

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)
service and, methods for the) ORDER DISMISSING SHOW CAUSE
collection and remittance of)
surcharges from carriers)
offering prepaid wireless)
services: TracFone Wireless,)
Inc.) Entered: May 12, 2010

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).

On or about September 1, 2007, TracFone Wireless, Inc. (TracFone) filed an application to use an alternative method for the collection and remittance of the enhanced wireless 911 surcharge, stating that TracFone would collect the E911 surcharge at a rate of one percent (1%) on any sales of airtime made directly by TracFone. 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 and that third-party vendors would collect the surcharge and remit said amounts to TracFone who would then remit those amounts to the Commission. On April 22, 2008, the Commission entered an order rejecting the proposed method and requiring TracFone to choose one of the currently available methods. Furthermore, the Commission entered an order to show cause as to why TracFone should not be fined for failing to file an appropriate method.

TracFone informed the Commission of its intent to seek judicial review of the April 1st and 22nd orders. Accordingly, TracFone and the Department entered into a stipulation to stay the orders entered, pending appeal by TracFone. On April 30, 2008, the Commission entered an order approving the stipulation agreement to stay all orders entered in this docket and canceling the show cause hearing.

On April 30, 2008, TracFone filed a petition for judicial review with the Lancaster County District Court. On September 25, 2008, the district court affirmed the Commission's decision to reject TracFone's proposed methods of collection, finding that neither proposal fulfilled TracFone's statutory duty to collect the 911 surcharge. The court also held that the Commission's established methods of collection did not treat prepaid and postpaid wireless carriers differently, and the Commission had the authority to mandate that TracFone choose an established collection method.¹

TracFone appealed the district court decision. On February 12, 2010, the Nebraska Supreme Court affirmed the district court's ruling, holding that the Commission did not err in rejecting TracFone's proposed alternative collection methods or in requiring TracFone to choose an established collection method pending approval of an alternative method. The Court also held that the Commission's application of the 911 Act was not preempted by federal law.² On April 14, 2010, the Supreme Court overruled TracFone's Motion for Rehearing.

In light of the Nebraska Supreme Court rulings, the stay placed on the orders in Application No. 911-031.01 by the Commission's April 30, 2008 order, is lifted. TracFone filed its election on May 6, 2010. Therefore, the Order to Show Cause previously entered by the Commission is dismissed.

TracFone shall begin remitting the enhanced wireless 911 surcharge consistent with the requirements of Neb. Rev. Stat. § 86-459 and all rules and regulations and Commission orders for the period commencing June 1, 2010.

¹ TracFone Wireless, Inc. v. Nebraska Public Serv. Comm., CI 08-1905 (September 24, 2008).

² TracFone Wireless, Inc. v. Nebraska Pub. Serv. Comm., 279 Neb. 426 (Neb. 2010).

O R D E R

IT IS THEREFORE ORDERED by the Commission that the Order to Show Cause previously entered by the Commission, is dismissed.

IT IS FINALLY ORDERED that TracFone Wireless, Inc. shall begin remitting the enhanced wireless 911 surcharge consistent with the requirements of Neb. Rev. Stat. § 86-459 and all rules and regulations and Commission orders for the period commencing June 1, 2010.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of May, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director