

Unpacking the TracFone Cellphone Unlocking Settlement

July 7, 2015



On June 30th, the Federal Communications Commission's (FCC's or the Commission's) Enforcement Bureau (EB) reached a projected \$3.2 million [consent decree](#) to resolve an investigation into whether TracFone, the nation's largest prepaid wireless carrier, violated Commission rules related to its cellphone unlocking capabilities. The FCC has estimated an aggregate consumer benefit of close to \$80 million from this settlement, based on the requirement to make handsets unlockable and the average trade-in value of handsets that TracFone will have to replace (i.e., an estimated \$10 benefit for each of TracFone's 8 million customers that could benefit from the settlement). This consent decree is unusual in that it does not include language admitting liability, which the EB has pushed for in other cases. There is no explanation provided and no clear reason why this case differs from others where an admission was part of the settlement.

As a federal eligible telecommunications carrier (ETC) participating in the Lifeline program, TracFone has certified its compliance with the CTIA Consumer Code for Wireless Service (CTIA Code) to meet the consumer protection and service quality requirements in Section 54.202(a)(3) of the FCC's rules. The CTIA Code serves as a safe harbor for ETCs to demonstrate they have met their required standards of service. Under the CTIA Code, ETCs must allow consumers to unlock their phones and notify consumers of their unlocking policies. As explained in the CTIA Code, cellphone unlocking simply means allowing consumers to activate their phones on another carrier's network. The phones, however, may not be interoperable with other networks that may use other technologies or wireless spectrum bands. The FCC alleges that TracFone inaccurately certified itself as complying with the CTIA Code without actually enabling consumers enrolled in the Lifeline Program to unlock their phones.

As TracFone transitions to unlockable phones, eligible TracFone customers can contact the company to receive a new unlocked device, credit for a device upgrade or a partial cash refund in exchange

for their locked device.

Under the terms of the settlement, TracFone must also:

- Provide customers clear notifications about its handset unlocking policy;
- Beginning in October 2015, provide a \$400,000 per month offset to the Universal Service Fund until it provides unlockable handsets to new Lifeline customers;
- By May 1, 2016, provide new Lifeline customers with phones capable of being unlocked;
- By May 1, 2016, allow eligible non-Lifeline TracFone customers to trade in their old devices for an upgrade credit toward a new, unlockable handset;
- Enable existing, eligible Lifeline customers to request a replacement unlocked handset;
- By December 31, 2016, ensure that all phones launched are capable of being unlocked;
- Through at least June 2018, continue providing refunds, upgrade credits and replacement handsets.

This Consent Decree marks EB's first enforcement action on cellphone unlocking, and is a valuable reminder for Lifeline eligible telecommunications carriers and any wireless carrier that has certified compliance with the CTIA Code to inventory their policies, procedures, and practices, to ensure compliance with FCC rules and certified industry standards.