

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	CC Docket No. 96-45
TracFone Wireless, Inc.)	
)	
Petition for Designation as an)	
Eligible Telecommunications)	
Carrier in the State of New York)	
)	
Petition for Forbearance)	

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

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SUMMARY

In these reply comments, TracFone clarifies and narrows the scope of its request for designation as an Eligible Telecommunications Carrier in New York (and in other states where it has sought or will seek ETC designation). Recognizing that service to low income users is an important aspect of its prepaid wireless service, TracFone hereby clarifies that if designated as an ETC it will only use that designation and will only utilize federal universal service funds to offer a Lifeline service to customers who are qualified to participate in the Lifeline program. It does not seek access to funds from the universal service fund to support service to high cost areas. It will accept a condition so limiting its ETC designation.

TracFone's proposed Lifeline program would provide participants with 250 minutes of prepaid calling time for a flat charge of \$25.00. Those minutes would be usable for at least one year from date of purchase. Unlike other prepaid plans, the minutes would not expire after 30, 60, 90, or even 180 days. Those minutes would be usable for calls within or outside the customer's local calling area. There would be no long distance or roaming charges. The \$0.10 rate would be all-inclusive. There would no federal state or local taxes, universal service or other regulatory fees or surcharges tacked on the \$0.10 rate. Qualified customers would receive discounted prices on new and refurbished handsets. Features of the service would include E-911 capability, voice-mail, caller ID, call waiting, and inbound SMS text messaging (all with no additional charges). Outbound SMS text messaging would be available at a rate of \$0.05 per message.

TracFone's Lifeline program will be actively promoted so that qualified customers will be aware of the program. This is important because the Lifeline program is currently underutilized. For example, in New York, only 31.7 percent of eligible customers participate;

nationally, the participation level is only 33.7 percent. Many persons who qualify for Lifeline may need the convenience and flexibility of a supported wireless service as much as or more than they need a supported wireline service. If designated as an ETC, TracFone will provide those customers with an important new service option more suited to their needs. TracFone hopes and expects that this option will increase utilization of the important federal Lifeline program.

Much of the criticism directed at TracFone's initial ETC petition and its forbearance petition seems to reflect an objection to TracFone receiving universal service support for high cost service. Hopefully, TracFone's revised proposal will obviate those concerns. There is no public interest reason why a wireless resale provider should not be allowed to offer services supported by the universal service fund. Customers do not care whether their providers are facilities-based or resellers. Customers care about affordable and reliable service. Indeed, TracFone may be more able to deliver reliable service than facilities-based carriers since it can move its customers from one underlying vendor to another when it detects unsatisfactory service performance by a vendor. Finally, TracFone has met each of the public interest criteria for ETC designation articulated in the Commission's recent Highland Cellular and Virginia Cellular decisions. It has also met each of the criteria set forth at Section 10 of the Communications Act for forbearance from application or enforcement of the facilities-based requirement for ETCs contained at Section 214(e)(1)(A) of the Act.

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REPLY COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply to the comments which were filed on or about July 26, 2004 in response to TracFone’s Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and its Petition for Forbearance. TracFone’s Petition for Forbearance requests that the Commission exercise its authority under Section 10 of the Communications Act¹ to forbear from applying or enforcing the requirement contained at Section 214(e)(1)(A) of the Act² that carriers designated as eligible telecommunications carriers provide service either using their own facilities or a combination of their own facilities and resale of another carrier’s services. As described in these reply comments, TracFone has narrowed the scope of its request for ETC designation in a manner which it believes obviates all of the concerns raised in those comments which have opposed TracFone’s petitions.

¹ 47 U.S.C. § 160.

² 47 U.S.C. § 214(e)(1)(A).

I. INTRODUCTION AND CLARIFICATION OF SCOPE OF TRACFONE'S ETC REQUEST

TracFone is a Commercial Mobile Radio Service (CMRS) provider which differs from other CMRS providers in one critical respect: its services are provided only on a prepaid basis. Because TracFone offers service on a "pay-as-you go" basis, with no service contracts, no volume or term commitments, no credit checks, no security payments or deposits, and no early termination penalties, TracFone service has become the wireless service of choice for more than 3.5 million customers throughout the United States. TracFone's customers tend to be those customers which other wireless carriers do not want to serve – lower income, lower volume users, students, the elderly, and transient consumers; customers who either are unwilling to enter into long-term service contracts with steep early termination penalties or, if they are willing to sign such contracts, do not have credit standings that would be satisfactory to those other carriers.

TracFone considers lower volume, lower income consumers to be the heart of its customer base, rather than a portion of the consuming public to be avoided. Traditional wireless carriers shun service to such customers since those customers tend to decrease the ARPU (Average Revenue Per User) levels sought by wireless providers. TracFone's commitment to offering prepaid plans which make wireless service available to low income, low volume users is not new. That has been a critical component of TracFone's business strategy since the company's inception. Now, however, TracFone has determined to offer services specifically targeted at that portion of the consuming public most in need of affordable telecommunications services: those who qualify for assistance under the Commission's Lifeline program.

For that reason, TracFone wishes to clarify its purpose in seeking Eligible Telecommunications Carrier (ETC) designation in the states of New York, Florida, Virginia, and

elsewhere,³ and to limit the scope of its petitions for ETC designation and petition for forbearance from the “facilities-based” requirement of Section 214(e).

TracFone seeks ETC designation solely to enable it to offer Lifeline service to eligible low income consumers. Lest there be any misunderstanding, TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. By limiting the scope of its request for ETC designation to Lifeline service, TracFone believes that it has alleviated the concerns of those parties who filed oppositions to its petitions.⁴ Based upon review of those oppositions, it is apparent that virtually all of the objections to TracFone’s petitions involved TracFone’s participation as an ETC in the high cost program.

II. TRACFONE’S LIFELINE PROGRAM WOULD OFFER AFFORDABLE WIRELESS SERVICE TO QUALIFYING CONSUMERS IN NEW YORK OR IN ANY OTHER STATE WHERE IT IS ALLOWED TO OFFER THE SERVICE

Commenters in this proceeding have noted quite correctly that reliable wireless service has evolved from being a luxury for the wealthy to an essential service for all consumers. As noted by the New York Public Interest Research Group:

While cell phones were once viewed as luxury items, they have become increasingly important for consumers in all income brackets. There are certainly unique services that cell-phone providers can offer low-income consumers. Many low-income consumers commute long distances and/or work several jobs,

³ To date, TracFone has applied for ETC designation in those three states. It plans to seek ETC designation in additional states.

⁴ TracFone is aware that AT&T Corp. has filed a petition for limited reconsideration in WC Docket No. 03-109 which asks the Commission to modify its rules to provide for separate ETC certification for Lifeline/Link-Up and for High Cost Support. TracFone takes no position on the AT&T petition. However, it does not believe that a rule change is needed to designate TracFone as an ETC solely for participation in Lifeline. TracFone would be willing to accept a condition attached to its ETC designation limiting its ETC status to receipt of universal service funds to support its Lifeline program.

meaning that they can spend many hours away from home each day. A cellular phone offers mobility, security, and convenience that a traditional wire-line can't offer.⁵

Similarly, the Sustainable Markets Foundation stated that prepaid wireless service:

has become an alternative to regular in-home telephone service for many low-income consumers, including migrant workers, working, traveling through, or living in rural areas with little access to regular phone service. It has also become an alternative to regular phone service for consumers who may not stay at one residence long enough to justify service connection fees or consumers with poor credit ratings who would otherwise have trouble obtaining phone service.⁶

TracFone concurs with the views of NYPIRG and SMF and it recognizes the increasing importance of available and affordable wireless service to consumers of all income levels. For that reason it has designed a service plan which it would make available in any state where it is designated as an ETC. TracFone's Lifeline program would provide participants with 250 minutes of prepaid calling time for a flat charge of \$25.00. Those minutes, once purchased, would be usable for at least one year from the date of purchase. Prepaid minutes under the plan could be used for local or long distance calling and would be usable within or outside the customer's local calling area. There would be no separate roaming charges. The \$0.10 per minute rate would be an all-inclusive rate. There would be no additional charges for taxes, universal service pass-throughs, E-911 fees, etc. Neither would there be any monthly minimum usage commitment. Once purchased, those minutes would be available to the customer for at least one year until the purchased quantity was depleted. Once depleted, additional prepaid cards could be purchased at the same price.

⁵ Comments of New York Public Interest Research Group (NYPIRG) at 2.

⁶ Comments of Sustainable Markets Foundation (SMF) at 2.

The fact that these prepaid cards would be usable for at least one year is an important feature of TracFone's proposed Lifeline program. All prepaid services available today, including those provided by TracFone, require consumers to make periodic purchases of additional service in order to keep their service active. Typically, prepaid calling cards must be purchased every 30, 60 or 90 days (depending on the carrier and plan) in order to keep a prepaid customer account in active status. Of course, traditional post-paid plans also require monthly purchases by customers. TracFone's plan will eliminate the concept of recurring purchase commitments. The elimination of any monthly or other periodic purchase obligation combined with the fact that TracFone's per minute rate will be comparable with the most favorable per minute rates available through post-paid plans will result in wireless service being available and affordable to low income consumers as never before.

In addition to offering discounted bundles of prepaid minutes with no expiration for at least one year, TracFone will make available to customers eligible for its Lifeline service choices of new or refurbished handsets at discounted prices. New handsets will be all-digital and will have state-of-the-art features including E-911 capability. Other features of TracFone's Lifeline service will include free voice mail, caller ID, call waiting, and free inbound SMS text messaging. Outbound SMS text messaging will be available at a rate of \$0.05 per message.

TracFone's fully-loaded, all-inclusive \$0.10 per minute rate is lower than consumers normally pay for wireless service. For example, SMF describes AT&T Wireless's pre-paid Free2Go service which offers 40 minutes of calling for \$10.00 – *i.e.*, \$0.25 per minute.⁷ Further, under that plan, unused minutes expire after 90 days. Thus, if a purchaser of that plan uses less than his or her full complement of 40 minutes within the 90 day period, it would lose the unused

⁷ SMF Comments at 2.

minutes which would, of course, raise the actual price paid by the customer for the minutes which it did use above the advertised rate of \$0.25 per minute. In contrast, customers of TracFone's Lifeline plan would pay \$0.10 per minute regardless of how many minutes are used and how long it takes the customers to exhaust their supply of prepaid minutes.

Not only is TracFone's proposed Lifeline rate more affordable than other prepaid wireless rates, it is less costly to consumers than most post-paid rate plans offered by traditional CMRS providers. Recently, TracFone commissioned market research to be performed by TNS Telecoms – a nationally-recognized telecommunications consulting firm. TNS examined rate plans and usage data of major post-paid providers. According to TNS's research, the average price per minute of use paid by consumers with rate plans under \$20 per month was \$0.31 per minute. For rate plans between \$20.01 and \$30, the average price per minute paid by customers was \$0.13; for rate plans between \$30.01 and \$40.00, the average price per minute was \$0.10. It must be remembered that those plans all require long-term service commitments of at least one year, and early termination penalties of \$175 or more. Moreover, the per minute rates included in the TNS data include such additional components as roaming charges, connection charges, long distance charges, family share charges, etc. Those rates do not include taxes, surcharges, universal service pass-throughs or other charges attributable to government or regulatory requirements, all of which increase the per minute costs to consumers even beyond the average per minute costs reflected in the TNS study.

In short, TracFone proposes to offer a prepaid wireless Lifeline plan at an all-inclusive price of \$0.10 per minute with no commitments, no minimums, no hidden charges, fees or taxes, and no expiration of purchased minutes. This service will be available in New York, Florida, Virginia and in any other state where TracFone is awarded ETC status.

III. CRITICISMS OF TRACFONE'S ETC PETITIONS LEVELED BY THEIR OPPONENTS DO NOT WARRANT DENIAL EITHER OF TRACFONE'S APPLICATION FOR ETC DESIGNATION IN NEW YORK OR TRACFONE'S PETITION FOR FORBEARANCE

It is significant that those commenters who represent the people who would benefit from designating TracFone as an ETC unanimously endorse TracFone's petition.⁸ However, those commenters who view TracFone as a competitor – either for customers or for USF funding -- oppose the application for reasons that can best be described as transparently self-serving and, in some cases, frivolous.⁹ The comments reveal the existence of certain factual disputes as well as disputes as to legal and policy conclusions which should be drawn regarding TracFone's petitions. However, one critical fact is not in dispute: based upon recent Commission-compiled data, the Federal Lifeline program remains significantly underutilized. According to Commission data, only 31.7 percent of households eligible for Lifeline in New York participate in the Lifeline program. Nationally, only 33.7 percent of eligible households participate in Lifeline. For Florida and Virginia – two other states – where TracFone has sought ETC designation, the percentages of eligible households participating in Lifeline are only 13.5 percent and 6.6 percent respectively.¹⁰

In this regard, BellSouth's strident opposition to TracFone's ETC petitions is especially disturbing. According to Commission-compiled data, the Lifeline participation rates in the nine

⁸ See Comments of NYPIRG and SMF.

⁹ Those opposing TracFone's petitions included several incumbent local exchange carriers, *e.g.*, Verizon, BellSouth, Frontier, TDS, and their trade association – the New York State Telephone Association, as well as by TCA, Inc. – Telecom Consulting Associates, a consulting firm which serves rural local exchange carriers. . Opposing comments also were filed by competing wireless entities such as Virgin Mobile, as well as one wireless entity which not only competes with TracFone but which also sells service to, *i.e.*, Dobson Cellular.

¹⁰ Lifeline and Link-Up (*Report and Order and Further Notice of Proposed Rulemaking*), WC Docket No. 03-109, FCC 04-87, released April 29, 2004, at Appendix K – Section 1: Baseline Information Table 1.A. Baseline Lifeline subscription information (Year 2002).

states where BellSouth operates as the incumbent local exchange carrier are among the lowest in the nation. Those participation rates are as follows: Alabama – 8.5 percent; Florida – 13.5 percent; Georgia – 15.1 percent; Kentucky – 18.3 percent; Louisiana – 7.4 percent; Mississippi – 6.9 percent; North Carolina – 16.1 percent; South Carolina – 7.5 percent; and Tennessee – 6.4 percent, all well below the national average participation rate of 33.7 percent.¹¹ Notwithstanding the sorry state of Lifeline participation throughout BellSouth’s territory, BellSouth objects that granting ETC status to TracFone would “create inefficient and artificial competition,” “place undue pressure on the size of the universal service fund” and would “adversely affect[ing] consumers.”¹²

In New York, more than 68 percent of eligible households are not participating in Lifeline. TracFone does not know why a program so important to low income consumers is so underutilized. Perhaps the ETCs currently receiving USF funds and participating in the program, including those ILEC ETCs who have opposed TracFone’s petitions, are not sufficiently advertising the availability of the Lifeline program in areas where it is most needed. Perhaps some eligible consumers would participate if they could obtain affordable wireless service as part of the Lifeline program. What TracFone does know is that it is prepared to aggressively promote the availability of the Lifeline program described above upon grant of its petition for forbearance and approval of its petitions for ETC designation, and that by doing so, it is expected that the level of participation by eligible households in the Lifeline program will increase.

Throughout the comments, opponents of TracFone’s petitions complain vociferously that “resellers” should not be allowed to become ETCs and receive support from the universal service fund. Some object that granting TracFone’s forbearance petition and designating it as an ETC

¹¹ *Id.*

¹² BellSouth comments at 2.

would do nothing other than enable TracFone to increase its profits.¹³ Others complain that the Commission's 1997 determination not to allow resellers to become ETCs – a decision made with specific reference to wireline resellers - should be extended to wireless resellers as well, notwithstanding the incontrovertible fact that wireline resellers (unlike CMRS resellers) enjoy a statutory entitlement (pursuant to Section 251(c)(4) of the Act) to obtain underlying service from incumbent local exchange carriers at government-mandated wholesale rates below retail rates which already are subject to universal service support.¹⁴ Indeed, one commenter opposing TracFone's petitions – Dobson Cellular – disputes TracFone's claim that rates charged to TracFone by smaller independent carriers are often higher than the wholesale rates charged by major providers.¹⁵ All that Dobson needed to do to corroborate the accuracy of TracFone's assertion was to check the wholesale rates which it charges TracFone. Dobson Cellular is keenly aware that it charges TracFone wholesale rates which are considerably higher than the rates which are charged to TracFone by its underlying vendors who provide it service in more populous areas.

Nothing in the opposing comments provide any reasoned justification for denying TracFone's petition for forbearance of the facilities-based requirement of Section 214(e). In its forbearance petition, TracFone addressed each component of the standard for forbearance codified at Section 10(c) of the Communications Act.¹⁶ TracFone will not reiterate its

¹³ See, e.g., comments of BellSouth at 10, comments of Frontier at 3.

¹⁴ Comments of Verizon at 8-9, TCA, Inc. at 3-4. In its petition for designation as an ETC in New York, TracFone identified the five vendors from whom it purchases service for resale in New York (TracFone New York ETC petition at 2). None of TracFone's five underlying vendors in New York is an ETC in New York. More importantly, even if any of those vendors were to become an ETC they would be under no legal obligation to sell service to TracFone at rates which reflect the fact that their service receives universal service support.

¹⁵ Comments of Dobson Cellular at 3.

¹⁶ 47 U.S.C. § 160(c). See TracFone's petition for forbearance at 5-10.

demonstration of compliance with Section 10(c) in these reply comments. However, it is clear that TracFone meets each of the forbearance criteria codified at Section 10 of the Act.

There is, however, a far more compelling reason for the Commission to reject those arguments against its petition for forbearance. TracFone proposes to offer a low cost, flexible wireless service to low income consumers and to promote its availability in a manner which is likely to increase the participation of eligible households in the Lifeline program. Will any of the consumers who will benefit from TracFone's Lifeline service care whether the service is "facilities-based" or "resale?" What matters to those consumers is that this program will bring to those qualifying consumers affordable, convenient, and dependable wireless service. Those eligible consumers who avail themselves of TracFone's Lifeline service will enjoy significant benefits. For example, Lifeline customers who are unemployed and seeking work will enjoy the ability to leave their homes and pursue employment opportunities and meet other responsibilities secure in the knowledge that potential employers will be able to reach them at any time. Furthermore, customers of TracFone's Lifeline program will be able to use their TracFone phones to place emergency calls by dialing 911 at any time. TracFone handsets will allow E-911 calling irrespective of whether the caller is an active customer, and whether the customer has available prepaid minutes. Stated simply, TracFone service really will serve as a "lifeline" for those eligible customers who participate in the program. These are significant benefits of USF-supported inexpensive Lifeline wireless service, and these benefits are no more or no less important depending on whether the underlying carrier is facilities-based or is a reseller.

Several commenters have objected to designation of wireless resellers as ETCs on the basis that resellers do not control network facilities and therefore cannot control or guarantee the quality of their services. This argument is specious for several reasons. First, even network

operators experience network outages, service disruptions, etc. Control of a network does not enable the network operator to ensure the quality of services provided over those networks. Indeed, TracFone's experience has demonstrated to it that as a reseller it is more able to control the quality of its service than are facilities-based carriers. In every market where TracFone purchases service from underlying carriers, it has a choice of vendors from whom to purchase service. Where it encounters unsatisfactory service quality with an underlying vendor TracFone has the ability to move its customers' traffic to other vendors. Where necessary it has utilized that ability to ensure that its customers enjoy high quality, reliable service.

Second, Section 214(e)(1)(A) specifically contemplates ETC status for companies who provide service, in part, by the resale of other carriers' services. Those "partial reseller" ETCs are no more able to control the quality of their resold services than are carriers which are so-called "pure resellers." Yet Congress saw fit to allow partial resellers to qualify as ETCs.

Virgin Mobile, USA, LLC, like TracFone, is a provider of prepaid wireless service. It also operates only as a reseller. Virgin Mobile USA opposes TracFone's petitions out of concerns that designating resellers as ETCs would increase the size of the universal service fund and would result in higher contribution obligations on those carriers which must contribute to support universal service.¹⁷ According to Virgin Mobile USA, this would make prepaid wireless services unaffordable for low income users. Virgin Mobile USA raises an important concern. However, TracFone urges the Commission to recognize first that TracFone's ETC proposal as modified is much more limited than its initial proposal, and therefore will have a more modest impact on the size of the universal service fund than that feared by Virgin Mobile USA and others. Moreover, the purpose of TracFone's ETC proposal is to make prepaid wireless service

¹⁷ Virgin Mobile USA comments at 2.

affordable for low income users. Virgin Mobile USA's concerns about the impact of changes in universal service support on prepaid wireless providers are important. However, those concerns can best be alleviated by refining the current universal service contribution methodology to require revenue-based contributions from all providers of telecommunications, based on all of their interstate telecommunications revenue. Those issues are before the Commission in the Universal Service Contribution Methodology proceeding.¹⁸

Finally, TracFone notes that several commenters have alleged that TracFone has not met the public interest standard for ETC designation established by the Commission in the recent Highland Cellular and Virginia Cellular decisions.¹⁹ In fact, in its New York ETC petition, TracFone addressed each of the public interest factors considered in Highland Cellular and Virginia Cellular and demonstrated that TracFone meets each of those criteria. Specifically, it showed that 1) consumers would benefit from the competitive choices to be provided; 2) that there would be no more than a *de minimis* impact on the universal service fund; 3) that TracFone's offerings provide certain unique advantages to consumers; 4) that it is committed to high service quality and will comply with the Cellular Telecommunications and Internet Association Consumer Code for Wireless Service; and 5) that it will be able to deploy service within a reasonable time.²⁰ Thus, TracFone's ETC petition meets the public interest standard established by the Commission for consideration of applications by wireless providers for ETC designation.

¹⁸ Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, et al, 17 FCC Rcd 24952 (2002).

¹⁹ Virginia Cellular, LLC, FCC 03-338, released January 22, 2004; Highland Cellular, Inc., FCC 04-37, released April 12, 2004.

²⁰ TracFone Petition for Designation as an Eligible Telecommunications Carrier in the State of New York at 11-15.

CONCLUSION

For all of the reasons set forth in these reply comments as well as in TracFone's New York ETC petition and its petition for forbearance, TracFone has demonstrated that its revised ETC proposal to offer Lifeline service would serve the public interest, and would comply with each of the public interest criteria established by the Commission for consideration of ETC petitions, and that it has met the standard for forbearance from application or enforcement of Section 214(e)(1)(A)'s facilities-based requirement, as set forth at Section 10 of the Act. Accordingly, TracFone respectfully urges the Commission to exercise its statutory authority to forbear from application or enforcement of Section 214(e)(1)(A) of the Act, and to promptly grant its petition for designation as an ETC in New York so that TracFone may offer its Lifeline program to eligible New York consumers. TracFone is anxious to make available at the earliest possible time affordable and reliable wireless telecommunications service to millions of low income consumers nationwide eligible to participate in the Lifeline program. Therefore, TracFone requests expeditious consideration of its forbearance petition and its petition to be designated as an ETC.

Respectfully submitted,

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August 9, 2004

CERTIFICATE OF SERVICE

I, Michelle D. Diedrick, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on August 9, 2004, a copy of the foregoing Reply Comments of TracFone Wireless, Inc. was filed with the following:

COPY of the foregoing served via electronic mail to the **FCC's Electronic Comment File Submission** on this 9th day of August, 2004

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