

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,	)	Application No. 911-031.01
on its own motion, seeking to	)	
establish surcharges assessed on	)	
users of prepaid wireless	)	ORDER REJECTING SECOND
service and, methods for the	)	PROPOSED PREPAID METHOD
collection and remittance of	)	
surcharges from carriers	)	
offering prepaid wireless	)	
services: TracFone Wireless,	)	Entered: April 22, 2008
Inc.	)	

BY THE COMMISSION:

On June 19, 2007, the Nebraska Public Service Commission (Commission) opened this proceeding, on its own motion, to establish surcharges assessed on users of prepaid wireless service and methods for the collection and remittance of surcharges from carriers offering prepaid wireless services as required by the Enhanced Wireless 911 Services Act, Neb. Rev. Stat. § 86-441, et seq. (Cum. Supp. 2006), as amended by Nebraska Laws LB 661 [2007] (the Act).

All wireless carriers offering prepaid wireless services were required to notify the Commission in writing no later than September 1, 2007, if they intend to utilize one of the three established methods, and as to which of the three methods it will utilize for the collection and remittance of the enhanced wireless 911 surcharge.

On or about September 1, 2007, TracFone Wireless, Inc. filed an application to use an alternative method for the collection and remittance of the enhanced wireless 911 surcharge. Hearing on the matter took place on January 16, 2008. On April 1, 2008, the Commission entered an order rejecting TracFone's proposed method and requiring TracFone to adopt one of the three established methods or, propose a suitable method not limited only to direct sales to users of its service, no later than fourteen (14) days from the date of the order.

On April 15, 2008, TracFone submitted a second alternative method, stating that the E911 surcharges would be collected at the point of retail sale at a rate of one percent (1%) on every retail sale of TracFone service. TracFone further proposes that third-party vendors would collect the surcharge and remit said amounts to TracFone who would then remit those amounts to the Commission. In its filing, TracFone states, "it believes that the Commission has broad authority under current law to

promulgate a point-of-sale collection method.”<sup>1</sup> In support of its assertion, TracFone relies upon Neb. Rev. Stat. § 86-457(3) which states, “If a wireless carrier, except as otherwise provided in this section, resells its service through other entities, each reseller shall collect the surcharge from its customers and shall remit the surcharge in accordance with section 86-459.”

The Commission’s jurisdiction is specifically set forth in Neb. Rev. Stat. § 75-901.01, which states in relevant part:

Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects: (1) Common carriers, generally, pursuant to sections 75-101 to 75-158; ... (8) **Telecommunications carriers** pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, **the Enhanced Wireless 911 Services Act**, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-580 . . . (Emphasis Added)

Telecommunications carriers necessarily includes wireless carriers who provide wireless telecommunications service.<sup>2</sup>

In the present case, TracFone remains the wireless carrier providing wireless telecommunications service to any consumers

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<sup>1</sup> Application No. 911-031.01, Notification of Alternative Collection Method, pg. 4 (April 15, 2008).

<sup>2</sup> See Neb. Rev. Stat. § 86-118 stating “Telecommunications common carrier means a provider of telecommunications service for hire which offers telecommunications service to the general public at large in Nebraska intrastate commerce.” and Neb. Rev. Stat. § 86-120 stating “Telecommunications contract carrier means a provider of telecommunications service for hire, other than as a common carrier, in Nebraska intrastate commerce.”; Neb. Rev. Stat. § 86-456 stating, “Wireless carrier means (1) any carrier of mobile service as referenced in 47 U.S.C. 153(27), as such section existed on January 1, 2007, (2) any carrier of commercial mobile service as referenced in 47 U.S.C. 332(d)(1), as such section existed on January 1, 2007, (3) any carrier of commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007, or (4) any cellular radiotelephone service, licensees of a personal communications service, and specialized mobile radio services as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007.”

purchasing that product.<sup>3</sup> Nothing within this section or the Act gives the Commission jurisdiction to enforce the method proposed by TracFone against retail vendors who are not telecommunications carriers. The Commission finds as a matter of law that § 86-457(3) cannot expand the jurisdiction of the Commission beyond that defined in § 75-901.01 so as to include retail vendors who are not telecommunications carriers.<sup>4</sup>

The Commission finds that the proposed alternative submitted by TracFone must be rejected as a matter of law as the Commission has no jurisdiction to require retail vendors who are not telecommunications carriers to collect enhanced 911 surcharges on behalf of wireless carriers who offer prepaid wireless service.

#### O R D E R

IT IS THEREFORE ORDERED by the Commission that the alternative method proposed by TracFone is rejected as a matter of law as the Commission has no jurisdiction to require the collection of surcharges by retailer vendors who are not telecommunications carriers.

IT IS FURTHER ORDERED that TracFone Wireless, Inc. shall immediately adopt and utilize one of the three established methods set forth in the June 19, 2007 order in Application 911-031.

IT IS FURTHER ORDERED that TracFone Wireless, Inc. shall notify the Commission in writing within ten (10) business days of the date of this order as to which of the three established methods set forth in the June 19, 2007 Order in Application No. 911-031 it will use.

IT IS FINALLY ORDERED that should TracFone Wireless, Inc. wish to propose another alternative method, it shall continue to utilize one of the three previously adopted methods set forth in the June 19, 2007 order in Application No. 911-031, pending Commission approval of any alternate method it may propose.

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<sup>3</sup> TracFone provided a description of the wireless services it provides in its testimony regarding its prior proposed method. See Application No. 911-031.01, Hearing Exhibit No. 5, Testimony of Richard B. Salzman, 2:3-19.

<sup>4</sup> See Application No. 911-031.01, Hearing Exhibit No. 5, Testimony of Richard B. Salzman, 2:22-3:13.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of  
April, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director