



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-9

May 16, 2012

TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers

ORDER

I. Introduction

The Department of Telecommunications and Cable (“Department”) determines that the annual Lifeline verification audit, filed on August 31, 2011, by TracFone Wireless, Inc. (“TracFone”) complies with the Department’s existing requirements. However, going forward, the Department directs TracFone to comply with the audit and reporting requirements recently established by the Federal Communications Commission (“FCC”), unless and until the Department orders otherwise. Consistent with the FCC’s directives, TracFone must submit to the Department: (1) the recertification results of TracFone’s annual eligibility audit of 100% of its Lifeline customers and certain ETC-specific certification by January 31 of every year commencing in 2013; and (2) copies of all biennial audits, when implemented, that an independent audit firm conducts on Tracfone’s behalf to assess TracFone’s overall compliance with the FCC’s Lifeline requirements.

II. Background

TracFone, an eligible telecommunications carrier (“ETC”), offers SafeLink Wireless (“SafeLink”) as its Lifeline service in Massachusetts. Lifeline is a universal service support mechanism designed to provide qualifying low-income consumers with discounted monthly

voice telephony service for a single subscription per household. *In the Matters of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 03-109, and 12-23, CC Docket No. 96-45, *Report and Order and Further Notice of Proposed Rulemaking* (rel. Feb. 6, 2012) (“*Lifeline Reform Order*”), recon. pending, at ¶¶ 47-50, 76; 47 C.F.R. § 54.401(a). As an ETC,¹ TracFone receives federal reimbursements for every qualifying low-income consumer that it provides with Lifeline service through the Low Income Program of the Universal Service Fund (“USF”). 47 C.F.R. § 54.407(b).

In order to minimize potential fraud and abuse of the Lifeline program, and pursuant to the FCC’s guidelines at the time, the Department in June of 2010 directed TracFone to conduct an annual audit of a random, statistically-valid sample of its customers to verify subscriber eligibility, and to submit a report of its results to the Department.² *TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 09-9, *Order* at Attachment 1³ (June 30, 2010) (“*D.T.C. 09-9 TracFone Order*”). Consistent with this requirement, TracFone

¹ Only carriers designated as ETCs under 47 U.S.C. § 214(e), may receive universal service reimbursement for providing Lifeline services.

² The Department notes that this action was consistent with the FCC’s then-existing guidelines. See *D.T.C. 09-9 TracFone Order* at 5; *Lifeline Reform Order* at ¶ 95. At that time, the FCC provided a formula for calculating the size of a statistically valid sample based upon the total customer base and the percentage of Lifeline subscribers found to be inappropriately receiving Lifeline services the previous year

³ Attachment 1 contained “Additional Audit Report Instructions” as follows:

1. Submit a detailed report of each audited subscriber, listed by subscriber identification number, . . . and additionally classify each subscriber by “reason” for de-enrollment, specifically:
 - a. No response: subscriber did not respond at all.
 - b. Incomplete response: subscriber responded in some way – for instance, subscriber provided an incomplete response by mailing back the audit form but failed to provide documentation of program participation.
 - c. Duplicate service: subscribers indicated that they were receiving services from another ETC.
 - d. De-enroll: subscriber cancelled service. Not applicable for subscribers who fit into another category.
 - e. Fraud: subscriber mistakenly/fraudulently enrolled.

submitted its third Annual Audit Report to the Department on August 31, 2011. Notice of Filing, Annual Audit Report (“Audit Report”).⁴

On February 6, 2012, the FCC released its *Lifeline Reform Order*, comprehensively reforming the Lifeline program. The reforms include new minimum reporting requirements imposed on ETCs operating in all states,⁵ including those in non-federal default states such as Massachusetts.⁶ Consequently, the FCC’s reforms override the Department’s existing annual Lifeline verification requirements.

III. Analysis and Findings: Annual Verification Audit

The Department finds that TracFone has satisfied the Department’s annual Lifeline verification requirements. TracFone conducted its annual audit on a statistically valid sample of 244 subscribers.⁷ See Audit Report at Attachment 1. In addition, TracFone submitted its Audit Report in compliance with the Department’s additional instructions by providing a detailed report of each audited subscriber. See *D.T.C. 09-9 TracFone Order* at Attachment 1. The Department notes its concerns, below, with regard to TracFone’s annual audit results. It also

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- f. No longer eligible: subscriber indicated that they had become ineligible at some point after enrollment.
 2. Continue to indicate the initial enrollment method for each subscriber.
 3. Complete the Annual Lifeline Certification and Verification form, including columns A through E, and submit to both the Department and to USAC. Available at http://www.usac.org/_res/documents/li/pdf/Annual-Lifeline-Certification-Verification-letter-for-OMB-and-USAC.pdf.

⁴ On January 4, 2012, TracFone made a supplemental filing to correct a minor error in Attachment 2 of its Audit Report.

⁵ The reforms also broaden additional requirements nationwide, including consumer eligibility requirements, consumer de-enrollment procedures, and ETC outreach. However, due to the limited nature of this proceeding, the Department focuses only on the amended reporting requirements.

⁶ Federal default states are those that have not adopted their own certification and verification procedures, have opted to follow the federal requirements, or do not assert jurisdiction over those ETCs operating in their states. Prior to the *Lifeline Reform Order*, the FCC imposed limited requirements on ETCs operating in non-federal default states, since state commissions asserted jurisdiction.

⁷ As of July 31, 2011, TracFone had a total Massachusetts Lifeline customer base of approximately 184,300. See Audit Report at Attachment 1.

notes, however, that the mandatory changes to the audit and verification processes stemming from the FCC's reforms address these concerns, at least in part.

TracFone indicates in the Audit Report that it verified the eligibility of 137 (or 56.15%) of the subscribers in the sample. Audit Report at Attachment 1. The remaining 107 subscribers (or 43.85% of the sample) were found to be ineligible for various reasons, ranging from no or an incomplete response to no longer being eligible. Audit Report at Attachment 1. Indeed, 72 (or nearly 30% of all those sampled) failed to respond by providing valid documentation of their ongoing eligibility. Audit Report at Attachments 1 and 3.

The Department finds that while the audit results remain similar to last year,⁸ the rate of ineligible subscribers increased and remained unacceptably high. Like last year's annual TracFone audit, this again raises the possibility that a significant number of customers may be receiving Lifeline services inappropriately. *See TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 10-6, *Order* (Oct. 19, 2010) ("*D.T.C. 10-6 TracFone Order*") at 2 (noting that the rate of ineligible subscribers raises the issue "of possibly significant numbers of customers" inappropriately subscribing to Lifeline services). Additionally, since nearly 30% of subscribers in the sample again failed to respond with appropriate documentation, the response rate of subscribers continues to itself be an issue in the verification process. *D.T.C. 10-6 TracFone Order* at 3; Audit Report at Attachments 1 and 3. Although the Department is presently examining both of these issues in its own ongoing proceeding, the Department acknowledges that the FCC has recently taken action to, at least in part, address these issues.⁹ *See generally Lifeline Reform Order*.

⁸ The results of TracFone's annual audit submitted in 2010 found 140 eligible subscribers out of a sample of 244 (or 57%), and 104 (43%) were found to be ineligible. 2010 Audit Report at Attachment 1.

⁹ The Department's investigation, docketed as D.T.C. 10-3, was initially opened as a result of concerns about TracFone's audit submitted in 2009. *See Investigation by the Department on its Own Motion into the Lifeline and*

Accordingly, the Department finds that TracFone's Audit Report satisfies the Department's annual audit requirements in the *D.T.C. 09-9 TracFone Order* and it is approved. However, in light of the FCC's actions, going forward the Department will no longer accept from TracFone an annual audit consisting of a statistically-valid sample of its Massachusetts Lifeline subscribers. Instead, the Department directs TracFone to comply with the new audit and reporting requirements discussed below.

IV. Analysis and Findings: Lifeline Reform Order Reporting Requirements

On February 6, 2012, the FCC released its *Lifeline Reform Order*. The Order's reforms include new minimum reporting requirements imposed on ETCs operating in all states, including those in non-federal default states such as Massachusetts. *Lifeline Reform Order* at ¶¶ 129-148 and at Appendix C ("Certification Requirements for Lifeline Subscribers"),¹⁰ 47 C.F.R. § 54.410 (§§ 54.410 (a)-(f) effective June 1, 2012"). Accordingly, consistent with the FCC's directives, TracFone must submit to the Department: (1) the recertification results of TracFone's annual eligibility audit of 100% of its Lifeline customers and certain ETC-specific certifications by January 31 of every year commencing in 2013 (*Lifeline Reform Order* at ¶¶ 125-148); and (2) copies of all biennial audits, when implemented, that an independent audit firm conducts on TracFone's behalf to assess TracFone's overall compliance with the FCC's Lifeline requirements (*Lifeline Reform Order* at ¶ 291).

a. Annual Recertification Audit and Reporting of Ongoing Consumer Eligibility and ETC-Specific Certifications

Through the *Lifeline Reform Order*, the FCC adopts new rules imposing a set of uniform recertification procedures that requires ETCs in all states to verify the ongoing eligibility of

Link-Up Programs for Massachusetts Telephone Customers, D.T.C. 10-3, *Order Opening Investigation* at 2 (Sept. 17, 2010); *D.T.C. 09-9 TracFone Order* at 13-16.

¹⁰ The Department attaches a copy of Appendix C to this order.

100% of their Lifeline subscriber base annually. *Lifeline Reform Order* at ¶¶ 129-148 and at Appendix C; 47 C.F.R. § 54.410 (§§ 54.410 (a)-(f) effective June 1, 2012”). Since these requirements are more stringent than the statistically-valid sample requirement imposed by the Department in the *D.T.C. 09-9 TracFone Order*, the FCC’s requirements will now apply going forward.

The FCC directs ETCs to conduct the first recertification of their Lifeline subscriber base as of June 1, 2012, by the end of 2012. *Lifeline Reform Order* at ¶ 130. Where ongoing consumer eligibility cannot be determined through access to a qualifying database, either by the ETC or the state, and there is no state administrator verifying the continued eligibility of Lifeline subscribers, the FCC directs ETCs to contact their subscribers directly to confirm the subscribers’ continued eligibility by obtaining a recertification form from each subscriber. *Lifeline Reform Order* at ¶ 130. The recertification form must include, at a minimum, certain information required by the FCC, contained in the attached Appendix C. *Lifeline Reform Order* at ¶¶ 111-124, 130, 133. Since Massachusetts neither has a qualifying database accessible to Massachusetts ETCs, nor does it have a state administrator to verify the continued eligibility of Massachusetts Lifeline subscribers, ETCs operating in Massachusetts are required to confirm their subscribers’ ongoing eligibility directly with their subscribers. *See* 47 C.F.R. § 54.410(f)(2)(iii) (effective June 1, 2012); *Investigation by the Department on its Own Motion into the Lifeline and Link-Up Programs for Massachusetts Telephone Customers*, D.T.C. 10-3, *Request for Comment and Notice of Public Hearing* at 3-4 (Sept. 17, 2010).

The FCC requires ETCs to submit their re-certification data to the Universal Service Administrative Company (“USAC”) and the FCC by January 31, 2013, in a format to be determined by the FCC’s Wireline Competition Bureau (“Wireline Bureau”) and USAC.

Lifeline Reform Order at ¶ 148. For ETCs that offer prepaid services, the FCC requires that they also report the number of customers de-enrolled every month for not using Lifeline service for 60 consecutive days. *See Lifeline Reform Order* at ¶¶ 257, 263; 47 C.F.R. § 54.405(e)(3) (effective Apr. 2, 2012). The FCC also requires ETCs to provide these data to state commissions for subscribers in those states where the state commission designates those ETCs. *Lifeline Reform Order* at ¶ 148; 47 C.F.R. § 54.416(b) (effective May 1, 2012).

In Massachusetts, the Department asserts jurisdiction over all ETCs operating in the state. *See D.T.C. 09-9 TracFone Order* at 2-3; *Investigation by the Department of Telecommunications & Energy on its own motion concerning (1) designation of eligible telecommunications carriers, pursuant to Section 102 of the Telecommunications Act of 1996; (2) participation in the FCC's modified Lifeline program and acceptance of increased federal funding, pursuant to 47 C.F.R. Part 54 sections 54.400-54.417 et seq.; and (3) participation in the FCC's program for discounted intrastate rates for telecommunications services for rural health care providers, pursuant to Section 254(h) of the Telecommunications Act of 1996, D.T.E. 97-103, Order Opening Investigation*, at 6 (Dec. 8, 1997). Accordingly, the Department directs TracFone to submit its annual recertification data for Massachusetts with the Department by January 31, 2013, and no later than January 31 every year thereafter unless directed to do otherwise by the Department. *Lifeline Reform Order* at ¶ 148; 47 C.F.R. § 54.416(b) (effective May 1, 2012). As an ETC that offers prepaid services, TracFone's report must also include the number of Massachusetts subscribers de-enrolled each month for failure to use the Lifeline service for 60 consecutive days. *Lifeline Reform Order* at ¶¶ 257, 263; 47 C.F.R. § 54.405(e)(3) (effective Apr. 2, 2012).

The FCC indicates that, after the first annual recertification, ETCs may elect to have USAC administer the self-certification process on their behalf. *Lifeline Reform Order* at ¶ 133. However, the FCC also mandates that “[o]ngoing eligibility of Lifeline subscribers must continue to be verified annually after 2012[.]” *Lifeline Reform Order* at ¶ 133. The FCC directs USAC to work with ETCs and its Wireline Bureau to develop a plan for USAC to conduct annual re-certifications in lieu of ETCs, estimated to start in 2013. *Lifeline Reform Order* at ¶ 133. If TracFone elects to have USAC conduct its annual recertification in the future, the Department directs TracFone to notify the Department of this election at the same time that it notifies the FCC and USAC. Until USAC successfully implements a process to certify TracFone’s subscribers, however, and unless the FCC mandates otherwise, TracFone will still need to conduct its own annual recertification of Massachusetts consumers and provide that information to the Department by January 31 of each year.

Finally, in addition to annual recertifications of consumers’ ongoing eligibility, the FCC also requires ETCs to provide certain ETC-specific certifications. *Lifeline Reform Order* at ¶¶ 125-128; 47 C.F.R. § 54.416 (effective May 1, 2012). These ETC-specific certifications must be made annually and must be submitted with the annual consumer recertification data to USAC. *Lifeline Reform Order* at ¶¶ 125-128. Specifically, an officer of each ETC must certify that the carrier: (1) has policies and procedures in place to review consumers’ documentation of income- and program-based eligibility;¹¹ (2) is in compliance with all federal Lifeline certification procedures; and (3) has obtained a valid certification form for each subscriber for whom the carrier seeks Lifeline reimbursement. *Lifeline Reform Order* at ¶¶ 125-128; 47 C.F.R. §§

¹¹ In instances where an ETC confirms consumer eligibility by relying on qualifying databases, the representative must attest to the specific data sources used to confirm consumer eligibility in each state. Qualifying eligibility databases are those described in new §§ 54.410(b)(1)(A) or (c)(1)(A) of the FCC’s regulations. As discussed above, Massachusetts does not have qualifying databases in place.

54.416(a)(1)-(3) (effective May 1, 2012). Since the FCC requires ETCs to submit these state-specific certifications annually to USAC with the results of their annual consumer recertification results, the Department directs TracFone to submit copies of these annual certifications to the Department, as well.

b. Biennial Audit

The Department directs TracFone to submit a copy of its biennial audit reports to the Department within 30 days of issuance of its final audit reports. The FCC's *Lifeline Reform Order* imposes a biennial audit requirement on every ETC that collects \$5 million or more nationwide, at the holding company level, in Lifeline reimbursements to assess the ETC's overall compliance with the federal requirements. *Lifeline Reform Order* at ¶ 291 (to be codified in 47 C.F.R. § 54.420(a)). Audits must be completed within one year after the FCC issues a standardized audit plan. *Lifeline Reform Order* at ¶ 292 (to be codified in 47 C.F.R. § 54.420(a)(2)). The FCC directs ETCs to provide copies of audit reports to the FCC, USAC, and relevant state and Tribal governments within 30 days of issuance of the final reports. *Lifeline Reform Order* at ¶ 294 (to be codified in 47 C.F.R. § 54.420(a)(4)). The FCC indicates that it will issue a Public Notice that establishes a deadline for completion of the first biennial audits. *Lifeline Reform Order* at ¶ 292. USAC data indicates that TracFone collects more than \$5 million annually from the Lifeline program. See USAC Low Income Disbursement Data Webpage, at <http://www.usac.org/li/tools/disbursements/default.aspx> (data calculated by inputting company name). As a result, the Department's requirement that TracFone submit to it copies of Tracfone's biennial audits is appropriate and consistent with the FCC's directives.

V. Order

Accordingly, it is:

ORDERED: That the Department approves TracFone's verification audit results; and

FURTHER ORDERED: That the Department's annual audit requirements set forth in *D.T.C. 09-9 TracFone Order*, including the "Additional Audit Report Instructions," are no longer in effect; and

FURTHER ORDERED: That TracFone contact its Massachusetts Lifeline subscribers as of June 1, 2012, directly to confirm the subscribers' continued eligibility by obtaining a recertification form from each subscriber, consistent with the FCC's annual recertification requirements; and

FURTHER ORDERED: That TracFone submit its annual recertification data for Massachusetts with the Department on January 31, 2013, and every January 31 thereafter consistent with the directives herein; and

FURTHER ORDERED: That TracFone's annual recertification report also include information on month-to-month Massachusetts Lifeline consumer de-enrollment data as described herein; and

FURTHER ORDERED: That TracFone's annual recertification report also include copies of ETC-specific certifications as described herein; and

FURTHER ORDERED: That TracFone submit a copy of its biennial audit reports to the Department within 30 days of issuance of any final audit reports.

By Order of the Department,

/s/ Geoffrey G. Why _____
Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws, including M. G. L. c. 25, § 5.