



Finance Director
636-537-4726

M E M O

DATE: April 28, 2017
TO: Mike O. Geisel, City Administrator
FROM: Craig D. White, Finance Director *CDW*
RE: TracFone Settlement – Advocacy Fund

The City recently received a \$30,847 settlement from TracFone Wireless, a prepaid wireless provider. This company had previously refused to pay license taxes on its prepaid wireless services. The Missouri Municipal League represented 295 Missouri municipalities, including Chesterfield, in the suit which is further described in the attached "Frequently Asked Questions."

The MML Advocacy Fund has asked the represented municipalities to contribute 5 percent or more of the settlement to help MML continue to lobby and intervene at the state and federal level in cases and actions affecting cities. The MML Advocacy Fund was created in 2008 from class action settlement funds cities received from large telecom providers. Cities involved in those settlement agreements, including Chesterfield, designated 5 percent of the funds they received, allowing MML to create the Advocacy Fund. Prior to 2008, there was no Advocacy Fund and MML's legislative lobbying effort was carried out by the Executive Director. Additional information about the Advocacy Fund is contained in the attached correspondence for Dan Ross, Executive Director.

I recommend that the City contributes 5% (\$1,542.35) of the recent settlement to the MML Advocacy Fund.

From: Info@mocities.com [mailto:Info@mocities.com]
Sent: Monday, April 10, 2017 3:37 PM
To: Mike Geisel <mgeisel@chesterfield.mo.us>
Subject: TracFone Settlement Update: Help MML Keep Up The Fight

TracFone Settlement Update

April 10, 2017

If you are one of the 295 MML member municipalities named in the class action settlement with TracFone Wireless Inc., you should receive your settlement payment in the next two weeks. Checks are scheduled to be sent out beginning April 11. If you are one of the approximately 100 municipalities who have allocated or committed to contribute 5 percent or more of your settlement to help MML continue to lobby and intervene at the state and federal level in cases and actions affecting cities, we sincerely thank you. If you haven't yet committed you can take the matter up at your next council meeting and approve the expenditure from settlement funds once you have received your check.

Let me offer a little background information. The MML Advocacy Fund was created in 2008 from class action settlement funds cities received from large telecom providers. Cities involved in those settlement agreements designated 5 percent of the funds they received, allowing MML to create the Advocacy Fund. Prior to 2008, there was no Advocacy Fund and MML's legislative lobbying effort was carried out by the Executive Director.

MML involvement in litigated cases was limited to *pro bono* work contributed by various municipal law firms and municipal attorneys. MML has never had a budget for advocacy or for intervention in cases impacting municipalities.

In 2008, the newly created Advocacy Fund started with a balance of approximately \$965,500. Since that time, the fund has been accessed eighty-three times to represent municipal interests in the legislature and the courts in Missouri and in Washington, to intervene in FCC and other federal agency proceedings, and to provide expert witnesses. Beginning in 2017, the MML Board approved our request to retain permanent part-time lobbyist services to help with the increase in volume of threats to municipal revenues and local control. Currently our team is tracking over 400 filed bills in the Missouri legislature that could impact municipalities.

For the past four years, Advocacy Fund expenditures to address threats to municipalities have been as follows:

2013 - \$103,433

2014 - \$166,620

2015 - \$127,173

2016 - \$113,162

Advocacy Fund resources permit MML to fight back against well-funded interests from within and outside Missouri and the U.S.A.

City of Chesterfield
TracFone Settlement – Advocacy Fund

By the end of 2017 the Advocacy fund balance will be below \$500,000. We estimate expenditures to average at least \$150,000/year if we maintain the same level of advocacy and involvement in court cases. Without replenishing the Advocacy Fund at this time of opportunity, it will be exhausted in approximately three years.

Class action settlement funds and a little interest earned on the investment have been the only source of resources for the Advocacy Fund. That is why we need and are asking the 195 as yet uncommitted class-action member municipalities to take the simple steps, at your next council meeting, to approve and allocate at least 5 percent of your TracFone settlement to help replenish the Advocacy Fund. Then, upon receipt of your settlement payment, issue a check payable to MML.

Help MML keep up the fight for you wherever threats and challenges arise. Thanks for your consideration.

If you have any questions or concerns, feel free to call or email me. My contact information is email dross@mocities.com and 573-635-9134.

Sincerely,

Dan Ross
Executive Director
Missouri Municipal League

EXHIBIT 9

TRACFONE SETTLEMENT Frequently Asked Questions

The following questions and answers try to provide general guidance to officials of the Political Subdivisions in the Settlement Class.

Specific Questions regarding any of the matters described in these questions and answers may be directed to Settlement Class Counsel.

The following is a summary. While every effort has been made to be accurate, some matters have been simplified, and nothing in these questions and answers amends, waives, or takes precedence over, anything in the Settlement Agreement. Capitalized terms used in these questions and answers are defined in the Settlement Agreement.

1. What is this case about?

On or about February 23, 2012, the City of Maryland Heights, Missouri and the City of Winchester, Missouri, brought the action styled *City of Maryland Heights, et al. v. TracFone Wireless, Inc.*, Cause No. 12SL-CC00648-01, in the Circuit Court of St. Louis County, Missouri against TracFone Wireless, Inc. ("TracFone") asserting, on behalf of themselves and a proposed class of Missouri Political Subdivisions, claims that TracFone is liable to Plaintiffs and the other Political Subdivisions under their respective business and/or occupational license tax ordinances for taxes on receipts from supplying or furnishing commercial mobile radio service, telephone, exchange telephone or telecommunications service and for interest and/or penalties on the alleged past due taxes.

After extensive litigation, the Plaintiffs and TracFone have entered into a Settlement Agreement of the class action lawsuit. The Settlement Agreement has been given preliminary approval by the Circuit Court of St. Louis County.

Based on the information available to both sides and the risks involved in a trial, Plaintiffs and Settlement Class Counsel have concluded that the proposed settlement is fair, reasonable, and adequate, and that it serves the best interests of Settlement Class Members.

TracFone does not admit that it is subject to the Business License Taxes but has agreed to this Settlement and will pay past taxes and future taxes to members of the Settlement Class.

Under the Settlement Agreement, the Political Subdivisions in the Settlement Class are entitled to payment of past taxes and to payment of additional taxes in the future.

2. Who are the parties to this case?

The named Plaintiffs in this class action are the City of Maryland Heights and the City of Winchester, Missouri. Plaintiffs filed this lawsuit as a class action to assert their own individual claims and to represent a class of Political Subdivisions who have similar claims.

The defendant is TracFone Wireless, Inc.

3. What Political Subdivisions are in the “Settlement Class”?

Settlement Class means the class certified for settlement purposes only, pursuant to the Preliminary Approval Order, consisting of all Political Subdivisions in the State of Missouri that have adopted a code or ordinance that imposes a Business License Tax, including – but not limited to – those Political Subdivisions listed on Exhibit 1 hereto. The Prior Opt-Outs listed on Exhibit 2 hereto and the following Political Subdivisions are specifically excluded from the Settlement Class: City of Boonville, Missouri, City of Jefferson, Missouri, and City of Springfield, Missouri. In developing Exhibit 1, Class Counsel has endeavored in good faith to identify all Political Subdivisions in the State of Missouri (other than excluded Political Subdivisions) that Class Counsel believes have Business License Taxes. However, if in response to Notice, a Political Subdivision that is not specifically excluded and not listed on Exhibit 1 comes forward asserting that it has a Business License Tax, Class Counsel, TracFone and the Court will determine whether such Political Subdivision is appropriately included in the Settlement Class.

4. What ordinances qualify? What is a “Business License Tax” for purposes of this case?

For purposes of the Settlement, “Business License Tax” means any tax, including any fee, charge, or assessment in the nature of a tax, imposed by a Political Subdivision on any person who constitutes a “telephone company,” “exchange telephone company,” “telecommunications company,” “public utility,” “utility” or any similar entity, reseller or service provider for the privilege of engaging in the business of providing telephone, exchange telephone, telecommunications, or any other type of Telecommunications Service, and specifically includes any tax imposed under Sections 66.300, 80.090, 92.045, 92.073, 94.110, 94.270, or 94.360, RSMo, or under authority granted in any charter, as well as an occupation license tax, gross receipts tax, flat tax, franchise tax, or similar tax, or any tax “alternative” to any of the foregoing, **but shall not include:**

a) Any state or Political Subdivision sales tax imposed under or subject to Sections 32.085 and 32.087 or 144.010 to 144.525, RSMo; or

b) Any Political Subdivision right-of-way usage fee, including but not limited to any fee imposed under the authority of a Political Subdivision’s police powers under Sections 67.1830 to 67.1846, RSMo; or

c) Any tax or fee levied for emergency services under Section 190.292, 190.305, 190.325, 190.335, or 190.430, RSMo, or any tax authorized by the Missouri General Assembly hereinafter enacted for emergency services; or

d) Any rent for use of Political Subdivision’s premises.

5. What is "Telecommunications Service"?

"Telecommunications service" has the same meaning ascribed thereto by Section 144.010.1(14) RSMo.

6. Who pays the tax?

The tax is being paid by TracFone. TracFone is permitted (but not required) to bill its customers to reimburse its cost of the future tax.

Because these taxes are themselves treated as "gross receipts" that are included in the tax base of Business License Taxes imposed on gross receipts, if TracFone charges its customers the tax, the remitted taxes are calculated by TracFone using grossed-up rates that cover the cost of the additional tax on the tax collection. Thus, for example, TracFone will collect a 5.26% tax to cover the cost of a 5.00% gross receipts tax.

7. What compensation or benefits will the Settlement provide?

The Settlement, if it is finally approved by the Court, provides for the payment of past taxes, accrued taxes and future taxes as described in more detail below.

a) Payment of Past Taxes. Pursuant to the Settlement, TracFone will pay \$9,000,000 in compromise of taxes allegedly due and owing through May 31, 2016 and an additional \$125,000.00 per month, pro-rated, for taxes allegedly due and owing from June 1, 2016 through October 13, 2016. Exhibit 3 hereto shows the estimated payment for each known Political Subdivision in the Settlement Class. The estimated payments were determined in accordance with the formula attached hereto as Exhibit 4.

b) Because the formula for calculating the Past Tax payment depends on the calculation of each Settlement Class Member's Business License Tax payment and other factors, it is possible that a Settlement Class Member's share of the amount to be distributed pursuant to the Settlement may change if, inter alia, Defendant approves an adjustment to the calculations pursuant to a Settlement Class Member's appeal to Defendant under Section V(C) of the Settlement Agreement, or otherwise.

c) Payment of Accrued and Future Taxes. Beginning on October 13, 2016, TracFone has agreed to pay each Settlement Class Member's Business License Tax on its receipts from Prepaid Retail Sales (including but not limited to receipts from license tax surcharges and receipts from any retail customer now or hereafter exempt from the state sales tax) and to include such receipts in the base when calculating future payments of Business License Tax to each Settlement Class Member. "Prepaid Retail Sales" means TracFone's taxable sales of Telecommunications Service and products, consistent with state and federal law, to end-user customers by way of internet, telephone or otherwise. Prepaid Retail Sales exclude TracFone's Prepaid Sales to Resellers. With respect to Settlement Class Members with dual rates applicable to residential and non-residential customers, TracFone will remit future Business License Tax payments using the highest applicable rate.

8. What is the source of the rate for taxes on gross receipts?

The current rates shown on Exhibit 8 to the Settlement Agreement were obtained from copies of ordinances and municipal code sections that were provided to TracFone by Settlement Class Counsel.

9. Are the amounts in the Notice the exact amounts the Settlement Class Member will receive?

The Past Tax payment amount in the Notice you received is an estimate based on the formula attached hereto (which is also set forth in Exhibit 7 to the Settlement Agreement). The amount could change. For example, if a Settlement Class Member proves that it is entitled to more than its present estimate, then the shares of other Settlement Class Members will decrease.

10. How does a Settlement Class Member qualify for payment?

The short answer is that if the Political Subdivision is listed on Exhibit 1 hereto, the Political Subdivision does not need to do anything to receive the benefits of the Settlement.

If you are a Settlement Class Member, you will receive the Past Tax payment shown in paragraph 2(a) of the Notice and Accrued and Future Taxes in accordance with paragraph 2(b) of the Notice. You do not need to file a claim form.

If you are not listed on Exhibit 1 but have a Business License Tax that you believe is applicable, you should send a certified copy of your ordinance to Thompson Coburn, LLP, Attn: TracFone Settlement Administrator, One US Bank Plaza, Suite 3500, St. Louis, MO 63101 for review and determination by Class Counsel, TracFone and the Court as to whether you are entitled to participate in the Settlement. You should include with your submission a detailed explanation of why you believe you are part of the Settlement Class.

11. When will a Settlement Class Member get its past tax payment?

Each Political Subdivision will receive its payment within thirty days after the Court has entered its final judgment approving the Settlement and order of dismissal in this case and that judgment of the Court has become final. If the Court enters its final judgment on January 30, 2017, when the final fairness hearing is scheduled, and there are no appeals from that final judgment, TracFone should mail payments on or before April 12, 2017.

12. What if a Settlement Class Member disagrees with the amount of past taxes?

Under the terms of the Settlement, a Settlement Class Member that disagrees with the Past Tax payment amount may submit a detailed explanation as to why it believes the Past Tax payment was incorrectly calculated or erroneous postmarked on or before December 16, 2016, as specified in Section V(C) of the Settlement Agreement. You should mail your detailed explanation to: Thompson Coburn, LLP, ATTN: TracFone Settlement Administrator, One US Bank Plaza, Suite 3500, St. Louis, MO 63101.

In the event TracFone disagrees with the Settlement Class Member's contention, TracFone is obligated to meet and confer in good faith with Settlement Class Counsel and representatives of the Settlement Class Member in question in an effort to resolve the issue. If after such consultation, the Settlement Class Member and TracFone cannot agree on the Past Tax payment, the Past Tax payment specified in this Notice shall be the amount the Settlement Class Member is entitled to receive pursuant to the Settlement, subject to the Settlement Class Member's right to present its disagreement through counsel to the Court for resolution.

13. What if a Settlement Class Member disagrees with the Settlement or the Fees and Expenses?

A Settlement Class Member can object to the Settlement or to Class Counsel's Fee and Expense Application. The Settlement Class Member must state its objection in writing and file it with the Court postmarked no later than December 16, 2016. Any such objection must include a detailed statement of the basis for the objection and a declaration stating that the Political Subdivision is a member of the Settlement Class. An objector may be subject to discovery and depositions related to the objection. If the Settlement Class Member does not properly file and serve an objection by December 16, 2016, any objections it has to the Settlement or to the Fees and Expenses will be waived. The objection should be addressed to:

Circuit Court for the County of St. Louis, Missouri
7900 Carondelet Avenue
Clayton, MO 63105

and marked to indicate "Objection to Proposed Settlement in *City of Maryland Heights, et al. v. TracFone Wireless, Inc.*, Cause No. 12SL-CC00648-01."

The Settlement Class Member must simultaneously mail its objection to Plaintiffs' attorneys:

John W. Hoffman
Douglas R. Sprong
Korein Tillery, LLC
505 North 7th Street, Suite
3600
St. Louis, MO 63101

John F. Mulligan, Jr.
101 South Hanley,
Suite 1280
Clayton, MO 63105

Howard Paperner
9322 Manchester Road
St. Louis, MO 63119

and to TracFone's attorneys:

Roman P. Wuller
John S. Kingston
Thompson Coburn, LLP
One US Bank Plaza
Suite 3500
St. Louis, MO 63101

14. When will the Settlement be finally approved?

The Court will conduct a public hearing to determine whether to approve the proposed Settlement and to determine the amount of Fees and Expenses to be awarded to the attorneys for the Plaintiffs and the Settlement Class on January 30, 2017, at 1:30 p.m. Although the hearing will be open to the public, Settlement Class Members will not be entitled to be heard in opposition to the Settlement unless they have filed a timely objection to the Settlement or to the attorneys' Fees and Expenses and timely filed and served a notice of intent to appear at the hearing. If a timely objection and notice of intent to appear is filed and served, a Settlement Class Member may appear by its own counsel and be heard at the hearing.

15. Are Settlement Class Members responsible for attorneys' fees for Class Counsel?

The attorneys for Plaintiffs and the Settlement Class will submit to the Court for approval a request for Fees and Expenses in the amount of \$2,694,737.50, which is approximately 25% of the total of the Past Tax Payment and Accrued Tax Payment funds (through March 13, 2017), plus litigation expenses, to be paid by TracFone from such funds.

TracFone has agreed not to oppose an award of fees and expenses in the amount set forth in this Notice. The Court will independently determine the amount of any fees and expenses awarded to Settlement Class Counsel.

16. Can a Political Subdivision opt out of the Settlement?

A Political Subdivision can exclude itself from the Settlement Class, which means it will not participate in any aspect of the Settlement, and the Political Subdivision may pursue its own claims, if any, at its own expense against TracFone. To do so, the Political Subdivision must state its request to be excluded in writing and deliver or postmark the request no later than December 16, 2016 to:

Thompson Coburn LLP
Attn: TracFone Settlement Administrator
One US Bank Plaza
Suite 3500
St. Louis, MO 63101

The Political Subdivision must simultaneously mail its Request for Exclusion to Class Counsel:

John W. Hoffman
Douglas R. Sprong
Korein Tillery, LLC
505 North 7th Street, Suite
3600
St. Louis, MO 63101

John F. Mulligan, Jr.
101 South Hanley,
Suite 1280
Clayton, MO 63105

Howard Paperner
9322 Manchester Road
St. Louis, MO 63119

Unless you file a Request for Exclusion, you will be prohibited from bringing a lawsuit against TracFone based on any of the released claims asserted by Plaintiffs. The judgment(s), whether

favorable or not, will include all members of the Settlement Class who do not request exclusion. Any Settlement Class Member who does not request exclusion may, if desired, enter an appearance through counsel at your own expense.

17. Can a Settlement Class Member assign part of its recovery to the Missouri Municipal League or the Municipal League of Metro St. Louis?

The Settlement allows you to assign a portion of your Past Tax payment, i.e., a portion of the amount shown in Exhibit 3 hereto to the Missouri Municipal League or the Municipal League of Metro St. Louis (if you are located within St. Louis County). If you wish to make such an assignment, you must complete and return the form attached as Exhibit 3 to the Notice, postmarked on or before December 16, 2016. **The amount of Past Tax payment that you receive will be reduced by the amount of the assignment.**

18. How can I get additional information?

Copies of the Settlement Agreement and template Notice are posted on the Missouri Municipal League website.

You may also examine the Settlement Agreement, the court orders and the other papers filed in the lawsuit at the Office of the Clerk of the Circuit Court of St. Louis County, Missouri at 7900 Carondelet Avenue, Clayton, Missouri 63105 during regular business hours. If you wish, you may seek the advice and guidance of your own attorney, at your own expense.

If you wish to communicate with or obtain information from attorneys for the Settlement Class, you may do so by letter at the addresses listed below. You should direct any such inquiries described in this FAQ to Plaintiffs' attorneys:

John W. Hoffman
Douglas R. Sprong
Korein Tillery, LLC
505 North 7th Street, Suite
3600
St. Louis, MO 63101

John F. Mulligan, Jr.
101 South Hanley,
Suite 1280
Clayton, MO 63105

Howard Paperner
9322 Manchester Road
St. Louis, MO 63119

Please do not contact the Court, Counsel for TracFone or any TracFone representative for information.