 14, 2010, it was not formally filed until June 15, 2010. While Rule 4901-1-02, Ohio Administrative Code (O.A.C.), provides for the faxing of certain documents with the Commission, Rules 4901-1-02(B)(1)(b), O.A.C., and 4901-1-35(E), O.A.C., preclude the filing of an application for rehearing via facsimile. The actual filing date of the application for rehearing occurred on June 15, 2010, 31 days after the order was journalized by the secretary of the commission. As a result, the application is untimely, pursuant to Rule 4901-1-35(C), O.A.C., and is denied by law.

- (8) In regard to OCC's application for rehearing, the Commission grants the application for rehearing. We believe that sufficient reasons have been set forth by OCC to warrant further consideration of the matters specified in the application for rehearing.

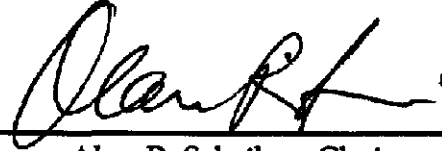
It is, therefore,

ORDERED, That, Edgemont's application for rehearing is denied in accordance with Finding (7). It is, further,

ORDERED, That OCC's application for rehearing is granted in accordance with Finding (8). It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser



Cheryl L. Roberto

JSA/dah

Entered in the Journal

~~JUL 14 2010~~



Renee J. Jenkins

Secretary