

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

TRACFONE WIRELESS, INC.	)	
Annual Verification of SafeLink Wireless	)	D.T.C. 09-9
Lifeline Subscribers	)	
	)	

**MOTION FOR PROTECTIVE ORDER**

TracFone Wireless, Inc. ("TracFone"), by its counsel, pursuant to Mass. Gen. Laws ch. 25C, § 5, respectfully requests the Department to issue a protective order in the above-captioned matter to protect the confidentiality of certain information. In particular, TracFone seeks a protective order to prevent the public disclosure of confidential, competitively sensitive, and proprietary information provided to the Department in response to the first set of information requests dated February 9, 2010.

**BACKGROUND**

On November 18, 2009, TracFone filed an Annual Audit Report that included the results of its audit of a statistically-valid sample of its SafeLink Wireless® Lifeline subscribers, as well as information regarding the auditing procedures used by TracFone. Simultaneously with that report, TracFone filed a Motion for Protective Order seeking confidential treatment for the documents submitted with the Annual Audit Report. On February 9, 2010, the Hearing Officer issued a Ruling regarding TracFone's motion for protective treatment of documents filed the Annual Audit Report. The February 9, 2010 Ruling denied TracFone's Motion for Protective Order and directed TracFone "to redact all personal identifying information regarding its subscribers from its audit including, but not limited to, name, address, telephone number, date of birth, email address, and social

security number, and submit the redacted version (in electronic format and hard copy) to the Department within seven (7) days of this Ruling.”

On February 18, 2010, TracFone filed a redacted version of documents with the Department and filed an appeal of the Ruling to the extent that it denied confidential treatment for certain documents. TracFone’s appeal, which remains pending, seeks confidential treatment for Attachments 1, 2, 3, 5, and 6 to the Annual Audit Report and withdraws the request for confidential treatment for Attachment 4. In this Motion, TracFone seeks confidential treatment for its responses to Request Numbers D.T.C. 1-8, 1-12, 1-28(C) and (D), 1-30, 1-31, and 1-32 in the Department’s first set of information requests.

### **ARGUMENT**

Massachusetts law allows the Department to “protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter.” Mass. Gen. Laws ch. 25C, § 5. Furthermore, there is a “presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection.” Id. Finally, when there is a need for information to be protected from public disclosure, the “[D]epartment shall protect only so much of the information as is necessary to meet such need.” Id. TracFone’s responses to the Department’s first set of information requests contain confidential information about TracFone’s customers and the procedures TracFone uses to operate its SafeLink Wireless® Lifeline service and ensure compliance with applicable laws. TracFone contends that its responses to certain information requests constitute confidential,

competitively sensitive and proprietary information that should be protected from public disclosure.

Request Number D.T.C. 1-8 states: “How many SafeLink Lifeline customers did TracFone have in Massachusetts as of 12/31/2009? How many SafeLink Lifeline customers does TracFone have in Massachusetts as of the date of the response to this question?” TracFone’s response to D.T.C. 1-8 discloses the number of TracFone’s SafeLink Wireless® Lifeline customers in Massachusetts. Request Number D.T.C. 1-12 states: “Provide an estimate of the total SafeLink Lifeline USAC reimbursements TracFone received for its Massachusetts customers for each month during the calendar year 2009.” TracFone’s response to D.T.C. 1-12 similarly discloses the number of SafeLink Wireless® Lifeline customers in Massachusetts because that number can be calculated from knowing the amount of the Lifeline reimbursements from USAC. The information disclosed in the responses to D.T.C. 1-8 and 1-12, is confidential and not available to the public.

TracFone competes with other ETCs for Lifeline customers, both in Massachusetts and in other states. In addition, current competitors of TracFone may apply for ETC status in Massachusetts. Disclosure of the information in the responses to D.T.C. 1-8 and 1-12 would allow TracFone’s competitors to know the number of Lifeline customers TracFone has in Massachusetts. Thus, TracFone’s competitors would be able to rely on TracFone’s data submitted in this proceeding to determine whether and how they would compete in the market for providing service to Lifeline-eligible customers. There is no public interest benefit to be served by allowing public access to data concerning TracFone’s SafeLink Wireless® customers in Massachusetts.

Request Number D.T.C. 1-28(C) states: “Provide a timeline for terminations as a result of the audit, including the date of each contact or attempted contact, as well as the date that any documents proving ineligibility were received.” Request Number D.T.C. 1-28(D) states: “Explain how TracFone calculates the amount billed to USAC for these terminated customers, as it relates to the events in the timeline requested above in part C of this request. Specify the date that such customers were removed from the customer counts for the purposes of billing USAC.” The responses to D.T.C. 1-28(C) and D.T.C. 1-28(D) disclose TracFone’s internal policies and procedures for complying with its Lifeline verification obligations and for seeking reimbursement from USAC.

Request Numbers D.T.C. 1-30, 1-31, and 1-32, seek information related to Attachment 5 to TracFone’s Annual Audit Report. Attachment 5 is the SafeLink Wireless® Certification Policy and Procedures document prepared by TracFone’s Lifeline Services Department. Request Number D.T.C. 1-30 states: “On page 24 of Attachment 5, TracFone states that ‘TracFone will not bill USAC for customers who reach the two month OTA pending and have no minutes of usage threshold.’ Does this mean that TracFone does not bill USAC for the two months of non-usage prior to termination? Explain.” D.T.C. 1-30 specifically references Attachment 5 and asks TracFone to clarify a statement in Attachment 5. Attachment 5 includes the following notice on each page: **“This policy is the confidential and proprietary product of TracFone Wireless, Inc. Any unauthorized use, reproduction, or transfer of this policy is strictly prohibited.”** This notice reflects TracFone’s intent that the information contained in Attachment 5 remain confidential. Moreover, the content of Attachment 5

demonstrates its confidential and commercially sensitive nature. The stated purpose of the Certification Policy and Procedures document is:

to document the processes that are followed by the Lifeline Services Department to attract and service eligible customers of the Lifeline Low Income program for wireless access, while strictly adhering to government rules and requirements for operating as an Eligible Telecommunications Carrier.

Attachment 5, Section 1 (Purpose). As stated in the Certification Policy and Procedures document:

This document covers the Lifeline Services Department processes involved in supporting the SafeLink Wireless® program, from establishing TracFone's use of the SafeLink Wireless® brand as an Eligible Telecommunications Carrier in approved states, to setting up the program per necessary state requirements, enrolling and activating a new customer and recertifying for annual eligibility.

Attachment 5, Section 2 (Scope). TracFone's response to D.T.C. 1-30 discloses the confidential internal procedures set forth in Attachment 5 and provides further explanation of those procedures that is not available to the public.

Request Number D.T.C. 1-31 states: "Describe how TracFone handles customers who are de-enrolled for non-usage who seek to reactivate their service. Specify how TracFone bills USAC for these customers." TracFone's response to D.T.C. 1-31 similarly discloses TracFone's confidential procedures for compliance with its legal obligations and for seeking reimbursement from USAC. Request Number D.T.C. 1-32 states: "TracFone states on page 5 of Attachment 5 that the process for reimbursement by USAC is described in a separate accounting policy. Provide complete documentation of that policy." TracFone's accounting policy, like its Lifeline certification policy in Attachment 5, is a confidential and proprietary document. The accounting policy is found in a document titled SafeLink Wireless® Accounting Policy & Procedures. This

document includes the following notice on each page: **“This policy is the confidential and proprietary product of TracFone Wireless, Inc. Any unauthorized use, reproduction, or transfer of this policy is strictly prohibited.”** This notice reflects TracFone’s intent that the information contained in the accounting policy remain confidential. The stated purpose of the Accounting Policy & Procedures document is:

to document those steps required to create an invoice and submit proper forms to collect reimbursement for providing service to eligible customers of the SafeLink Wireless® (“SafeLink”) Low Income Lifeline program (“Lifeline”) from the Universal Service Administration Company (“USAC”).

#### Section 1 (Purpose).

The information included the responses to D.T.C. 1-28(C) and (D), 1-30, 1-31, and 1-32 constitute TracFone’s internal policies and procedures for providing Lifeline service, for complying with its Lifeline certification obligations, and for seeking reimbursement from USAC. TracFone developed procedures as to how it will operate its Lifeline service and comply with its legal obligations over several years. Development of these processes and procedures required significant investment by TracFone in resources and systems to implement these procedures and practices. Allowing TracFone’s competitors, including other existing and potential ETC competitors, to have access to the detailed description of how TracFone operates and manages its Lifeline service would unfairly provide those companies with a blueprint of how TracFone operates its Lifeline service and how it complies with its legal obligations. Those competitors would unfairly benefit from research and analysis conducted by TracFone as a Lifeline service provider in over 20 jurisdictions as well as the efforts of TracFone employees developing and implementing detailed operational procedures and policies to ensure a successful Lifeline

service. It would also bestow upon those other providers the benefits of the legal advice provided by TracFone's counsel to its client, TracFone, in violation of the attorney-client privilege which exists regarding communications between TracFone and its counsel.

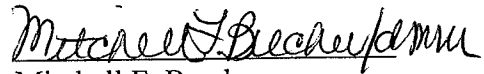
TracFone's responses D.T.C. 1-28(C) and (D), 1-30, 1-31, and 1-32 describe exactly how TracFone conducts its Lifeline services business, including how it seeks reimbursement from USAC and how it handles customers based on the results of the verification audit. Such information is confidential, competitively sensitive, and proprietary. No third parties, especially competitors, have a right to or a need to see such information. Moreover, no customer, or any third party has received the information for which TracFone seeks confidential treatment.

TracFone maintains that there is no need for TracFone's internal documents or customer data to be available to the public, especially to other current and future ETCs who currently compete or will compete with TracFone for Lifeline customers. There is no public interest benefit to be served by allowing public access to TracFone's confidential customer data or internal procedures covering operational, accounting, and compliance issues related to Lifeline service.

## CONCLUSION

Based on the foregoing, TracFone's responses to information requests D.T.C. 1-8, 1-12, 1-28(C) and (D), 1-30, 1-31, and 1-32 are confidential and competitively sensitive information that should be protected from public disclosure.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Mitchell F. Brecher".

Mitchell F. Brecher  
Debra McGuire Mercer  
GREENBERG TRAURIG, LLP  
2101 L Street, NW  
Suite 1000  
Washington, D.C. 20037  
(202) 331-3100

*Counsel for TracFone Wireless, Inc.*

March 3, 2010



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing TracFone Wireless, Inc.'s Motion for Protective Order was served electronically and by overnight delivery to the persons listed below, on this 3<sup>rd</sup> day of March, 2010.

Catrice C. Williams, Department Secretary  
Department of Telecommunications and  
Cable  
Two South Station, 4th Floor  
Boston Ma, 02110  
Tel: 617-305-3580  
Fax: 617-988-8287  
Email: catrice.williams@state.ma.us  
Dtc.efiling@state.ma.us

Alison Lackey, Hearing Officer  
Department of Telecommunications and  
Cable  
Two South Station, 4th Floor  
Boston Ma, 02110  
Tel: 617-305-3580  
Fax: 617-988-8253  
Email: Alison.lackey@state.ma.us

Betsy Whittey, Hearing Officer  
Department of Telecommunications and  
Cable  
Two South Station, 4th Floor  
Boston Ma, 02110  
Tel: 617-305-3580  
Fax: 617-988-8285  
Email: betsy.whittey@state.ma.us

Kajal Chattopadhyay, Acting General  
Counsel  
Department of Telecommunications and  
Cable  
Two South Station, 4th Floor  
Boston Ma, 02110  
Tel: 617-305-3580  
Fax: 617-988-8254  
Email: Kajal.chattopadhyay@state.ma.us

Michael Isenberg, Director, Competition  
Division  
Department of Telecommunications and  
Cable  
Two South Station, 4th Floor  
Boston Ma, 02110  
Tel: 617-305-3580  
Fax: 617-988-8265  
Email: mike.isenberg@state.ma.us

Armine Simonyan, Telecom Analyst  
Department of Telecommunications and  
Cable  
Two South Station, 4th Floor  
Boston Ma, 02110  
Tel: 617-305-3580  
Fax: 617-988-8279  
Email: armine.simonyan@state.ma.us

Michael Mael, Telecom Analyst  
Department of Telecommunications and  
Cable  
Two South Station, 4th Floor  
Boston Ma, 02110  
Tel: 617-305-3580  
Fax: 617-988-8269  
Email: michael.mael@state.ma.us

Charles Harak, Esq.  
7 Winthrop Square, 4th Floor  
Boston, MA 02110-1245  
Tel: (617) 542-8010  
Email: charak@nclc.org

John Breyault  
National Consumers League  
1701 K Street, NW, Suite 1200  
Washington, D.C. 20006  
Tel: (202) 835-3323  
Email: [johnb@nclnet.org](mailto:johnb@nclnet.org)

/s/ Raymond Lee