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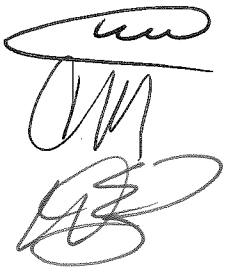

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF TRACFONE WIRELESS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF INDIANA FOR THE LIMITED PURPOSE OF OFFERING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS	)	**CAUSE NO. 41052 ETC 54**
TRACFONE WIRELESS, INC. APPLICATION FOR A CERTIFICATE OF TERRITORIAL AUTHORITY FOR COMMUNICATION SERVICE PROVIDERS	)	**CAUSE NO. 43732**
	)	**ORDER ON CTA APPLICATION**
	)	**APPROVED:** AUG 0 4 2010

BY THE COMMISSION:
David E. Ziegner, Commissioner
Angela Rapp Weber, Administrative Law Judge

On July 10, 2009, TracFone Wireless, Inc. ("TracFone") filed with the Indiana Utility Regulatory Commission ("Commission") its Application for a certificate of territorial authority ("CTA") to provide, within the State of Indiana, communications services. Specifically, TracFone's Application explained that it intended to provide telecommunications services defined as commercial mobile radio service ("CMRS") by 47 U.S.C. 153(46). TracFone's Application for a CTA was docketed as Cause No. 43732.

On June 22, 2009, TracFone filed with the Commission its Verified Petition for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of Offering Lifeline Service to Qualified Households ("ETC Proceeding"). TracFone's ETC Proceeding was docketed as Cause No 41052 ETC 54. Pursuant to a Docket Entry issued on July 27, 2009, the Presiding Officers consolidated Cause No. 43732 with Cause No 41052 ETC 54. The Presiding Officers also granted pursuant to the June 22, 2009 Docket Entry the Indiana Wireless Enhanced 911 Advisory Board's ("Board") Petition to Intervene and scheduled a Prehearing Conference in the consolidated causes for August 17, 2009.

At the August 17, 2009 prehearing conference, TracFone objected to the establishment of a procedural schedule and hearing in the CTA Proceeding on the grounds that (i) the establishment of a procedural schedule and hearing violated 47 U.S.C. § 332(c)(3)(A) and (ii) the Commission is required under I.C. § 8-1-32.5-8 to issue a CTA to TracFone without hearing for various reasons. TracFone relied on its Motion to Dismiss filed in Cause No. 43524 and its Reply to the Board's Response to the Motion to Dismiss. The Presiding Officers issued a Docket Entry on September 11, 2009 overruling TracFone's objections. The September 11, 2009 Docket Entry established a procedural schedule for the CTA Proceeding and that the ETC Proceeding would be considered by the Commission after the CTA Proceeding is decided. On

September 21, 2009, TracFone filed its written appeal to the full Commission of the ruling denying its objections to the establishment a procedural schedule in the CTA Proceeding, thereby deferring consideration of the ETC Proceeding to a later date.

On September 30, 2009, TracFone prefiled its case-in-chief, which consisted of the direct testimony and exhibits of Mr. F.J. Pollak, TracFone's President and Chief Executive Officer. The Board prefiled on October 28, 2009 its case-in-chief, which consisted of the direct testimony and exhibits of Mr. Ken Lowden, the Board's Executive Director. On December 1, 2009, the OUCC prefiled its case-in-chief consisting of the direct testimony of Mr. Ronald L. Keen, a Senior Analyst in its Resource Planning, Emerging Technologies and Telecommunications Division. TracFone filed on December 11, 2009 its rebuttal evidence consisting of the rebuttal testimony and exhibits of Mr. Pollak. Finally, on December 15, 2009, TracFone filed the amended rebuttal testimony and exhibits of Mr. Pollak.

On December 9, 2009, TracFone filed an agreed-to motion asking that the December 21, 2009 hearing convene at 10:30 AM instead of 9:30 AM. The agreed-to motion explained that Mr. Pollak's schedule prevented his ability to arrive at the Evidentiary Hearing at 9:30 AM. On December 17, 2009, by Docket Entry, the Presiding Officers denied TracFone's agreed-to motion and explained that the order of witnesses can be amended to accommodate Mr. Pollak's schedule.

On December 14, 2009, Brightpoint, Inc. ("Brightpoint") filed its Petition to Intervene and its case-in-chief consisting of the direct testimony of J. Mark Howell, President of Brightpoint Americas Division. On December 16, 2009, the Board filed its objection to Brightpoint's Petition to Intervene and motion to strike Brightpoint's case-in-chief. On December 18, 2009, Brightpoint filed its response to the Board's objection. On December 21, 2009, after opening the record, the Presiding Officers (i) overruled the Board's objection to Brightpoint's intervention, (ii) granted Brightpoint's Petition to Intervene, and (iii) granted the Board's motion to strike the entirety of Brightpoint's case-in-chief pursuant to the procedural schedule established by the September 11, 2009 Docket Entry and 170 IAC 1-1.1-11(e).

On December 16, 2009, the Board filed its written objections and motion to strike portions of TracFone's rebuttal evidence. On December 21, 2009, after opening the record, the Presiding Officers overruled the Board's objections to TracFone's rebuttal evidence and denied the Board's motion to strike portions of TracFone's rebuttal evidence. On December 17, 2009, TracFone filed its written objections and motions to strike (i) the entirety of the Board's case-in-chief on the grounds that the Board was not a party to the CTA Proceeding, (ii) portions of the Board's case-in-chief, and (iii) portions of the OUCC's case-in-chief. On December 21, 2009, after opening the record, the Presiding Officers overruled TracFone's objections to the cases-in-chief of the Board and OUCC and denied TracFone's motions to strike directed at the cases-in-chief of the Board and OUCC.

Before the close of the hearing on December 21, 2009, the Presiding Officers established a post-hearing filing schedule to which the parties had agreed: (i) the proposed orders and briefs of TracFone and Brightpoint would be filed on or before January 15, 2010, (ii) exceptions, proposed orders and briefs of the Board and OUCC would be filed on or before February 15, 2010, and (iii) TracFone's reply would be filed on or before March 1, 2010. All post-hearing filings of the parties were timely made.

1. **Commission Notice and Jurisdiction.** Due, legal and timely notice of the Application was given and published by the Commission in accordance I.C. § 8-1-32.5-9 and I.C. 8-1-1-8. TracFone requested the issuance of a CTA pursuant to I.C. § 8-1-32.5 *et seq.* and, therefore, the Commission has jurisdiction over TracFone and the subject of this Cause.

2. **TracFone's Organization and Business.** TracFone is a corporation organized and formed under the laws of the State of Delaware. Its corporate headquarters are located at Miami, Florida. TracFone has no offices or locations in Indiana. TracFone provides CMRS service throughout the United States, including Indiana. TracFone does not own, operate, manage or control any plant, equipment or facilities in Indiana for the conveyance of telegraph or telephone messages directly or indirectly to the public. Instead, all telecommunications services provided to TracFone subscribers are provided by other communication service providers that bill TracFone for such services. TracFone provides prepaid CMRS service, and its subscribers can purchase either (i) directly from TracFone online or by telephonic transactions or (ii) from a variety of retail vendors, including Wal-Mart, Best Buy, Target, 7-11 and others.

3. **Summary of Evidence of the Parties.**

a. *TracFone's Case-in-Chief.* TracFone submitted the testimony and exhibits of F.J. Pollak, its president and Chief Executive Officer and a co-founder of TracFone. Mr. Pollak sponsored Exhibits FJP-1, a copy of TracFone's CTA Application, and FJP-2, a copy of the Commission's instructions that accompany its CTA application form. Mr. Pollak testified that he signed and verified the Application on behalf of TracFone. Mr. Pollak further testified that TracFone's CTA Application contains all information required of CMRS providers by the Commission's CTA Application form and includes all documents required to be included with that form. Mr. Pollak said TracFone's answers on that form are complete and no responsive information or documents were omitted. He added that all information in the Application is accurate and true. Mr. Pollak testified that the Commission had not returned the Application to TracFone indicating it was not accurate, complete or properly verified, or was deficient or defective in any other way.

On cross-examination Mr. Pollak was questioned about TracFone's remittance of the E911 fee to the Board. He explained that that TracFone collects E911 fees on all direct sales made by it to customers in Indiana and remits those collected fees to the Board. He also testified that facilities-based carriers have accounting and billing systems that are integrated with their telecommunications facilities, including their switching facilities. Facilities-based carriers who provide prepaid wireless service are able to track prepaid customers' unused airtime through their accounting and billing systems.

Accordingly, Mr. Pollak stated that such carriers may be able to reduce prepaid customers' unused airtime balances in order to collect surcharges from their customers. However, TracFone has no facilities and its customers' telecommunications are all carried on the facilities of other carriers. Therefore, Mr. Pollak asserted, TracFone cannot track its customers' unused airtime through an accounting and billing system nor can TracFone subtract from its customers' unused airtime to collect surcharges. Rather the unused airtime for a TracFone customer is tracked only by the customer's phone. According to Mr. Pollak, when a TracFone customer buys any quantity of prepaid TracFone airtime, that airtime is not available for use by that TracFone customer until loaded into the customer's phone. Once airtime is loaded into a

TracFone customer's phone and that phone is used to make or receive calls, the phone itself reduces the remaining unused airtime available on that phone.

b. *OUCC Evidence.* The OUCC submitted the testimony of Mr. Ronald L. Keen, Senior Analyst in its Resource Planning Emerging Technologies, and Telecommunications Division. Mr. Keen testified that he learned from TracFone's website that TracFone is the largest prepaid cell phone provider in the United States with over eleven million subscribers. In addition, Mr. Keen stated that TracFone is a subsidiary of América Móvil S.A.B. de C.V., which is the largest cell phone company in the Americas and the fourth largest in the world, having more than 182 million cell phone subscribers. Mr. Keen stated that TracFone began providing service in Indiana in May of 1997 as a for-profit foreign corporation and maintains active registration with the Indiana Secretary of State. Mr. Keen reported that América Móvil is headquartered in Mexico with operations in eighteen countries in the Americas and that TracFone's subscribers contributed 4.8% of América Móvil's total revenue according to its 2008 Annual Report.

Mr. Keen testified that according to TracFone's Petition filed in the ETC Proceeding, service in Indiana to TracFone's subscribers is provided by Alltel, AT&T Mobility, Centennial Wireless, T-Mobile, US Cellular, and Verizon Wireless. TracFone resells the telecommunications services of those six providers, which subscribers then utilize on TracFone trademarked handsets. Mr. Keen testified that as a CMRS provider, TracFone is considered a Communications Service Provider ("CSP") under various Indiana statutes. He stated that any CSP seeking to offer communications service in Indiana after June 30, 2009 is required to apply for and obtain a CTA from the Commission unless it previously possessed a CTA granted by the Commission.

Mr. Keen testified that under various Indiana statutes every CSP granted a CTA by the Commission is required to abide by all applicable legal requirements, including but not limited to: (i) establishing and maintaining contact with the Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired ("InTrac"), (ii) imposing an InTrac surcharge on the regular monthly bills to each customer and remitting the surcharges when paid by the customers to InTrac, (iii) verifying that facilities-based carriers whose services they resell have provided 211 service, (iv) providing notice to counties and local Public Safety Answering Points ("PSAP") when commencing local exchange service in those areas, (v) remitting to the Board fees collected from customers, (vi) imposing an Indiana Universal Service Fund ("IUSF") assessment surcharge (computed on net billed intrastate retail telecommunications service revenue) on the regular monthly bills to each customer and remitting the IUSF assessments, (vii) establishing and maintaining contact with the Indiana Underground Plant Protection Service, and (viii) offering per-call and per-line blocking for law enforcement and crisis intervention agencies.

Mr. Keen reported that since prepaid providers, including TracFone, do not bill customers on a monthly basis, TracFone takes the position that the requirement to impose an InTrac surcharge on monthly bills to customers and remit such surcharges when paid by customers, is not applicable to TracFone. Mr. Keen stated that it is the OUCC's position that TracFone is required to collect an InTrac surcharge from customers at the time customers purchase prepaid airtime and remit such collections to InTrac. Therefore, in the opinion of the OUCC, TracFone has not complied with the legal requirements imposed on CSPs with respect to InTrac.

Mr. Keen testified that since TracFone does not own, operate, maintain or control any local exchange facilities, TracFone relies on the underlying facilities-based carriers to handle 211-related requirements. However, he noted TracFone indicated that if it were to be designated as an ETC provider as requested in the ETC Proceeding, TracFone intends to contact the Indiana 211 Partnership to ensure that information about TracFone's Lifeline program will be available to those who call 211 for information and for referrals regarding health and human services. Mr. Keen stated that the issue of collecting and remitting 911 fees to the Board is the subject of another pending proceeding before the Commission (Cause No. 43524), and that the OUCC has taken no position on that issue. However, he testified that issues regarding 911 fee payment obligations should be addressed in that proceeding, not in the instant CTA proceeding.

Mr. Keen testified that TracFone takes the position that it is not subject to the IUSF assessment requirements because TracFone does not have any billed intrastate retail telecommunications revenue. Mr. Keen stated that TracFone's customers are "billed" for TracFone's services at the time the customers purchase prepaid services and therefore TracFone is subject to IUSF assessments and has not complied with that requirement. Mr. Keen stated that since TracFone does not own, operate, maintain, or control any underground infrastructure in Indiana, the requirement to establish and maintain contact with the Indiana Underground Plant Protection Service does not appear presently to apply to TracFone, but it would, were TracFone to own, operate, maintain, or control underground infrastructure in Indiana in the future. Mr. Keen stated that, as to the issue of per-call and per-line blocking on cellular handsets, the present requirements of Indiana law may need to be examined on an industry-wide basis for applicability and possible modification specific to CMRS providers.

Finally, Mr. Keen stated that the OUCC recommends approval of TracFone's CTA Application subject to the condition that TracFone first provide documentation that it has paid all applicable fees and taxes that have accrued since TracFone began providing communications services in Indiana in 1997. If, based on whatever documentation TracFone provides, the Commission were to determine TracFone has not paid all applicable fees and taxes, then the OUCC recommends that approval of TracFone's CTA Application be subject to the condition that TracFone pay all delinquent fees. Mr. Keen also said that TracFone should certify to the Commission that until it ceases doing business in the State it will comply with all Indiana laws, rules, and regulations. Finally, if TracFone is unwilling either to pay all delinquent fees or certify future compliance with all Indiana laws, rules, and regulations, then the OUCC recommends that TracFone's CTA Application be rejected. The OUCC recommends, however, that determinations regarding TracFone's payment of fees to the Board be deferred until a final, unappealable order is entered in Cause No. 43524.

c. *The Board's Evidence.* The Board presented the testimony and exhibits of Mr. Ken Lowden, its Executive Director. Mr. Lowden provided testimony concerning TracFone's remittance of the E911 fee to the Board and the dispute that has arisen regarding that remittance. Mr. Lowden testified that the Board collects the E911 fee from wireless carriers and uses the money to develop and administer a network through which wireless customers' 911 calls are connected to the nearest PSAP. According to Mr. Lowden, the Board establishes the E911 fee, pursuant to statute, as a fixed charge per customer per month. Since April 2006, when the E911 fee was reduced from 65¢, it has been 50¢ per customer per month. Mr. Lowden stated that from at least October 2000 through August 2007, TracFone remitted to the Board every month an amount computed by multiplying the then-applicable per customer per month E911 fee times the

total number of TracFone's active accounts in Indiana. Mr. Lowden testified that beginning in September 2007, TracFone began computing the monthly amounts it remits to the Board based on the number of Indiana subscribers who purchase prepaid service directly from TracFone that month. TracFone excluded from the computation subscribers who only purchase prepaid service that month from third-party retailers.

Mr. Lowden sponsored Exhibit KDL-1, a copy of a letter dated November 14, 2007 from TracFone explaining the basis on which TracFone began computing its remittances to the Board as of September 2007. According to Mr. Lowden, after the Board and TracFone were unable to resolve their differences over whether Indiana law requires TracFone to collect and remit E911 fees from subscribers who purchase prepaid service only from third-party retailers rather than directly from TracFone, the Board initiated Cause No. 43524. In Cause No. 43524, the Board requested that TracFone collect and remit the E911 fee to the Board by computing its monthly remittance on all customers regardless of whether those customers purchased prepaid service directly from TracFone.

d. *TracFone's Rebuttal Evidence.* In rebuttal, TracFone offered the testimony and exhibits of Mr. Pollak. Mr. Pollak testified that there has been no determination that TracFone is not complying with Indiana law concerning collection and remittance of E911 fees. He added that TracFone will comply with any final legal determination regarding its legal obligations to remit E911 fees. Therefore, TracFone's representation in its CTA Application that it will comply with Indiana law is accurate.

Mr. Pollak sponsored Exhibit FJP-3 which contains affidavits from Centennial Communications Corp., Verizon Wireless, and AT&T, three other Indiana CMRS providers who offer prepaid wireless service. Those affidavits describe whether and how those companies collect and remit E911 fees with respect to their prepaid customers. Mr. Pollak also sponsored Exhibit FJP-4, a copy of an October 2008 letter from CTIA - The Wireless Association® to the Board which describes the difficulties inherent in collecting and remitting 911 fees from customers of prepaid wireless services. However, Mr. Pollak stated that this proceeding was limited to whether TracFone complied with the requirements for a CTA. Mr. Pollak stated that the Commission's review is limited to whether TracFone's CTA application was accurate, complete, and properly verified. He added that TracFone's CTA application complied with Indiana law.

In response to Mr. Keen's testimony, Mr. Pollak testified that TracFone is not in contact with InTrac because InTrac's dual party relay service is provided by local exchange carriers, and TracFone is not a local exchange carrier. Mr. Pollak explained that, as a reseller, TracFone relies on the relay services provided by the underlying carriers. All TracFone customers who need dual party relay service have access to that service through TracFone's underlying CMRS provider vendors. Mr. Pollak further noted that I.C. § 8-1-2.8-14 provides that the InTrac surcharge "shall be collected on the regular monthly bill that a LEC sends to each of its customers." Since TracFone provides only prepaid service and renders no bills to customers who are charged the InTrac surcharge, TracFone contends that it is not required by law to collect and remit the InTrac surcharge.

Mr. Pollak testified that as a reseller, TracFone relies on its underlying carriers to provide 211 access. If TracFone is designated an ETC, then it would contact the Indiana 211 Partnership to insure that information about TracFone's Lifeline program is made available. Further, Mr.

Pollak testified that as a 100% prepaid service provider, TracFone renders no bills to customers and therefore receives no revenue from customer billings. Accordingly TracFone has no billed revenues on which to compute any IUSF assessments. Additionally, he stated that the Commission's IUSF Implementation Guidelines require that the IUSF assessment be passed through as a surcharge on retail customers' bills. Since TracFone's customers receive no bills, the assessment cannot be passed through to TracFone's customers as specified in the Implementation Guidelines.

Mr. Pollak testified that the OUCC's suggestion that TracFone must pay past InTrac and IUSF fees from TracFone's own funds would be fundamentally unfair and an unlawful penalty. He explained that those fees are to be borne by customers and not by carriers. Also, because of the statutory and regulatory language implementing those fees TracFone believed in good faith it was not required to collect and remit them from its customers. He stated that TracFone now has no ability to collect those past fees from its customers.

Mr. Pollak testified that since TracFone owns no facilities in Indiana, the requirements of I.C. ch. 8-1-26, which apply only to underground infrastructure, do not apply to TracFone.

Finally, Mr. Pollak testified that TracFone will comply with applicable legal requirements concerning call blocking.

4. <u>Findings and Conclusions</u>. The Commission first recognizes that a dispute exists between the Board and TracFone concerning whether or how the state's laws governing collection and remittance of E911 fees apply to TracFone. The Board put those disputes before the Commission with its Complaint in Cause No. 43524. The Commission has found that the Board has the authority to resolve these disputes on its own initiative.

Pursuant to I.C. § 8-1-32.5-8, the Commission's review of CTA applications are limited to whether the documents filed under this statute are accurate, complete, and properly verified. TracFone's CTA application was filed with the Commission on July 10, 2009. Notice of the application was posted to the Commission's website. No timely written request for intervention or a hearing was made by any entity during the thirty-day posting period. The Commission, however, on its own motion, determined a need for a hearing in this Cause pursuant to I.C. § 8-1-32.5-9. Based upon the information provided by TracFone in its CTA application and the evidence presented, the Commission finds that TracFone's CTA application was accurate, complete, and properly verified. Therefore, a Certificate of Territorial Authority for CMRS proposed to be offered within the service areas identified in TracFone's CTA application should be issued to TracFone, consistent with and subject to the findings below. Accordingly, TracFone's September 21, 2009 appeal to the full Commission of the ruling denying its objections to the establishment of a procedural schedule for consideration of its application of a CTA is moot.

TracFone shall comply with all applicable legal requirements pertaining to the provision of the communications services authorized by this CTA, including, but not limited to, the following:

a. **Public Utility Fees.** Payment of all public utility fees properly assessed by the Commission, pursuant to I.C. § 8-1-6, *et seq.*

b. **InTRAC.** Establishing and maintaining contact with the Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired and payment of all required fees required by I.C. § 8-1-2.8, *et seq.*

c. **211 Dialing Code.** Establishing and maintaining contact with, and providing appropriate notice to, the Indiana 211 Partnership, Inc. (the designated administrator of the 211 dialing code in Indiana) to coordinate proper switch translations for the 211 dialing code described in I.C. § 8-1-19.5 to ensure that its customers can dial "211" when desired or, in the case of a bundled reseller of local exchange service, to ensure the facilities-based carrier has provided 211 Service.

d. **E-911.** Providing notice to all counties and PSAPs covering areas in which TracFone provides local exchange service when the offering of service commences in the county and the PSAP's area, in order to facilitate the continued operation of the enhanced emergency telephone systems defined and described in I.C. § 36-8-16, *et seq.*, and providing PSAP database updates to applicable 911 Service Providers, as required under I.C. § 36-8-16, *et seq.*

e. **Call Blocking.** Offering of per-call or per-line blocking for law enforcement and crisis intervention agencies, pursuant to I.C. § 8-1-2.9-2(a).

f. **Indiana Universal Service Fund.** Payment of all required assessments into the IUSF based on the "net billed intrastate retail telecommunications revenue," pursuant to the "Implementation Guidelines" attached to the July 25, 2007, Docket Entry issued in Cause No. 42144, or pursuant to any subsequently issued IUSF-related requirements, rules, or procedures.

g. **Notice of Initiation of Service.** Pursuant to I.C. § 8-1-32.5-6(b)(3)(D) and I.C. § 8-1- 32.5-6(a)(9)(A), filing of a notice with the Secretary of the Commission of TracFone's "in service" dates (i.e., the dates on which TracFone commences offering communications service in each service area identified in the Application in accordance with I.C. § 8-1-32.5-6(a)(4)) within ninety days of each "in service" date.

h. **Additional Filing Requirements.** Filing of any other data, information, or reports properly required or requested by the Commission, including, but not limited to, information concerning the types of service offered, the areas in which the services are offered, and any information needed by the Commission.

i. **Indiana Underground Plant Protection Service.** Establishing and maintaining contact with, and providing appropriate notice to, the Indiana Underground Plant Protection Service, the designated administrator of the 811 dialing code in Indiana and complying with I.C. § 8-1-26, *et seq.*

j. **Notice of Changes.** Notifying the Commission, pursuant to I.C. § 8-1-32.5-12, of any change involving either TracFone or the CTA occurring after the issuance of this CTA. Such notice shall be provided using a Notice of Change form in accordance with GAO 2009-4. If the change involves the provision of other types of services than those approved in this CTA, additional obligations and fees may apply.

The Commission notes, however, that TracFone and the OUCC disagree as to whether TracFone is obligated to pay certain fees, including, for example, those relating to InTrac and the

IUSF. TracFone's payment of such fees is not appropriate for our consideration in a CTA proceeding, but the Commission is not precluded from inquiring into this issue in the future. Finally, we recognize that TracFone's petition for designation as an ETC in Indiana for the limited purpose of offering Lifeline service to qualified low-income Indiana households has been deferred by the Commission pending resolution of this Cause. The Commission will now consider issues presented in Cause No. 41052 ETC 54.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Subject to the Findings set forth in this Order, TracFone Wireless, Inc. is hereby issued a Certificate of Territorial Authority as a Communications Service Provider to provide Telecommunications Services, specifically commercial mobile radio service as requested in the Application that is the subject of this Order.

2. This Order shall be effective on and after the date of its approval.

LANDIS, MAYS AND ZIEGNER CONCUR; HARDY AND ATTERHOLT ABSENT:

APPROVED: AUG 0 4 2010

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission