

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
TracFone Wireless, Inc. )
File No.: EB-IHD-15-00018098
FRN: 0006855639

ORDER

Adopted: June 30, 2015

Released: July 1, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree with TracFone Wireless, Inc. (TracFone) to resolve its investigation into whether TracFone violated the Commission’s rules (Rules) by certifying its compliance with industry consumer protection and service quality standards despite failing to fulfill one of those standards requiring customer handset unlocking.

2. In its 2014 FCC Form 481 filings, TracFone certified that for the 2015 Lifeline program year that it would comply with the CTIA – The Wireless Association® Consumer Code for Wireless Service (CTIA Code), which serves as a safe harbor for eligible telecommunications carriers (ETCs) to demonstrate that they have met the standards required to serve as an ETC.

3. On February 11, 2015, the handset unlocking provisions in the CTIA Code went into full effect, which requires carriers to unlock customer handsets and to properly disclose their unlocking policies to consumers. TracFone did not have a process in place for unlocking its customers’ handsets in compliance with the CTIA Code, despite representing to the Commission in its Form 481 that it would comply with the CTIA Code during the entirety of the 2015 calendar year.

4. As part of the settlement agreement, TracFone has committed to the following requirements:

- By September 1, 2015, TracFone will provide clear notifications to its customers about its handset unlocking policy. All eligible consumers will get at least one text message telling them that they are eligible, and consumers can go to the TracFone website to determine eligibility,

1 See 47 C.F.R. §§ 54.202(a)(3), 54.422(b)(3); see, e.g., Report from TracFone Wireless, Inc., WC Docket No. 10-90 (fil. June 26, 2014), available at http://apps.fcc.gov/ecfs/document/view?id=7521348285 (TracFone Oregon Form 481).

2 See 47 C.F.R § 54.202(a)(3); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6383, para. 28 (2005) (ETC Designation Order). In the ETC Designation Order, the Commission stated that “requiring an ETC applicant to demonstrate that it will comply with [] consumer protection requirements . . . ensure[s] that consumers are able to receive an evolving level of universal service that “tak[es] into account advances in telecommunications, and information technologies and services.” Id.

3 See CTIA Consumer Code for Wireless Service, part 12, available at http://www.ctia.org/docs/default-source/default-document-library/ctia-consumer-code-for-wireless-service.pdf?sfvrsn=2 (CTIA Code part 12).

4 E.g., TracFone Oregon Form 481 at 16.

request pre-paid mailers for trade-in of locked phones, and obtain other relevant information.

- By September 1, 2015, eligible non-Lifeline TracFone customers can trade in their old device for a cash refund of the trade-in-value of the handset.
- By May 1, 2016, as TracFone begins to launch handsets capable of being unlocked, eligible non-Lifeline TracFone customers can trade in their old device for an upgrade credit toward a new, unlockable handset.
- By May 1, 2016, TracFone must provide new Lifeline customers with phones capable of being unlocked. Existing, eligible Lifeline customers may request a replacement unlocked handset.
- TracFone will also provide a \$400,000 per month offset to the Universal Service Fund until it provides unlockable handsets to new Lifeline customers.
- By December 31, 2016, all phones launched by TracFone must be capable of being unlocked.
- Refunds, upgrade credits and replacement handsets will be available under the program through at least June 2018.

5. TracFone also agrees to implement a compliance plan and shall file compliance reports with the Commission demonstrating its compliance with the terms of the Consent Decree.

6. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding TracFone's compliance with the Commission's Rules.<sup>5</sup>

7. In the absence of material new evidence relating to this matter, we do not set for hearing the question of TracFone's basic qualifications to hold or obtain any Commission license or authorization.<sup>6</sup>

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act<sup>7</sup> and the authority delegated by Sections 0.111 and 0.311 of the Rules,<sup>8</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

9. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

10. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Richard B. Salzman, EVP & General Counsel, TracFone Wireless, Inc., 9700 NW 112<sup>th</sup> Avenue, Miami, FL 33178 and to Nancy Victory, Esq., Wiley Rein, LLP, 1776 K Street, NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Chief  
Enforcement Bureau

<sup>5</sup> Investigation means the investigation commenced by the Bureau in File No. EB-IHD-15-00018098.

<sup>6</sup> See 47 C.F.R. § 1.93(b).

<sup>7</sup> 47 U.S.C. § 154(i).

<sup>8</sup> 47 C.F.R §§ 0.111, 0.311.

Before the
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In the Matter of
TracFone Wireless, Inc.
File No.: EB-IHD-15-00018098
FRN: 0006855639

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and TracFone Wireless, Inc. (TracFone), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether TracFone violated the Commission’s Rules by failing to comply with the handset unlocking provisions of the CTIA Code as part of TracFone’s certification that it meets consumer protection and service quality standards in its provision of Lifeline service. Almost all handsets currently offered by TracFone to its customers, whether through its Lifeline program or to its general customer base, are not capable of being unlocked as defined by the CTIA Code. This Consent Decree provides a remedy for consumers with locked handsets, and provides a schedule and plan for when TracFone will launch and market only handsets that are capable of being unlocked by consumers, including both its Lifeline and non-Lifeline customers.

- 2. To settle this matter, and as defined more fully below, TracFone agrees to:
• provide a \$400,000 per month offset to the Lifeline Program until TracFone provides unlocked handsets to Lifeline customers;
• establish and implement, by May 1, 2016, a program to provide eligible Lifeline customers who request handset unlocking a comparable unlocked handset;
• establish and implement, by September 1, 2015, a program to provide eligible non-Lifeline customers who request handset unlocking a refund or upgrade credit for the

9 47 C.F.R. § 54.202(a)(3).

10 The full name of the code is the “CTIA – The Wireless Association® Consumer Code for Wireless Service.” See CTIA Consumer Code for Wireless Service, part 12, available at http://www.ctia.org/docs/default-source/default-document-library/ctia-consumer-code-for-wireless-service.pdf?sfvrsn=2 (CTIA Code part 12).

11 See 47 C.F.R §§ 54.202(a)(3).

12 See Letter from Nancy Victory, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, at 20 (Apr. 1, 2015) (on file in EB-IHD-15-00018098) (TracFone LOI Response); see also CTIA Code part 12.

13 TracFone estimates that approximately 5.5 million non-Lifeline subscribers and 2.3 million Lifeline subscribers will be eligible for the interim program as of May 2016. See Letter from Nancy Victory, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, at 2 (May. 22, 2015) (on file in EB-IHD-15-00018098)

(continued....)

Trade-in Value<sup>14</sup> of their handset;

- exclusively provide Lifeline handsets capable of being unlocked by May 1, 2016 and exclusively launch new non-Lifeline handsets capable of being unlocked by December 31, 2016;
- continue to operate under this Consent Decree and offer the benefits to consumers described herein until 18 months after it ceases all sales of locked handsets; and
- provide clear, concise and readily available notifications to its customers about its handset unlocking policy.

## I. DEFINITIONS

3. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.<sup>15</sup>
  - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which TracFone is subject by virtue of its business activities, including but not limited to Section 54.202(a)(3).
  - (f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
  - (g) “Covered Employees” means all employees and agents of TracFone who perform, or supervise, oversee, or manage the performance of, duties that relate to TracFone’s responsibilities under the Communications Laws, including the Eligible Telecommunications Carrier Designation Rules. With respect to TracFone’s customer service representatives, only those who will handle customer inquiries regarding unlocking and will provide unlocking codes and other related assistance to customers will be considered “Covered Employees” subject to the Compliance Manual and Compliance Training requirements described at paragraph 13.
  - (h) “CTIA Consumer Code” means the CTIA Code for Wireless Service in effect on the Effective Date.
  - (i) “Effective Date” means the date by which both the Bureau and TracFone have signed the Consent Decree.
  - (j) “Eligible Customer” means customers that satisfy the eligibility criteria defined in

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(TracFone Supplemental LOI Response); *see also* E-mail from Nancy Victory, Counsel for TracFone Wireless, Inc., to Enforcement Bureau Staff (May 29, 2015).

<sup>14</sup> TracFone estimates the minimum trade-in values for handsets, as of May 2015, as follows: Lifeline handsets: \$5; PPE handsets: \$5-10; non-flagship Androids: \$20-40; Galaxy Discover: \$20; Moto E: \$25; Moto G: \$35; Galaxy S3: \$60; Galaxy S4: \$100. *See* Letter from Nancy Victory, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, at 2 (May. 22, 2015) (on file in EB-IHD-15-00018098) (TracFone Supplemental LOI Response).

<sup>15</sup> 47 U.S.C. § 151 *et seq.*

Section 13(a)(ii)(1).

- (k) “ETC” means an eligible telecommunications carrier designated under, or operating pursuant to, Section 214(e) of the Communications Act, as amended, 47 U.S.C. § 214(e), as eligible to offer and receive support for one or more services that are supported by federal universal service support mechanisms pursuant to Section 254(e) of the Act, 47 U.S.C. § 254(e).
- (l) “Investigation” means the investigation commenced by the Bureau in File No. EB-IHD-15-00018098 regarding whether TracFone violated the Commission’s Rules.
- (m) “LOI” means the Letter of Inquiry issued by the Bureau to TracFone on February 23, 2015 in File No. EB-IHD-15-00018098 seeking information and documents relating to whether TracFone violated Sections 54.202(a)(3), 8.3 and 27.16 of the Commission’s Rules.
- (n) “Operating Procedures” means the standard internal operating procedures and compliance policies established by TracFone to implement the Compliance Plan.
- (o) “Parties” means TracFone and the Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “TracFone or Company” means TracFone Wireless, Inc. and its affiliates, brands, subsidiaries, and successors-in-interest, including but not limited to the brands TracFone, NET10 Wireless, Total Wireless, Straight Talk, SafeLink Wireless, Telcel América, Simple Mobile, and Page Plus Cellular.
- (r) “Trade-in Value” means the greater of (i) 20 percent of the manufacturer’s suggested retail price of the handset (MSRP) on December 1 of the year prior to the customer’s request for trade-in (or, if the handset is no longer sold by TracFone, the MSRP of the handset on December 1 of the last year it was sold by TracFone), (ii) the price offered for the unlockable version of the handset in question on BuyBackWorld.com on the 1<sup>st</sup> of the month in which the customer made their request; or (iii) \$5.00 (five dollars) for handsets with an MSRP value of \$25 or less, and \$10.00 for handsets with an MSRP value of \$25.01 or more.

## II. BACKGROUND

4. All ETCs requesting federal high-cost or low-income universal service support must annually file reports providing financial and operational information, which is used to validate support disbursed to ETCs from the high-cost and Lifeline support mechanisms.<sup>16</sup> Pursuant to Sections 54.202(a)(3) and 54.422(b), ETCs that receive low-income support are required to certify that they comply with applicable service quality and consumer protection standards.<sup>17</sup> Certain ETCs, including TracFone, take advantage of a “safe harbor” provided in Section 54.202(a)(3), which allows the companies to certify that they will comply with the CTIA Code in lieu of otherwise demonstrating how they meet these standards.<sup>18</sup>

5. On June 26, 2014, TracFone filed with the Commission FCC Form 481 for all states and

<sup>16</sup> See 47 U.S.C. § 254; 47 C.F.R. §§ 54.313, 54.422.

<sup>17</sup> See 47 U.S.C §§ 54.202(a)(3), 54.422(b)(3).

<sup>18</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Red 6371, 6383, para. 28 (2005); 47 C.F.R. §54.202(a)(3).

territories in which it provides Lifeline service.<sup>19</sup> In those Forms, TracFone certified and represented to the Commission that it would comply with the CTIA Code for calendar year 2015. At the time it filed these Forms, TracFone was aware that an additional provision in the CTIA Code related to handset unlocking, referred to as “part 12” of the Code, would become effective in February 2015. However, as of February 11, 2015, when the provision took full effect, and continuing through today, it is the FCC’s belief that TracFone did not have the policies and procedures in place to comply with part 12 of the CTIA Code.

6. Part 12 of the CTIA Code includes six principles by which carriers are to abide to enable customers, former customers, and individual owners of eligible devices to unlock phones and tablets that are locked by or at the directions of the carrier.<sup>20</sup> As the CTIA Code explains, “unlocking” a device refers to allowing a consumer to activate a device that works on one carrier’s network on another carrier’s network, if that network is technologically compatible.<sup>21</sup> TracFone states that for security reasons, it has contracted with its handset manufacturers to ensure that the vast majority of TracFone’s handsets are not technically capable of being unlocked, with the exception of one manufacturer who prohibits carriers from locking their handsets.<sup>22</sup> TracFone also states that “it is continuing to work with manufacturers of mobile wireless devices to pursue secure solutions that would allow for further unlocking of its devices.”<sup>23</sup>

7. On February 23, 2015, the Enforcement Bureau sent a Letter of Inquiry (LOI) to TracFone inquiring into whether TracFone’s actions may have violated certain of the Commission’s Rules, including, but not limited to, Section 54.202(a)(3).<sup>24</sup>

### III. TERMS OF AGREEMENT

8. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

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<sup>19</sup> In response to the Bureau’s LOI, TracFone submitted a copy of all 41 certifications it filed in 2014, for the 2015 Lifeline program year. *See* TracFone LOI Response at Inquiry 33.

<sup>20</sup> *See* CTIA Code part 12. The six principles required for part 12 of the CTIA Code are as follows: (1) Disclosure. Each carrier will post on its website its clear, concise, and readily accessible policy on postpaid and prepaid mobile wireless device unlocking; (2) Postpaid Unlocking Policy. Carriers upon request, will unlock mobile wireless devices or provide the necessary information to unlock their devices for their customers and former customers in good standing and individual owners of eligible devices after the fulfillment of the applicable postpaid service contract, device financing plan, or payment of applicable early termination fee; (3) Prepaid Unlocking Policy. Carriers, upon request, will unlock prepaid mobile wireless devices no later than one year after initial activation, consistent with reasonable time, payment or usage requirements; (4) Notice. Carriers that lock devices will clearly notify customers that their devices are eligible for unlocking at the time when their devices are eligible for unlocking or automatically unlock devices remotely when devices are eligible for unlocking, without additional fee. Carriers reserve the right to charge non-customers/non-former-customers with a reasonable fee for unlocking requests. Notice to prepaid customers may occur at point of sale, at the time of eligibility, or through a clear and concise statement of policy on the carrier’s website; (5) Response Time. Within two business days after receiving a request, carriers will unlock eligible mobile wireless devices or initiate a request to the OEM to unlock the eligible device, or provide an explanation of why the device does not qualify for unlocking, or why the carrier reasonably needs additional time to process the request; (6) Deployed Personnel Unlocking Policy. Carriers will unlock mobile wireless devices for deployed military personnel who are customers in good standing upon provision of deployment papers. *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *See* TracFone LOI Response at 19.

<sup>23</sup> *See* TracFone LOI Response at 22; *see also* TracFone Wireless, Inc. Unlocking Policy, available at [http://www.tracfone.com/includes/content/popup/unlocking\\_policy.jsp?a=1296504971589](http://www.tracfone.com/includes/content/popup/unlocking_policy.jsp?a=1296504971589).

<sup>24</sup> *See* Letter from Jeffrey Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to F.J. Pollak, Chief executive Officer, TracFone Wireless, Inc. (Feb. 23, 2015) (on file in EB-IHD-15-00018098) (LOI).

9. **Jurisdiction.** TracFone agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

11. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, TracFone agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against TracFone concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or set for hearing the question of TracFone's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.<sup>25</sup>

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, TracFone shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that TracFone complies with the terms and conditions of the Compliance Plan and this Consent Decree for all of its brands. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the CTIA Consumer Code and the additional terms and conditions of this Consent Decree prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, TracFone agrees that it shall develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. TracFone will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, TracFone shall establish Operating Procedures that all Covered Employees must follow to help ensure TracFone's compliance with this Consent Decree, including the following requirements:
  - i. **Immediate Handset Unlocking.** No later than July 1, 2015, TracFone will assist customers, former customers and non-former customers with TracFone handsets that are capable of being unlocked by consumers with unlocking their phones in accordance with the CTIA Consumer Code.
  - ii. **Locked Handset Buy Back/Replacement Program.** No later than May 1, 2016 for Lifeline handsets and September 1, 2015 for non-Lifeline handsets, TracFone will provide Eligible Customers the benefits defined below. The Locked Handset Buy Back/Replacement Program will continue to be available until the termination of this Consent Decree. TracFone shall facilitate handset replacements, notifications, refunds and upgrade credits to customers under the Locked Handset Buy Back/Replacement Program in good faith.

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<sup>25</sup> See 47 C.F.R. § 1.93(b).

1. Locked Handset Buy Back/Replacement Program Eligibility Criteria.
  - a. Customers must request handset unlocking.
  - b. Customers must have had their locked device activated on TracFone service for no fewer than 12 months, redeemed air time cards in no fewer than 12 months, and not have had their telephone number recycled or ported.
  - c. Customers must request this interim unlocking solution while their service is active or within 60 days after their active service days expire. This 60-day grace period applies even if the customer's telephone number was recycled or ported.
  - d. Non-Lifeline customers must currently own a TracFone branded handset model launched on TracFone's service after February 11, 2014 or activated with TracFone's service after February 11, 2015.
  - e. Lifeline customers must currently own a TracFone branded handset, which the customer activated on TracFone's service after February 11, 2014. Only the original approved Lifeline customer is eligible.
  - f. Customers must possess a handset that is in working condition.
  - g. Customers must possess a handset that is not reported stolen, lost, or associated with fraudulent activity.
  - h. If a customer requesting handset unlocking is deployed military personnel, upon provision of deployment papers, TracFone will honor that customer's unlocking request by sending a refund for the Trade-in Value of the used, locked phone returned by the customer without regard for the 12 months of service activation and air card redemption eligibility requirements. However, all other eligibility criteria apply to TracFone's customers who are deployed military personnel.
  - i. Customers are eligible for the Locked Handset Buy Back/Replacement Program only once every twelve months.
2. Buy Back Process for non-Lifeline Eligible Customers.
  - a. After a non-Lifeline Eligible Customer contacts TracFone to request the Trade-in Value of his or her handset, the customer shall send, at TracFone's expense via prepaid mailer, the used, locked handset to TracFone. Upon receipt of the device, TracFone will send the customer a refund for the Trade-in Value of the handset.

- b. After TracFone handsets capable of unlocking are available, a non-Lifeline Eligible Customer wishing to upgrade to a phone capable of unlocking may, at their option, send their used, locked handset, at TracFone's expense via prepaid mailer, to TracFone and TracFone will apply the used handset's Trade-in Value to the cost of any new handset, capable of being unlocked, that the customer selects.

### 3. Replacement Process for Lifeline Eligible Customers

- a. After a Lifeline Eligible Customer contacts TracFone to request an unlocked handset, TracFone will send the customer a comparable unlocked handset via courier (e.g., UPS Returns Exchange) who will deliver the unlocked handset in exchange for the customer's locked handset. TracFone will effectuate this replacement in good faith to minimize inconvenience to the customer, including offering Saturday delivery, and will provide instructions for activating the unlocked handset. At the customer's option, TracFone alternatively will provide a pre-paid mailer for return of the locked handset, and return the unlocked handset to the customer, said process not to exceed six business days.

### iii. Permanent Unlocking Solution.

1. By May 1, 2016, TracFone will provide, exclusively, Lifeline handsets that are capable of being unlocked by consumers. TracFone may continue, after that date, to provide locked handsets as courtesy replacements for lost, stolen or damaged Lifeline handsets.
2. By December 31, 2016, TracFone will launch, exclusively, non-Lifeline handsets that are capable of being unlocked by consumers.
  - a. Schedule for marketing of non-Lifeline handsets capable of being unlocked: Samsung handsets: April 30, 2016; LG handsets: September 30, 2016; all other handset manufacturers: December 31, 2016. TracFone may request adjustments to this schedule for particular manufacturers, for good cause, based on the Engineering Reports described in section 15(b). TracFone will endeavor in good faith to meet these manufacturer specific milestones but, for the avoidance of doubt, the enforceable deadline for TracFone to launch, exclusively, non-Lifeline handsets capable of being unlocked is December 31, 2016.
3. Beginning no later than one year after the handsets capable of being unlocked are marketed by TracFone, TracFone will unlock eligible devices of current and former customers, non-customers, and non-former customers who request handset unlocking in accordance with the CTIA Consumer Code.
4. Between the Effective Date and December 31, 2016, TracFone's handset purchases shall be consistent in volume and timing with its

average purchases over the past three years, as adjusted for the size of TracFone's customer base and current customer demand.

5. Consistent with its prior purchasing patterns, TracFone's last major purchase of handsets that lack the capability of being unlocked by consumers will be prior to October 31, 2016. TracFone shall be able to continue selling all inventory acquired before October 31, 2016.
- iv. Customer Notifications. TracFone must provide clear, concise and readily available notifications, in English and Spanish, to its customers about its handset unlocking policy in the following ways:
1. No later than September 1, 2015, TracFone must notify, via text message, customers of its new unlocking policy as described above. The message should provide information, a phone number, or a link to information, about TracFone's unlocking policy, unlocking eligibility criteria and the Buy Back/Replacement program.
  2. No later than September 1, 2015, TracFone must notify, via text message, customers who are currently eligible for unlocking that they are eligible. For all customers who become eligible between the initial notification and June 2016, TracFone will notify them in June 2016, via text message, that they are eligible. TracFone will continue to provide a yearly text message to newly eligible customers while the Consent Decree remains in effect.
  3. Within 60 days of the Effective Date, TracFone shall post on the website of all of its brands a clear, concise and readily accessible statement on handset unlocking that clearly articulates the Company's current policy.
  4. No later than September 1, 2015, TracFone shall provide an online unlocking portal that allows eligible customers, former customers, and non-former customers to: (1) determine whether they are eligible for unlocking, (2) request unlocking or a prepaid mailer, and (3) request to receive responses and unlocking instructions by email and/or text message.
  5. Within 60 days of the Effective Date, TracFone shall include a clear and concise statement about its handset unlocking policy in its Terms and Conditions for all TracFone brands. TracFone will remove any language in its Terms and Conditions for all of its brands, which states that handset unlocking is prohibited, or that otherwise indicates that handset unlocking is a violation of the TracFone customer agreement.
  6. Statements about unlocking on TracFone handset packaging materials shall not be inconsistent with the unlocking information on TracFone's website and shall clearly indicate if a particular handset cannot be unlocked.
  7. After December 31, 2016, TracFone must adhere to the customer notification provisions for unlocking contained in the CTIA Consumer Code.

- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the requirements of this Consent Decree and set forth the Operating Procedures that Covered Employees shall follow to help ensure TracFone's compliance. TracFone shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. TracFone shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** TracFone shall establish and implement a Compliance Training Program on compliance with this Consent Decree, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of TracFone's obligation to report any noncompliance with this Consent Decree under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Every Covered Employee shall provide an individual certification showing that they have completed the Compliance Training Program and TracFone will provide these certifications to the Bureau upon request. TracFone shall repeat compliance training and individual certification by Covered Employees on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** TracFone shall report to the Bureau any noncompliance with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that TracFone has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that TracFone has taken or will take to prevent the recurrence of any such noncompliance. The Bureau will not consider TracFone to be in noncompliance if it determines, in its sole discretion, based on the Engineering Reports or other materials submitted pursuant to section 15(b) that the schedule in section 13(a)(iii) cannot be met based solely on third party actions and not due to actions of TracFone. All reports of noncompliance shall be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey.Gee@fcc.gov and Erin.Boone@fcc.gov.

15. **Compliance Reports.** TracFone shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, and every other month thereafter, with a final report due upon the expiration of the Consent Decree.

- (a) Each Compliance Report shall include a detailed description of TracFone's efforts during the relevant period to comply with the terms and conditions of this Consent Decree. The Compliance Report shall include, for the time period covered by the report: (1) the number of customers who have requested handset unlocking, reported separately for Lifeline and non-Lifeline customers; (2) the number of requesting customers who TracFone deemed to be eligible for handset unlocking, reported separately for Lifeline and non-Lifeline customers; (3) the total amount of replacement handsets and Trade-in Value refunds and upgrade discounts issued pursuant to this Consent Decree; (4) the number of customers who were denied their request for handset unlocking, in total and categorized based on reason for the denial; (5) all customer complaints related to unlocking; and (6) a report of the total dollar amount of forgone support as required by paragraph 19.

- (b) Each Compliance Report shall include a detailed Engineering Report describing all efforts made to implement the Permanent Unlocking Solution by the dates in section 13(a)(iii), and the current schedule for completion of the development of TracFone handsets that are capable of being unlocked. This Engineering Report shall be certified, under penalty of perjury, by the most senior TracFone engineer in charge of the project. TracFone further agrees to provide additional information concerning the handset development process on request from the Bureau.
- (c) Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of TracFone, stating that the Compliance Officer has personal knowledge that TracFone: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance, intentional or unintentional, with the terms and conditions of this Consent Decree.
- (d) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.<sup>26</sup>
- (e) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of TracFone, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that TracFone has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that TracFone has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (f) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey.Gee@fcc.gov and Erin.Boone@fcc.gov.

16. **Termination Date.** Unless stated otherwise, this Consent Decree shall expire eighteen (18) months after the date TracFone stops selling locked handsets to customers.

17. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act<sup>27</sup> against TracFone or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by TracFone with the Communications Laws.

18. **Compliance with Section 54.202(a)(3).** For purposes of compliance with Section 54.202(a)(3), TracFone will be deemed in compliance with Section 12 of the CTIA Consumer Code to the extent it maintains compliance with this Consent Decree.

19. **Offset to Lifeline Program.** TracFone will reduce by \$400,000 its monthly requests to

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<sup>26</sup> 47 C.F.R. § 1.16.

<sup>27</sup> 47 U.S.C. § 208.

the Universal Service Fund for reimbursement for qualifying low-income customer support, beginning with the requests covering services provided in September 2015, until the first full month that TracFone exclusively provides Lifeline handsets that are capable of being unlocked by consumers.<sup>28</sup>

20. **Waivers.** As of the Effective Date, TracFone waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. TracFone shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither TracFone nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and TracFone shall waive any statutory right to a trial *de novo*. TracFone hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>29</sup> relating to the matters addressed in this Consent Decree.

21. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which TracFone does not expressly consent) that provision will be superseded by such Rule or Order.

24. **Successors and Assigns.** TracFone agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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<sup>28</sup> For illustration, if TracFone exclusively provides Lifeline handsets that are capable of being unlocked by consumers by May 1, 2016, it will have reduced its support requests by \$400,000 for the eight months of service provided between September 2015 and April 2016, for a total of \$3,200,000. If instead TracFone exclusively provides those handsets by December 1, 2015, it will have reduce its monthly support requests by \$400,000 for the three months of service provided between September 2015 and November 2015, for a total of \$1,200,000.

<sup>29</sup> See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

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Travis LeBlanc  
Chief  
Enforcement Bureau

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Date

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F.J. Pollak  
Chief Executive Officer  
TracFone Wireless, Inc.

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Date