

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. 911-034
of TracFone Wireless,)
Incorporated, for Refund from) ORDER APPROVING STIPULATION
the Wireless Enhanced 911 Fund.) AND REFUND
)
) Entered: April 1, 2008

BY THE COMMISSION:

On or about November 9, 2007, TracFone Wireless, Incorporated (TracFone) filed an application with the Commission requesting a refund of enhanced wireless 911 surcharges in the amount of **\$200,224.71** remitted to the Fund between 2002 and 2005. TracFone claimed these amounts were paid on it's prepaid wireless service which was not required to remit under the Enhanced Wireless 911 Services Act, Neb. Rev. Stat. § 86-442, et. seq. (Cum. Supp. 2006) ("the Act")

According to records of the Nebraska Telecommunications Infrastructure and Public Safety Department (Department) records, TracFone had actually remitted **\$201,829.51** from its prepaid services. However, \$7,150.60 of the amounts remitted during the period from May 2003 through September 2003 was the subject of a prior stipulation regarding a remittance complaint in Docket No. NUSF-38/911-008/DC-65 in 2004.

The Department and TracFone entered into a stipulation for purposes of avoiding the necessity and expense of a hearing and to permit a refund to be made to TracFone, fully resolving the above-captioned matter. The Department and TracFone jointly seek an order authorizing refund of **\$194,678.91** from the Fund to TracFone and closing this matter without necessity of hearing.

O P I N I O N A N D F I N D I N G S

Prior to the passage of LB 1222 [2006], § 86-457 stated,

"Each wireless carrier who has a subscriber with a billing address in Nebraska shall collect a surcharge of not more than fifty cents per month per access line. The wireless carrier shall add the surcharge to each subscriber's billing statement. The wireless carrier is not liable for any surcharge not paid by a subscriber and is not obligated to take legal action to collect the surcharge. The surcharge shall appear as a separate line-item charge on the subscriber's

billing statement and shall be labeled as 'Enhanced Wireless 911 Surcharge' or a reasonable abbreviation of such phrase. The commission may take any legal action as it deems necessary to collect unpaid surcharges in its own name, as a real party in interest, or by assigning such debt for collection to a third party."

The language of the Act references "subscribers" and "monthly billing statements". Due to the nature of many prepaid services, no monthly billing statements are issued. Although, the Commission does not believe that it was the legislature's intent to do so, it appears that prior to LB 1222 [2006], the Act did not capture prepaid wireless carriers that did not have subscribers or issue monthly billing statements.

Clearly the users of the prepaid service have had access to 911 services. Furthermore, the providers of prepaid wireless services have been able to market and profit from the fact that the users of their services are be able to reach 911 in an emergency. Equity would suggest that the users and providers of prepaid wireless services support the 911 system as others have. However, based upon the technical language of the Act, prepaid wireless carriers were not required to collect and remit the enhanced wireless 911 surcharge.

The language of LB 1222 and subsequently LB 661 [2007] and the Commission's June 19, 2007 order in Docket No. 911-031 have now remedied the language of the Act and prepaid carriers were required to remit effective July 1, 2007.

The Commission finds that the stipulation be approved and that a refund of **\$194,678.91** from the Fund be paid to TracFone.

Any future requests for refunds from prepaid carriers will be addressed on a case-by-case basis.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission the stipulation be approved and that a refund of **\$194,678.91** from the Fund be paid to TracFone.

MADE AND ENTERED at Lincoln, Nebraska this 1st day of April, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director