

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

---

In the Matter of )

Application of TracFone Wireless, Inc. for )  
Designation as an Eligible Telecommunications )  
Carrier in the State of Kansas for the Limited )  
Purpose of Offering Lifeline Service to Qualified )  
Households )

---

Docket No. 17-TFWZ-237-ETC

**APPLICATION OF TRACFONE WIRELESS, INC. TO EXPAND DESIGNATION  
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER TO RECEIVE  
KANSAS UNIVERSAL SERVICE FUND SUPPORT FOR LIFELINE SERVICE**

Susan B. Cunningham (KS #14083)  
DENTONS US LLP  
7028 SW 69<sup>th</sup> Street  
Auburn, KS 66402  
Direct: (816) 460-2441  
Facsimile: (816) 531-7545  
Cell: (785) 817-1864  
susan.cunningham@dentons.com

Mitchell F. Brecher  
Debra McGuire Mercer  
GREENBERG TRAURIG, LLP  
2101 L Street, NW  
Suite 1000  
Washington, D.C. 20037  
Telephone: (202) 331-3100  
Facsimile: (202) 331-3101  
brecher@gtlaw.com  
mercercdm@gtlaw.com

*Counsel for TracFone Wireless, Inc.*

December 5, 2016

## **TABLE OF CONTENTS**

I.	Background. ....	2
II.	TracFone Is Eligible to Receive Kansas USF Support Because Kansas Law Governing Eligibility to Receive Kansas USF Support Is Inconsistent with and Preempted by FCC Universal Service Requirements that Allow Resellers to Receive USF Support. ....	6
III.	The Commission’s Grant of this Application Will Serve the Public Interest by Allowing TracFone to Provide Kansas Low-Income Households with an Enhanced Lifeline Offering and Increasing Competition in the Market for Wireless Lifeline Service. ....	12
	CONCLUSION.....	16

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

---

In the Matter of )

Application of TracFone Wireless, Inc. for )  
Designation as an Eligible Telecommunications )  
Carrier in the State of Kansas for the Limited )  
Purpose of Offering Lifeline Service to Qualified )  
Households )

---

Docket No. \_\_\_\_\_

**APPLICATION OF TRACFONE WIRELESS, INC. TO EXPAND DESIGNATION  
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER TO RECEIVE  
KANSAS UNIVERSAL SERVICE FUND SUPPORT FOR LIFELINE SERVICE**

COMES NOW TracFone Wireless, Inc. ("TracFone"), by its undersigned counsel, and hereby submits this Application to Expand Designation as an Eligible Telecommunications Carrier ("ETC") to include authorization to receive Kansas Universal Service Fund ("USF") support for Lifeline service within the State of Kansas. TracFone's request for approval to receive Kansas USF support, like its initial request for ETC designation to receive federal USF support, solely relates to TracFone's provision of Lifeline service to Lifeline-eligible Kansas households. However, as explained in this Application, TracFone will enhance its current Lifeline service offering to provide additional airtime minutes to qualifying Kansas households based upon its receipt of Kansas USF support. As demonstrated herein, federal law requires that the Commission approve TracFone to receive Kansas USF support for Lifeline service. TracFone respectfully requests that the State Corporation Commission of the State of Kansas ("Commission") grant this Application and that it do so expeditiously so that TracFone may provide an enhanced Lifeline service to low-income households throughout its service area at the earliest practicable time.

## **I. Background.**

1. TracFone is incorporated under the laws of the State of Delaware and is headquartered at Miami, Florida. Its corporate offices are located at 9700 N.W. 112th Avenue, Miami, Florida, 33178. TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States, including the State of Kansas. TracFone is currently the nation's leading provider of prepaid wireless telecommunications services, and the fifth largest wireless carrier overall, with more than 25 million subscribers nationwide. TracFone provides service consisting of services obtained from numerous licensed operators of wireless networks. TracFone has provided CMRS service throughout the State of Kansas continuously for more than fifteen years. In Kansas, TracFone obtains service from the following underlying carriers: AT&T Wireless, T-Mobile, and Verizon Wireless. TracFone's arrangements with those providers enable it to offer services wherever any of those providers offer service in the State of Kansas.

2. On December 14, 2010, the Commission issued an order designating TracFone as an ETC in certain defined areas served by AT&T Mobility and T-Mobile ("December 2010 ETC Order"). In the December 2010 ETC Order, the Commission, citing 47 U.S.C. § 214(e)(5), designated TracFone as an ETC in those exchanges of non-rural incumbent local exchange carriers ("ILECs") that TracFone could serve in their entirety and in the study areas of rural LECs that TracFone could serve in their entirety.<sup>1</sup>

---

<sup>1</sup> In the Matter of the Application of TracFone Wireless Inc. for Designation as an Eligible Telecommunications Carrier in the State of Kansas for the Limited Purpose of Offering Lifeline Services to Qualified Households, Order Granting in Part and Denying in Part Amended Application of TracFone for Designation as ETC for the Limited Purpose of Offering Lifeline Services to Qualified Households, Docket No. 09-TFWZ-945-ETC, December 14, 2010. The Commission designated TracFone as an ETC in the following rural LEC study areas: Columbus Telephone Company, Inc., Council Grove Telephone Company, Elkhart Telephone Co. Inc., LaHarpe Telephone Company, Inc., MoKan Dial, Inc., Moundridge Telephone Co. Inc., Peoples



3. Commission Staff subsequently reminded TracFone that ETCs are required to permit Lifeline customers to choose a calling plan and to apply the Lifeline discount to the plan selected by the customer (“Lifeline Calling Plan Rule”).<sup>2</sup> While TracFone believed that its Lifeline offering, which includes three different calling plans, complied with the Commission’s Lifeline Calling Plan Rule, it filed a Waiver Request on January 6, 2011 in the event that the Commission disagreed with TracFone’s position. The Commission approved TracFone’s Waiver Request conditioned on TracFone submitting quarterly reports of any TracFone customers’ complaints of their inability to subscribe to one of TracFone’s non-Lifeline calling plans in Kansas.<sup>3</sup>

4. Since the time when the Commission designated TracFone as an ETC in the December 2010 Order, TracFone has filed applications requesting to expand its designation as an ETC to include additional service areas. On January 2, 2013, the Commission issued an order designating TracFone as an ETC in additional exchanges of non-rural ILECs that TracFone could serve in their entirety and in one study area of a rural LEC that TracFone could serve in its

---

Telecommunications, LLC, Wamego Telecommunications Company, Inc., Wheat State Telephone, Inc. and Zenda Telephone Company, Inc. The Commission also designated TracFone as an ETC in certain AT&T non-rural exchanges that TracFone can serve in their entirety. Those exchanges are identified in the Staff Memorandum, Attachment B filed in Docket No. 09-TFWZ-945-ETC on September 10, 2010.

<sup>2</sup> See In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers, Docket No. 06-GIMT-446-GIT, *Order Addressing Petitions for Reconsideration* (2006), at ¶ 47 (“The Commission believes it is in the public interest to ensure that Lifeline customers are not limited to one plan. The Commission notes that other carriers participating in this docket do provide a choice of plans to Lifeline customers.”)

<sup>3</sup> TracFone commenced offering Lifeline service in Kansas in January 2013, and filed its first quarterly report with the Commission, covering the period of January 1 through March 31, 2013, on June 7, 2013.

entirety.<sup>4</sup> On April 10, 2014, the Commission issued an order designating TracFone as an ETC in additional rural and non-rural LEC exchanges.<sup>5</sup> On May 14, 2015, the Commission issued an order designating TracFone as an ETC in additional rural LEC exchanges.<sup>6</sup>

5. In the Commission's orders designating TracFone as an ETC and subsequently expanding that designation to include additional service areas, TracFone's designation was limited to receiving Lifeline support from the federal USF. As noted in each of the Commission's orders, TracFone met all of the requirements to receive federal Lifeline support for its Kansas customers. One of those requirements is set forth in Section 214 of the Communications Act of 1934, as amended (47 U.S.C. § 214(e)(1)). Section 214(e)(1)(A) of the Communications Act requires a carrier designated as an ETC to offer the services that are supported by federal universal service support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier's services.

---

<sup>4</sup> In the Matter of the Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Kansas for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order Granting Application to Expand Designation as an Eligible Telecommunications Carrier, Docket No. 13-TFWZ-207-ETC, January 2, 2013. The Commission designated TracFone as an ETC in H&B Communications Inc.'s study area (a rural LEC) and in the non-rural AT&T exchanges listed in Staff Exhibit A to Staff Report and Recommendation, filed in Docket No. 12-TFWZ-207-ETC on December 5, 2012.

<sup>5</sup> In the Matter of the Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Kansas for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order Granting Application to Expand Designation as an Eligible Telecommunications Carrier, Docket No. 14-TFWZ-325-ETC, April 10, 2014. The Commission designated TracFone as an ETC in the exchanges listed in Staff Exhibit 1 to Staff's Memorandum, filed in Docket No. 14-TFWZ-325-ETC on April 3, 2014.

<sup>6</sup> In the Matter of the Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Kansas for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order Granting Expansion of Lifeline-Only ETC Designation, Docket No. 15-TFWZ-312-ETC, May 14, 2015. The Commission designated TracFone as an ETC in the rural LEC exchanges listed in Exhibit 1 to TracFone's Application, filed in Docket No. 15-TFWZ-312-ETC on January 21, 2015.



6. In its applications filed with the Commission, TracFone acknowledged that Section 214(e)(1)(A) of the Communications Act states that ETCs shall offer services, at least in part, over their own facilities and that Section 54.201(i) of the FCC's Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC "a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services."<sup>7</sup> However, TracFone advised the Commission that on June 8, 2004, it had filed with the Federal Communications Commission ("FCC") a petition requesting that the FCC exercise its forbearance authority under Section 10 of the Communications Act (47 U.S.C. § 160) with respect to the facilities-based service requirement. The FCC granted the petition for forbearance in an Order dated September 8, 2005.<sup>8</sup>

7. The Commission referenced the TracFone Forbearance Order when it granted TracFone's initial application for designation as an ETC, as well as when it granted subsequent applications to expand the ETC designation to include additional service areas.<sup>9</sup> The Commission also looked to the Commission Staff's Report and Recommendation ("Staff Report") regarding TracFone's applications. The Staff Report on TracFone's initial ETC application referred to the TracFone Forbearance Order and cited to 47 U.S.C. § 160(e), which provides: "[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under

---

<sup>7</sup> See, e.g., Application of TracFone Wireless, Inc. to Expand Designation as an Eligible Telecommunications Carrier, filed in Docket No. 15-TFWZ-312-ETC on January 21, 2015.

<sup>8</sup> Federal-State Joint Board on Universal Service: 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 Dkt. No. 96-45, Order, 20 FCC Red 15095 (2005) ("TracFone Forbearance Order").

<sup>9</sup> See, e.g., December 2010 ETC Order, at 3.

subsection (a) of this section.” The Staff Report concluded: “[t]herefore, since the FCC has granted such forbearance request, this Commission may not continue to enforce the requirement for TracFone to provide universal service through its own facilities.”<sup>10</sup> As mandated by 47 U.S.C. § 160(e), the Commission did not require TracFone to meet the “own facilities” requirements in Section 214(e)(1)(A) nor did it apply the prohibition on a state commission designating a reseller as an ETC in FCC rule 54.201(i).

8. By this Application, TracFone requests the Commission to expand its ETC designation so that it may receive Kansas USF support. TracFone will use the Kansas USF support to enhance its Lifeline service plan offered to qualifying Kansas households by providing additional airtime minutes. As described below, Kansas law governing disbursements from the Kansas USF, like Section 214(e)(1)(A) of the Communications Act governing disbursements from the federal USF, facially requires ETCs to provide Lifeline service by using at least some of its own facilities. However, a facilities-based requirement for receiving state USF support is inconsistent with the FCC’s requirements, and therefore may not be enforced pursuant to Section 254(f) of the Communications Act (47 U.S.C. § 254(f)).

**II. TracFone Is Eligible to Receive Kansas USF Support Because Kansas Law Governing Eligibility to Receive Kansas USF Support Is Inconsistent with and Preempted by FCC Universal Service Requirements that Allow Resellers to Receive USF Support.**

9. Section 2008(b) of the Kansas Statutes, which establishes the Kansas USF, provides the following: “Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible

---

<sup>10</sup> Staff Report, at 6, filed in Docket No. 09-TFWZ-945-ETC on September 10, 2010. The Staff Reports associated with TracFone’s subsequent applications to expand its designation to include additional service areas include virtually identical language.



both under subsection (e)(1) of section 214 of the federal act and by the commission.” As detailed above, Section 214(e)(1) of the Communications Act includes a facilities-based requirement for designation as an ETC to receive federal USF support. However, in 2005, the FCC exercised its statutory authority under Section 10 of the Communications Act (47 U.S.C. § 160) to forbear from applying or enforcing the facilities-based requirement against TracFone. Over the next several years, the FCC granted eleven petitions filed by wireless resellers seeking forbearance from the facilities-based requirement in Section 214(e)(1)(A) for purposes of providing Lifeline-only service.<sup>11</sup>

10. In 2012, as part of a rulemaking proceeding to reform and modernize the Lifeline program, the FCC decided to “forebear from applying the Act’s facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions ... .”<sup>12</sup> The FCC’s decision was based on its determination that forbearance of the facilities requirement for Lifeline-only ETCs met the statutory requirements for forbearance in 47 U.S.C. § 160. Specifically, the FCC found that: (1) the Section 214(e)(1) facilities requirement is not necessary to ensure that Lifeline-only ETCs have charges and practices that are just and reasonable and not unjustly or unreasonably discriminatory; (2) the facilities requirement is not necessary for the protection of consumers; and (3) forbearance from the facilities requirement will serve the public interest by enhancing

---

<sup>11</sup> See, e.g., Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A) et al., CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009).

<sup>12</sup> See Lifeline and Link Up Reform and Modernization et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶ 368 (2012) (“2012 Lifeline Reform Order”). The FCC’s “blanket” forbearance was subject to the following conditions: (1) providing Lifeline subscribers with 911 and E911 access regardless of activation status or availability of minutes; (2) providing Lifeline subscribers with E911-complaint handsets; and (3) obtaining approval of a compliance plan from the FCC’s Wireline Competition Bureau. See id. ¶¶ 368-81.

competition among Lifeline service providers.<sup>13</sup> Thus, the facilities requirement is no longer applicable to Lifeline-only ETCs so long as they meet conditions regarding 911 service and receive approval of a compliance plan. TracFone has already obtained forbearance from the facilities-based requirement in the TracFone Forbearance Order and had its compliance plan approved, so it is not required to seek further approval of a compliance plan.

11. The FCC's exercise of its statutory forbearance authority is applicable to and binding on state commissions. Section 10(e) of the Communications Act (47 U.S.C. § 160(e)) provides: "[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section." Section 10(e) requires all State commissions, including the Commission, to act in accordance with the TracFone Forbearance Order and the FCC's blanket forbearance rules adopted in the 2012 Lifeline Reform Order, and therefore, the Commission may not apply any facilities-based requirements to TracFone, or any other reseller, that seeks to be designated as an ETC (provided that such resellers comply with the FCC-established conditions of forbearance). Indeed, the Commission referenced and acted in accordance with the TracFone Forbearance Order when it considered TracFone's application to be designated as an ETC for purposes of receiving federal USF support, and it referenced and acted in accordance with the FCC's blanket forbearance adopted in the 2012 Lifeline Reform Order when it designated other wireless carriers as ETCs for purposes of receiving federal USF support.<sup>14</sup>

---

<sup>13</sup> See *id.* The FCC made those same findings with respect to TracFone in the TracFone Forbearance Order.

<sup>14</sup> See, e.g., *In the Matter of the Application of i-wireless, LLC for Designation as an Eligible Telecommunications, Order Granting Eligible Telecommunications Carrier Status*, Docket No. 12-IWRZ-848-ETC, September 6, 2012, incorporating Report and Recommendation, Utilities Division, at 9-10, filed August 23, 2012.



12. The FCC's decision to forbear from enforcing Section 214(e)(1)(A)'s facilities requirement against telecommunications resellers is equally applicable to resellers seeking to receive disbursements from a state USF. Section 254(f) of the Communications Act (47 U.S.C. § 254(f)) authorizes states to establish programs that preserve and advance universal service. Many states, including Kansas, have established state Lifeline programs that supplement the federal Lifeline benefits so that their qualifying low-income households may receive additional Lifeline benefits. However, a state's authority to establish a universal service program is not unlimited. Section 254(f) provides: "A state may adopt regulations **not inconsistent** with the [Federal Communications] Commission's rules to preserve and advance universal service." (emphasis added) A state requirement that an ETC must be facilities-based to receive state USF support for Lifeline is wholly inconsistent with the FCC's rule that those resellers who meet the federal forbearance conditions are eligible to receive federal USF support. As stated by the Commission, "[i]n Section 254(f), Congress expressed a clear intent to preempt state laws."<sup>15</sup> The Commission may not enforce a statute that is preempted by the Communications Act.<sup>16</sup> As such, the Commission may not require TracFone, nor any other ETC, to be facilities-based as a condition for receiving state USF support.

13. The Commission is aware of the FCC's blanket forbearance of the facilities requirement, but has nevertheless determined that the FCC's forbearance only applies to federally-supported universal service, not to state-supported universal service. In a Commission

---

<sup>15</sup> In the Matter of a General Investigation into the Kansas Universal Service Fund pursuant to K.S.A. 2010 Supp. 66-2008(c), Order, Docket No. 12-GIMT-170-GIT, May 29, 2013, at 8; see also Order Denying Petition for Reconsideration of the Commission's May 29, 2013 Order, July 11, 2013, at 4-5 ("in Section 254(f), the FCC explicitly preempted states' authority to adopt regulations inconsistent with the FCC's rules to preserve and advance universal service ...").

<sup>16</sup> See Kansas Stat. § 66-2015 ("The commission shall not enforce any provision of this act nor any order entered by authority of this act which is specifically preempted by the federal act.").



order addressing an application filed by Telrite Corporation to be designated as an ETC for purposes of receiving federal and Kansas USF support, the Commission stated: “Applicants who have received forbearance from the ‘own facilities’ requirement for FUSF Lifeline purposes by filing a Compliance Plan with the FCC will not be eligible to receive KUSF Lifeline funds unless they meet the ‘own-facilities’ requirement in Kansas.”<sup>17</sup> The Commission failed to consider the statutory directive in Section 254(f) that a state’s universal service program may not be inconsistent with FCC rules. TracFone requests that the Commission, as required by Section 254(f) of the Communications Act, approve TracFone’s application to receive state USF support as a reseller.

14. The FCC’s decisions to forbear from Section 214(e)(1)(A)’s facilities requirement were issued in the context of carriers’ requests to receive federal USF. However, under FCC precedent, a state may not impose any universal service requirements that are inconsistent with the FCC’s requirements, even if the state’s requirements are solely applicable to the state’s universal service program. In the Open Internet Order,<sup>18</sup> the FCC classified broadband internet access service as an interstate telecommunications service. Pursuant to Section 254(d) of the Communications Act (47 U.S.C. § 254(d)), providers of interstate telecommunications services (which the FCC found to include broadband Internet access service providers) are required contribute to the federal USF. Although Section 254(d) would have required broadband internet access service providers to contribute to the federal USF, the FCC decided to forbear from

---

<sup>17</sup> In the Matter of the Application of Telrite d/b/a Life Wireless for Designation as an Eligible Telecommunications Carrier on a Wireless Basis (Low-Income Only), Order Granting Application for Eligible Telecommunications Carrier Status in Kansas for Purposes of Receiving Federal Lifeline Support and Denying Application for Kansas Lifeline Service Program Support, Docket No. 13-RITC-181-ETC, March 13, 2013, at 4.

<sup>18</sup> Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015), *aff’d sub nom*, United States Telecom Ass’n v. F.C.C., 825 F.3d 674 (D.C. Cir. 2016) (“Open Internet Order”).

enforcing that requirement against broadband internet access service providers on an interim basis.<sup>19</sup> The FCC further held that during that interim forbearance period states may not require broadband internet access service providers to contribute to state USFs. The FCC, relying on Section 254(f) of the Communications Act, explained:

Because our action today precludes for the time being federal universal service contribution assessments on broadband Internet access services that are not currently assessed, we conclude that any state requirements to contribute to state universal service support mechanisms that might be imposed on such broadband Internet access services would be inconsistent with federal policy and therefore preempted by section 254(f) – at least until such time that the [Federal Communications] Commission rules on whether to require federal universal service contributions by provision of broadband Internet access service.<sup>20</sup>

15. Notably, even though the forbearance in the Open Internet Order was only interim, the FCC unequivocally stated that its interim forbearance related to contributions to the federal USF was fully applicable to contributions to state USFs. Unlike the forbearance decision in the Open Internet Order, the FCC's TracFone Forbearance Order and the blanket forbearance adopted in the 2012 Lifeline Reform Order are permanent forbearance decisions based on a detailed and thorough application of the statutory forbearance standards in Section 10 of the Communications Act (47 U.S.C. § 160). As such, there can be no doubt that any state requirement that ETCs must have their own facilities in order to receive distributions from a state USF is inconsistent with the federal requirement that resellers are eligible to receive distributions from the federal USF. Section 2008(b) of the Kansas Statutes, by limiting disbursements from the Kansas USF to facilities-based ETCs, is inconsistent with the FCC's universal service requirements, and is therefore preempted by Section 254(f). As mandated by Section 66-2015 of

---

<sup>19</sup> As explained in the Open Internet Order, the Commission had delegated to the Federal-State Joint Board on Universal Service the responsibility to make a recommendation as to how contributions to the USF should be assessed and determined. See id. ¶¶ 489 n. 1471.

<sup>20</sup> Id. ¶ 492 n.1477.



the Kansas Statutes, the Commission may not enforce a state statute that is preempted by the Communications Act. For the foregoing reasons, the Commission should grant this Application and authorize TracFone to receive Kansas USF support.

**III. The Commission's Grant of this Application Will Serve the Public Interest by Allowing TracFone to Provide Kansas Low-Income Households with an Enhanced Lifeline Offering and Increasing Competition in the Market for Wireless Lifeline Service.**

16. The Kanas Lifeline Service Program provides qualifying low-income households with an additional \$7.77 discount beyond the \$9.25 discount provided under the federal Lifeline program. Although the Commission has not adopted a minimum number of minutes that must be provided to a consumer to receive Kansas USF support for Lifeline, the Commission "does require that the entirety of the KLSP discount be passed along to the end user customer ...".<sup>21</sup> Currently, there are only two wireless ETCs that are eligible to receive Kansas USF support. Both of those providers, TAG Mobile, LLC and YourTel America, Inc., provide 500 minutes per month to their Kansas Lifeline customers.<sup>22</sup>

17. TracFone, as a recipient of Kansas USF support, would offer its current Kansas Lifeline customers (*i.e.*, Lifeline customers who became customers on or before December 1, 2016) the option of choosing between the following two plans: (1) 1,100 airtime minutes and unlimited text messaging each month using their existing handset or (2) 950 airtime minutes, unlimited text messaging and 500 MB of broadband data (Internet access) each month using a

---

<sup>21</sup> See Report and Recommendation, Utilities Division, at 6, filed in In the Matter of a General Investigation to Address Issues Concerning the Kansas Lifeline Service Program, Docket No. 16-GIMT-575-GIT, June 29, 2016 (citing Docket No. 12-TAGC-843-ETC, November 15, 2012 Order; Docket No. 12-TPCT-768-ETC, August 8, 2012 Order; and Docket No. 10-GIMT-658-GIT, August 17, 2011 Order).

<sup>22</sup> Id. at 7.



smartphone provided by the customer.<sup>23</sup> Current Lifeline customers who choose to upgrade from a voice-only plan to a bundled broadband data and voice plan will need to use their own smartphone and will receive an additional 500 MB of data, for a total of 1 GB of data, for the first three months for which they are Lifeline bundled data and voice customers. Those Lifeline customers will then receive 500 MB of data starting with the fourth month of service.

18. New Kansas Lifeline customers (i.e., Lifeline customers who become customers on or after December 2, 2016) will receive 950 airtime minutes, unlimited text messaging and 500 MB data. New customers will have the option of receiving a free Android smartphone from TracFone or using their own smartphone. Those new Lifeline customers who choose to use their own smartphone, like TracFone's current voice-only Lifeline customers who upgrade to a bundled plan with their own smartphone, will receive an additional 500 MB of broadband data, for a total of 1 GB of data, for the first three months for which they are TracFone Lifeline customers. Commencing with the fourth month of service, new Lifeline customers who bring their own smartphone will receive 500 MB of data. All customers, whether they are current voice-only customers or bundled data and voice customers, would receive 600 more minutes of wireless calling than would be available under the plans supported solely by the federal USF without Kansas USF support.

---

<sup>23</sup> TracFone understands that the Kansas USF may only be used to support voice telecommunications service. The 500 MB of broadband data provided to TracFone's Lifeline customers will be supported solely by the federal USF in accordance with recently-promulgated FCC requirements. The additional \$7.77 from the Kansas fund will support the additional voice minutes provided to Kansas consumers above the quantity of minutes supported by the federal fund.

19. As required by the FCC's recent Lifeline Modernization Order,<sup>24</sup> effective December 2, 2016, mobile voice providers must offer at least 500 voice minutes per month to qualify for federal Lifeline support.<sup>25</sup> TracFone's voice-only offering (which will be available only to current Lifeline customers) will provide an additional 600 minutes for Kansas Lifeline subscribers, above the 500 minutes required by the FCC, to justify its receipt of Kansas USF support. TracFone's voice-only Lifeline service offering commencing December 2, 2016, like its current Lifeline service offering, will include unlimited texting, voicemail, caller ID, national long distance calling without toll charges, and no charges for roaming.

20. TracFone's bundled data and voice Lifeline offering (which will be available to (1) current voice-only Lifeline customers who upgrade to the bundled offering and bring their own smartphones and (2) new customers who will be provided with free smartphones which are Wi-Fi-capable and capable of being used as Wi-Fi hotspots or who choose to bring their own smartphones) will provide Kansas Lifeline subscribers with an additional 600 minutes above the voice minutes that TracFone provides with its bundled data and voice service in other states with only federal support in order to ensure that Kansas Lifeline customers receive the full benefit of the additional support from the Kansas USF.<sup>26</sup> TracFone's standard bundled data and voice

---

<sup>24</sup> See In the Matter of Lifeline and Linkup Reform and Modernization et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) ("Lifeline Modernization Order").

<sup>25</sup> See id. ¶ 64; 47 C.F.R. § 54.408(b)(3). The minimum monthly minutes increases to 750 minutes on December 1, 2017 and to 1,000 minutes on December 1, 2018. See id. As the FCC's monthly minimum standards increase over time, TracFone plans to continue providing qualifying Kansas Lifeline subscribers with an additional 500 airtime minutes above the minimum number of airtime minutes.

<sup>26</sup> The minimum monthly service standard for mobile broadband Lifeline service increases to 1 GB on December 1, 2017, to 2 GB on December 1, 2018, and to an amount to be calculated in accordance with the FCC's rules on and after December 1, 2019. See 47 C.F.R. § 54.408(b). As the FCC's monthly minimum service standard increases over time, TracFone plans to continue providing qualifying Kansas Lifeline subscribers who receive the bundled data and voice service

Lifeline service includes 350 voice minutes and 500 MB of data each month in all states where TracFone does not receive state USF support. The voice portion of TracFone's bundled data and voice Lifeline service offering commencing December 2, 2016, will include unlimited texting, voicemail, caller ID, national long distance calling without toll charges, and no charges for roaming.

21. Expansion of TracFone's designation as an ETC so that it may receive Kansas USF support will provide a valuable alternative to the existing telecommunications services available in Kansas. Specifically, TracFone's receipt of Kansas USF support will benefit consumers by increasing the number of wireless Lifeline providers able to use that additional USF support to offer enhanced Lifeline service. As mentioned above, the Commission has only approved two wireless ETCs to receive disbursements from the Kansas USF. Kansas Lifeline households overwhelmingly choose wireless Lifeline service over wireline service. In August 2016, 30 percent of all ETCs receiving federal USF support in Kansas were wireless carriers, but those carriers received over 90 percent of the federal USF support distributed that month.<sup>27</sup> There are fifteen wireless ETCs that received federal USF support in Kansas in August 2016, but the Commission has approved only two of those ETCs to receive Kansas USF support. Low-income Kansas residents would benefit from increased competition within the Lifeline market if the Commission authorized TracFone to receive Kansas USF so that TracFone could offer an enhanced Lifeline service plan which would provide 1,100 wireless minutes of airtime per month to qualifying households.

---

with an additional 600 airtime minutes above the number of airtime minutes that TracFone provides to Lifeline customers in states where TracFone does not receive additional state USF support.

<sup>27</sup> See LI03 Eligible Telecommunications Carriers - 3Q2016.xlsx and LI04 Quarterly Low Income Disbursement Amounts by Company - 3Q2016.xlsx, available at <http://www.usac.org/about/tools/fcc/filings/2017/q1.aspx>.



## CONCLUSION

Based on the foregoing, TracFone has demonstrated that all applicable requirements for eligibility to receive Kansas USF support have been met. Accordingly, TracFone requests that the Kansas Corporation Commission promptly grant its Application to expand its designation as an ETC to include approval to seek Kansas USF support for Lifeline service.

Respectfully submitted,



Susan B. Cunningham (KS #14083)  
DENTONS US LLP  
7028 SW 69<sup>th</sup> Street  
Auburn, KS 66402  
Direct: (816) 460-2441  
Facsimile: (816) 531-7545  
Cell: (785) 817-1864  
susan.cunningham@dentons.com

Mitchell F. Brecher  
Debra McGuire Mercer

GREENBERG TRAURIG, LLP  
2101 L Street, NW  
Suite 1000  
Washington, D.C. 20037  
Telephone: (202) 331-3100  
Facsimile: (202) 331-3101  
brecherrn@gtlaw.com  
mercdrn@gtlaw.com

*Counsel for TracFone Wireless, Inc.*


December 5, 2016

**VERIFICATION**

K.S.A. 53-601

STATE OF KANSAS            )  
                                      )  
COUNTY OF SHAWNEE    )       ss:

I, Susan B. Cunningham, verify under penalty of perjury that I have caused the foregoing Application of TracFone Wireless, Inc. to Expand Designation as an Eligible Telecommunications Carrier to Receive Kansas Universal Service Fund Support for Lifeline Service to be prepared on behalf of TracFone Wireless, Inc., and that the contents thereof are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Susan B. Cunningham

December 5, 2016