

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Transition from TTY to Real-Time Text Technology)	CG Docket No. 16-145
)	
Petition For Rulemaking To Update The Commission's Rules For Access To Support The Transition From TTY To Real-Time Text Technology, And Petition For Waiver Of Rules Requiring Support Of TTY Technology)	GN Docket No. 15-178

COMMENTS OF TRACFONE WIRELESS, INC.

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TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments on the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding, in which the Federal Communications Commission (“FCC” or “Commission”) seeks comment on a number of proposals to implement a transition from text telephony (“TTY”) technology to real-time text (“RTT”) technology for communications on Internet protocol (“IP”) based networks.¹ TracFone commends the Commission for undertaking this proceeding to identify the technical challenges facing the accessibility of communications over IP-based networks and to ensure that the provision of communications services for Americans who are deaf, hard of hearing, speech disabled or deaf-blind is not hampered by outdated technology.

I. INTRODUCTION AND SUMMARY

TracFone is the leading provider of prepaid wireless telecommunications services throughout the United States, serving more than 25 million subscribers. Through its SafeLink Wireless® program, TracFone is also the largest national provider of Lifeline services, offering

¹ *Transition from TTY to Real-Time Text Technology*, Notice of Proposed Rulemaking, CG Docket No 16-145, GN Docket No. 15-178, FCC 16-53 (2016) (“*RTT NPRM*”).

low-income households access to the opportunities and benefits of affordable wireless services. TracFone provides service by reselling services it obtains from licensed operators of wireless networks. This enables TracFone to offer national coverage wherever mobile wireless services are available.

A member of CTIA – The Wireless Association, TracFone supports the comments filed by CTIA in this proceeding, which are focused on ensuring that functional or technical requirements relating to RTT implementation meet the Commission’s objectives while also allowing for innovation in the fields of telecommunications and disability accessibility. As the nation’s leading wireless reseller and Lifeline provider, however, TracFone maintains a unique perspective on certain RTT implementation challenges. TracFone submits these comments to ensure that the Commission takes into consideration the technological and commercial realities of the resale and Lifeline markets when contemplating the adoption of new regulatory requirements as a part of the TTY to RTT transition. Specifically, TracFone advocates for RTT implementation responsibilities and deadlines that reflect the level of control resellers have over their networks, proposes that 911-via-RTT requirements be consistent with other accessibility mandates, and seeks clarifications on the scope of RTT requirements applicable to end user devices.

II. RTT REQUIREMENTS FOR VOIP SERVICES SHOULD REFLECT IMPLEMENTATION CHALLENGES FACING WIRELESS RESELLERS AND LIFELINE PROVIDERS

A. Wireless Resellers Will Face Unique RTT Implementation Challenges Because They Are Dependent on the Networks of Other Operators

Wireless resellers, or Mobile Virtual Network Operators, offer telecommunications services that are transmitted over the networks of facilities-based, FCC-licensed network operators. Because wireless resellers have no control over the underlying facilities that form the

communications networks for their subscribers' traffic, the services and technologies resellers may offer are limited to those that are technically feasible on the underlying networks. In addition, many wireless resellers have agreements with multiple facilities-based licensees and route customers' traffic across multiple networks. This makes interoperability particularly important for resellers.

B. Wireless Resellers Should Be Responsible for RTT Implementation Only to the Extent Underlying Licensees Have Implemented RTT Requirements

The NPRM proposes to require wireless IP-based voice service providers to ensure that their services support RTT and permit access to telecommunications relay services (“TRS”) and 911 using RTT.² To meet these requirements, telecommunications networks would need to be upgraded to achieve the appropriate technological specifications and standards. Because they depend on the networks of facilities-based providers to transmit the communications of their subscribers, wireless resellers will be unable to control whether their services are made RTT-compatible in accordance with the proposed rule. To the extent the Commission imposes an independent requirement on wireless resellers to ensure that the services they offer can support RTT, the Commission should clarify that resellers would be subject to such a requirement only to the extent that underlying facilities-based licensees have implemented RTT, and would not be subject to enforcement actions for RTT rule violations of underlying licensees.

The Commission's approach to the provision of 911 service by commercial mobile radio service providers is an instructive model for developing RTT implementation requirements that reflect the limitations faced by wireless resellers. In response to a Notice of Proposed Rulemaking concerning the scope of the obligations to provide access to 911 and enhanced 911 (“E911”) services, TracFone explained that “imposition by the Commission of 911 and E911

² *RTT NPRM* ¶ 16.

requirements on resellers will not result in network upgrades that are needed to help consumers reach emergency services” because resellers lack control over the underlying networks.³ The Commission agreed, finding that because “resellers lack control over the underlying licensee,” they “should not be liable for its failure to deploy the needed facilities in a timely manner.”⁴ Accordingly, the Commission determined that resellers “only have an obligation to ensure access to 911 service to the extent that the underlying facilities-based licensees offer access to 911 service.”⁵ The Commission should adopt a similar approach with respect to RTT implementation. By requiring resellers to support RTT only to the extent that underlying facilities-based licensees meet RTT implementation requirements, the Commission can appropriately balance responsibility for the implementation of RTT in accordance with each provider’s level of control over underlying networks.

C. Wireless Resellers Should Have Additional Time to Achieve Compliance for Covered Services and Devices

The NPRM proposes to require that RTT implementation be completed by December 31, 2017 for wireless services and new end user devices provided by Tier I carriers, and seeks comment on extending this proposed deadline for smaller carriers.⁶ Because wireless resellers cannot offer RTT-supported IP-based voice services until underlying carriers have made necessary network upgrades, resellers may be unable to meet the same deadlines as network operators. The FCC recognized in the E911 proceeding, “the ability of resellers to comply may be complicated,” particularly where “resellers enter into agreements with multiple licensees in

³ Comments of TracFone, CC Docket No. 94-102, at 9 (Feb. 19, 2003).

⁴ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, 25380 ¶¶ 97 (2003) (“*E911 Order*”).

⁵ *Id.*; see also 47 C.F.R. § 20.18(p).

⁶ *RTT NPRM* ¶¶ 26-28.

order to offer larger calling area plans to their customers.”⁷ Although here, all providers would be subject to the same requirement to support RTT and ensure interoperability, the timeframe in which this can be accomplished will vary by provider, preventing resellers from being able to offer fully RTT-supported services or devices until the requirements have been met by all underlying facilities-based licensees with which resellers have contracted. As the Competitive Carriers Association (“CCA”) asserted in its petition for waiver of TTY requirements, “[a]s a result of the lack of resources or ability by CCA members to influence the process of developing and adopting standards” for RTT implementation and deployment, “there is little certainty with regard to the intricacies of establishing RTT interoperability or backwards compatibility, and whether smaller carriers will have the appropriate devices and resources to achieve deployment” on timelines achievable by larger carriers.⁸

The NPRM’s implementation timeline takes into account carrier size, proposing to provide Tier II and Tier III wireless carriers with additional time to comply with the RTT requirements beyond the December 31, 2017 deadline proposed for Tier I carriers.⁹ If this proposal is adopted, then resellers with multiple agreements likely will face a challenging situation where some of the facilities transmitting a subscriber’s call can support RTT and have achieved RTT interoperability while others have not. To ensure that resellers can meet RTT obligations with respect to their services and devices, the Commission should, as it did in the E911 proceeding, establish a period of time to allow resellers to come into compliance following

⁷ *E911 Order* at 25378-79 ¶¶ 91, 94.

⁸ Revised Petition of Competitive Carriers Association for a Waiver, GN Docket No. 15-178, at 8 (filed Apr. 8 2016). The Commission declined to grant CCA’s request for additional time in the resulting waiver, but noted that this determination was “subject to possible adjustment in light of the RTT proceeding.” *Petition for Waiver of Rules Requiring Support of TTY Technology*, Order, GN Docket No. 15-178, DA 16-435, ¶¶ 19-20 (2016).

⁹ *RTT NPRM* ¶ 27.

the compliance deadlines for all underlying carriers with which they work.¹⁰ This period of time should be at least one year to allow for implementation, network testing, and device certification.¹¹

D. Access to 911 Via RTT Should Be Subject to Achievability

The NPRM would require providers of VoIP services—including non-interconnected VoIP—to support 911 access via RTT.¹² However, the timing regarding the retail availability of IP-based voice services (such as Voice over LTE or “VoLTE”) that are interoperable among carriers and capable of supporting 911 calls to Public Safety Answering Points remains uncertain. This technical uncertainty may be especially problematic for Lifeline carriers. Pursuant to the Commission’s recent *Lifeline Modernization Order*, support for voice-only services will be phased out beginning December 1, 2019, to be completely phased out by December 1, 2021.¹³ Because wireless Lifeline providers will be able to receive subsidies only for voice services that are bundled with broadband services, many carriers likely will be forced to transition to non-interconnected VoIP offerings to preserve their ability to provide affordable services to Lifeline customers. The inability to provide 911 access via RTT may dissuade or prevent Lifeline providers from providing IP-based voice services, resulting in broadband-only

¹⁰ *E911 Order* at 25381 ¶ 99.

¹¹ *See id.* (concluding that an “appropriate timeframe” for resellers to comply with 911 and E911 requirements was one year after the full compliance date for licensees).

¹² *RTT NPRM* ¶ 16 & n.65; *see also Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets, Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Fourth Report and Order and Notice of Proposed Rulemaking, 30 FCC Rcd 13845, 13855 ¶ 18 (2015).

¹³ *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4003 ¶ 117 (2016).

offerings and frustrating the Lifeline program’s purpose of “ensuring the availability of communications services for low-income households.”¹⁴

To ensure that RTT requirements do not inadvertently hamper the development of non-interconnected voice technology or prevent Lifeline providers from offering affordable voice services, the Commission should require access to 911 via RTT *only* if such access is achievable. In the telecommunications accessibility context, Congress frequently has limited implementation requirements by achievability.¹⁵ Restricting proposed Section 20.18(c)(2) to circumstances where access to 911 via RTT is achievable would harmonize this accessibility requirement with the Twenty-First Century Communications Video and Accessibility Act of 2010 and the Commission’s implementing Part 14 rules, which establish accessibility requirements for advanced communications services, including non-interconnected VoIP.¹⁶ Moreover, properly cabinning this requirement will facilitate the deployment of 911 access via RTT while allowing providers to continue developing innovative IP-based voice services.

III. RTT REQUIREMENTS FOR DEVICES SHOULD REFLECT MARKET REALITIES OF DEVICE PROVISION

The NPRM proposes to require device manufacturers and service providers to ensure that all end user devices authorized for use with IP-based voice services support RTT.¹⁷ The NPRM further proposes to apply this requirement to all devices sold after December 31, 2017, but asks whether this deadline should apply to “the date on which new devices are manufactured, rather

¹⁴ *Id.* at 3989 ¶ 23.

¹⁵ *See, e.g.*, 47 U.S.C. §§ 255(b); 255(c); 303(u)(2)(A); 303(z)(1); 303(aa)(1); 617(a)(1); 617(b)(1); 619(a).

¹⁶ *Id.* § 617(b)(1); 47 C.F.R. § 14.20(a)(1).

¹⁷ *RTT NPRM* ¶¶ 17-19.

than first made available to the general public.”¹⁸ Finally, the NPRM seeks comment on whether there should be “a requirement to add RTT capability to end user devices already in service at the compliance deadline, at ‘natural opportunities,’ previously defined by the Commission to occur upon ‘the redesign of a product model or service, new versions of software, upgrades to existing features or functionalities, significant rebundling or unbundling of product and service packages, or any other significant modification that may require redesign[.]’”¹⁹ The Commission clarifies that such a proposal would not “require manufacturers of equipment to recall or retrofit equipment already in their inventories or in the field,” and that “cosmetic changes to a product or service” would not trigger the requirement.²⁰

TracFone understands this proposal as imposing RTT requirements on all new device *models* sold or manufactured on or after the compliance date, and not on newly sold or manufactured units of device models where those models were introduced prior to the compliance date. This interpretation of the NPRM allows the requirements for new devices to be read consistently with requirements to add RTT capability to existing devices at “natural opportunities.” If the Commission intended to impose RTT requirements on all units of pre-compliance-date device models sold or manufactured on or after the compliance date, then the only units of these models not subject to an RTT requirement would be devices in the field or possibly in manufacturers’ inventories (if manufacture date is the trigger for the obligation). Yet

¹⁸ *Id.* ¶ 28.

¹⁹ *RTT NPRM* ¶ 29 (quoting *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14609 ¶124 (2011); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6447 ¶ 71 (1999)).

²⁰ *Id.* ¶ 29 n.92.

the Commission’s interpretation of the natural opportunities requirement expressly states that it would not require manufacturers to recall or retrofit equipment either in the field or in their inventories. Further, if field or inventory units were the only remaining units to which RTT needed to be added, then there would be no circumstances under which there would be a “redesign of a product model” that could trigger the obligation after the original compliance date, and the exception for “cosmetic changes” to a product model would serve no purpose – the model already would have been updated to support RTT. The “natural opportunities” proposal clearly contemplates adding accessibility features to models of devices as those models are redesigned or otherwise substantially modified.

Limiting the scope of the RTT device compliance deadline to new device models not only is consistent with the Commission’s “natural opportunity” doctrine, but also is consistent with its device requirements in other contexts. With respect to waivers of FCC rules governing advanced communications service (“ACS”), the Commission has made clear that “a waiver extends to particular models of equipment for as long as the covered models are sold without significant upgrades.”²¹ Further, structuring RTT implementation in this way will mitigate the risk of having divergent technical specifications and capabilities across a single device model, which would make it difficult for service providers to offer technical assistance for those devices.

Requiring RTT capability only for new device models sold or manufactured after the compliance deadline will enable manufacturers and service providers to develop RTT-supported devices without placing undue burdens on older generations of devices in service prior to the

²¹ *Petitions for Class Waivers of Sections 716 and 717 of the Communications Act and Part 14 of the Commission’s Rules Requiring Access to Advanced Communications Services (ACS) and Equipment by People with Disabilities*, Order, 27 FCC Rcd 12970, 12989 ¶ 38 (2012).

compliance deadline. Should the Commission adopt its proposal to require that RTT capability be added to older device models at “natural opportunities,” this term should include only those redesigns, upgrades, and modifications that manufacturers or providers undertake on a model-wide basis, and should not include processes undertaken on an individual device level such as device refurbishment. In addition, to the extent the Commission believes that software updates could enable providers to implement RTT in devices in the field without retrofitting, such updates do not present a “natural opportunity” for RTT implementation. Carriers regularly push software updates out to devices in service, usually for security-related purposes. Requiring RTT implementation whenever a carrier introduces such an update would hinder the release of these time-sensitive updates and threaten the security of consumers’ devices.

Finally, the proposed rules would require carriers to ensure RTT capability for all “authorized user devices.” The proposed rules define “authorized devices” as “a handset or other end user device that is authorized by the provider of a covered service for use with that service and is able to send, receive, and display text.”²² Many carriers now offer subscribers the flexibility to use devices from previous carriers when they initiate new service.²³ Because carriers are not in a position to ensure that individual devices issued by previous carriers support RTT in compliance with the rule, the Commission should clarify that such devices are not “authorized” by the carrier for purposes of the RTT accessibility rules.

²² *RTT NPRM* at Appendix A (proposed rule 47 C.F.R. § 67.1(a)).

²³ *See, e.g.* Verizon Wireless, “Prepaid Bring Your Own Device (BYOD) program FAQs,” <http://www.verizonwireless.com/support/prepaid-bring-your-own-device-program-faqs/>; AT&T, “Bring your own phone or tablet,” <https://www.att.com/shop/wireless/byop.html>; Cricket Wireless, “Bring Your Own Phone (BYOP),” <https://www.cricketwireless.com/support/apps-and-services/bring-your-own-device-byod/customer/bring-your-own-device-byod.html>; Straight Talk Wireless, “Bring Your Own Phone,” <http://get.straighttalk.com/bring-your-own-phone/>; T-Mobile, “Bring Your Own Phone,” <http://www.t-mobile.com/bring-your-own-phone.html>.

IV. CONCLUSION

TracFone commends the Commission's attention to the accessibility needs of people who are deaf, hard of hearing, speech disabled and deaf-blind and its recognition of the shortcomings of existing technology to provide accessible communications over IP-based networks to these underserved Americans. TracFone is also generally encouraged by the Commission's efforts to find a technology neutral solution and give service providers and device manufacturers the necessary flexibility to implement it. TracFone supports the Commission's overall approach to this problem, and urges the Commission to ensure that the final rules properly take into account the market and technological realities facing wireless resellers, Lifeline providers, and the provision of end user devices.

Respectfully Submitted,

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