

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

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
TracFone Wireless, Inc.)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the Commonwealth))	
of Virginia)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Florida)	
)	
Petitions for Forbearance from)	
Application of Section 214)	

COMMENTS OF VERIZON¹

Introduction and Summary

TracFone Wireless, Inc. (“TracFone”) has sought to be designated as an eligible telecommunications carrier (“ETC”). However, as a reseller of CMRS services, it concedes that it does not meet the threshold statutory requirement that it offer services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” 47 U.S.C. § 214(e)(1)(A). It asks the Commission to forbear from this statutory

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

requirement, and allow it to become an ETC based on services it provides wholly through resale.²

The Commission should deny TracFone's petitions. The ETC petitions rely entirely on TracFone's petition for forbearance. However, as Verizon has explained in comments opposing the forbearance petition, the Commission should not grant ETC status to TracFone or other pure resellers, especially given the current strain on the federal universal service funds, which will only be exacerbated if pending ETC petitions are granted.³ In addition, just a few years ago, the Commission denied petitions for forbearance on the same issue now raised by TracFone, determining "it is neither in the public interest nor would it promote competitive market conditions to allow resellers" to be designated as ETCs.⁴ That rationale is equally applicable today. If anything, the growing number of pending ETC petitions by wireless carriers, as well as the current pressures that now exist on the size of the universal service fund, present an even stronger reason to deny forbearance on this issue today.

In the face of oppositions to its petition for forbearance, TracFone now has filed amended petitions, seeking to "narrow[] the scope" of its requests and seek ETC status

² See TracFone Petition for Forbearance, CC Docket No. 96-45 (filed June 8, 2004) ("Forbearance Petition"); TracFone Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, at 4-5 (filed July 21, 2004) ("Virginia ETC Petition"); TracFone Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, at 4-5 (filed July 21, 2004) ("Florida ETC Petition");

³ See Comments of Verizon, TracFone Wireless, Inc., Petition for Forbearance, CC Docket No. 96-45, at 2-13 (filed July 26, 2004) ("Verizon Forbearance Comments").

⁴ See *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, ¶ 179 (1997) ("First Universal Service Order").

only for “Lifeline service.”⁵ The Commission also should deny the amended petitions. The statute does not permit ETCs to pick and choose the universal service supported services they will provide customers, and the Commission recently denied a similar petition from AT&T.⁶

Argument

I. The Commission Should Deny TracFone’s Petitions for ETC Status

Both as a condition for forbearance, and as part of the ETC criteria, TracFone has the burden to prove that it would be in the public interest to grant its petitions.⁷

TracFone’s petitions for ETC status rely entirely on the Commission’s willingness to forbear from the statutory requirement that an ETC provide services using its own facilities, or a combination of its own facilities and resale from another. However, as Verizon has explained in opposition to the petition for forbearance, the Commission should not grant ETC status to pure resellers.⁸ The purpose of universal service support is to ensure that there is sufficient investment in infrastructure in high-cost areas so that customers can receive access to quality telecommunications services at rates that are

⁵ TracFone Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45 (filed Aug. 16, 2004) (“Amended Virginia ETC Petition”); TracFone Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed Aug. 16, 2004) (“Amended Florida ETC Petition”).

⁶ See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, ¶ 54 (2004) (“*Lifeline Order*”).

⁷ See 47 U.S.C. § 160(a)(3); 47 U.S.C. § 214(e)(6). See also *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563, ¶ 26 (2004) (“*Virginia Cellular Order*”) (“In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant.”).

⁸ Verizon Forbearance Comments, at 2-13.

reasonably comparable to rates charged in urban areas. *See* 47 U.S.C. § 254.⁹ Providing universal service subsidies to non-facilities based providers does nothing to further those goals. In fact, because pure resellers such as TracFone do not have their own facilities, it is unclear whether they would even be able to comply with the statutory requirement that “[a] carrier that receives [ETC-designated universal service support] shall use that support only for the provision, maintenance, and upgrading of *facilities* and services for which the support is intended,” 47 U.S.C. § 254(e) (emphasis added). Moreover, TracFone’s petition for forbearance raises the same potential for “double recovery” of universal service funds that the Commission noted when denying similar requests to forbear from the facilities-based requirement of the ETC statute.¹⁰

In addition, the facts in TracFone’s petitions do not demonstrate that it would be in the public interest to grant its petitions in this instance. The Commission has noted that the public interest test “is a fact-specific exercise,” that weighs a number of different factors. *Id.*, ¶ 28.¹¹ In determining whether the public interest standard has been met, “the Commission places the burden of proof upon the ETC applicant.” *Virginia Cellular Order*, ¶ 26. However, all the evidence available demonstrates that it would be *against*

⁹ *See also Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 19 FCC Rcd 10805, ¶ 74 (2004) (Joint Board Recommended Decision noting that, “High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages . . . designating an excessive number of ETCs could dilute the amount of support available to each ETC to the point that each carrier’s ability to provide universal service might be jeopardized”).

¹⁰ *See Verizon Forbearance Comments*, at 7-13; *First Universal Service Order* at ¶ 179.

¹¹ Although the Commission noted this in the context of the public interest standard required for rural areas, the same factors must be considered in the non-rural public interest analysis. *See Verizon Comments*, CC Docket No. 96-45, at 16 (filed June 21, 2004).

the public interest to grant the petition, since it would lead to higher universal service charges to all consumers, and no competitive benefits.¹²

TracFone already states that the prices for its services are “affordable,” and are the same nationwide, regardless of whether the service is offered in rural, high-cost areas, or urban, low-cost areas. *See, e.g., Virginia ETC Petition*, at 2; *Florida ETC Petition*, at 2. Specifically, TracFone argues that its contracts with CMRS carriers allow it to “offer services wherever any of those providers offer service in the United States,” at “rates [that] are the same everywhere.” *Forbearance Petition*, at 3. In other words, “TracFone service is priced no higher in Jasper (Hamilton County), Florida than it is in Miami, Florida.” *Florida ETC Petition*, at 2; *see also Virginia ETC Petition*, at 2 (stating that prices for TracFone service are no higher in Staunton, Virginia than Richmond, Virginia). Moreover, TracFone emphasizes the already “affordable” service it provides to consumers. *Virginia ETC Petition*, at 12; *Florida ETC Petition*, at 12. Thus, unlike providers that use universal service support for its intended purposes – such as to build the facilities necessary to provide service in high-cost areas at rates that are reasonably comparable to other areas of the country – TracFone would be able to use the universal service subsidies to decrease its already admittedly “affordable” rates.

TracFone also states that its services consist solely of resale of other CMRS carrier services. *Virginia ETC Petition*, at 4-5; *Florida ETC Petition*, at 4-5. Thus, any place where TracFone is able to provide service presumably *already* is being served by at

¹² The Commission identified several factors to be considered in determining whether designating another ETC in a particular area would be in the public interest, including the benefits of increased competition, and the impact that designation would have on the size of the universal service fund. *See Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 6422, ¶ 22 (2004) (“Highland Cellular Order”).

least one other wireless carrier – the carrier that is selling use of its network to TracFone, at wholesale prices. Given that customers in these areas *already* have access to at least one wireline and one wireless service offering, and that TracFone’s rates in high cost areas already are “affordable,” providing universal service support to TracFone would not incent additional “competition.”

TracFone also does not make any estimate of the impact that its ETC designation would have on the universal service fund. Rather, it simply asserts that it believes that its share of the universal service pie would be “negligible” and “de minimis.” Virginia ETC Petition, at 12; Florida ETC Petition, at 12. This bare prediction does not meet even the minimum of evidentiary requirements. Moreover, it is contrary to the facts. Based on the same analysis the Commission has used in the *Highland Cellular* and *Virginia Cellular* orders, it appears that approximately \$164 million in universal service funding is at issue in Virginia and Florida.¹³

Moreover, almost all carriers petitioning for ETC status assert that grant of their individual ETC petitions will have only “negligible” impact on the size of the universal service fund. *See, e.g.,* U.S. Cellular (“USCOC”) Virginia Petition, at 11 (filed April 13,

¹³ Using current universal service totals, Verizon calculates that if TracFone’s petitions were granted, and every customer in Virginia and Florida were to receive a subsidy for one wireline and one wireless phone, the impact to the fund could be as much as \$78.5 million per year Virginia (\$28 million of which is rural, \$50.4 non-rural) and an additional \$86 million per year in Florida (\$46.6 million rural, \$39.4 million non-rural) *See* Attachment B. Verizon has used the same assumptions used by the Commission in the Virginia Cellular Order and the Highland Cellular Order in calculating this estimate. *See Virginia Cellular Order*, ¶ 31 n.96; *Highland Cellular Order*, ¶ 25 n.73. Moreover, TracFone is seeking support in New York, which similar estimates show could impact the fund by an additional \$53,492,375 per year (\$43,694,951 of which is rural support and \$9,797,424 in non-rural support). *See* Verizon Comments, TracFone Petition for Designation in New York, CC Docket No. 96-45, at Attachment B (filed July 26, 2004). It also has stated that it “plans to seek ETC designation in additional states.” Amended Virginia ETC Petition, at 2 n.2.

2004). However, the cumulative effect that would occur to the fund if the FCC and various state commissions were to grant all pending and future ETC petitions would add up to hundreds of millions of dollars. *See Verizon Comments*, CC Docket No. 96-45, at 2 (filed June 21, 2004).

II. Because TracFone Does Not Use Its Own Facilities, It Cannot Guarantee That Minimum ETC Standards Will Be Met

Because TracFone is a reseller of services provided by other carriers, it relies entirely on their networks, and it cannot provide the Commission with basic information about its services, or ensure that it would be able to satisfy (and maintain) the basic standards for granting ETC status. For example, regarding its service quality, TracFone can only represent that its “service is of the same quality and reliability as that of its underlying vendors,” without any indication of what quality of service those underlying vendors are providing, or will continue to provide. Virginia ETC Petition, at 13; Florida ETC Petition, at 12-13. Similarly, regarding its provision of 911 services, TracFone states that it provides basic 911, but provides enhanced 911 (“E911”) only “to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP.”¹⁴ It gives no indication of which of its underlying wholesale providers give it the ability to provide E911 capability.

TracFone’s inability to ensure that it will be able to comply with any minimum ETC standards constitutes another, independent reason for denying its petition for ETC status.

¹⁴ Virginia ETC Petition, at 6-7 (quoting *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, ¶ 91 (2003)); Florida ETC Petition, at 6-7 (same).

III. The Commission Should Not Adopt TracFone’s Proposed “Amendments” to Provide Only Lifeline Support, But Not Other Universal Service Support, to Customers

Responding to commenters’ oppositions to TracFone’s petition for forbearance, TracFone has sought to amend its ETC petitions to seek only Lifeline support. Amended Virginia ETC Petition, at 1-2; Amended Florida ETC Petition, at 1-2. The Commission should also deny the amended petitions.

The Commission already has rejected suggestions that some carriers be able to provide only Lifeline support (but not support provided under other universal service programs) to their customers. *See Lifeline Order*, ¶ 54. Allowing a carrier to pick and choose the portions of universal service obligations that it wishes to satisfy cannot be reconciled with Section 214(e), which allows universal service support to go only to those carriers who undertake the obligations necessary to provide basic services to *all* customers. *See* 47 U.S.C. § 214(e). The statute makes no provision for making carriers ETCs for some purposes but not others, or for carving out pockets of support into different buckets.

Second, there is no policy justification for allowing a carrier that does not agree to undertake the entire ETC obligations to recover from the universal service fund. As an initial matter, there would be significant administrative burdens to federal and state regulators if there existed separate requirements for, and certifications of, “High Cost ETCs” and “Lifeline ETCs.” And, more importantly, as the Commission reasoned when denying a similar petition from another carrier, “[e]xtending Lifeline/Link-Up universal service support to carriers that do not satisfy the requirements for designation as an ETC could also serve as a disincentive for other carriers to comply with their ETC

obligations.” *Lifeline Order*, ¶ 54. If the Commission were to allow carriers to become ETCs for some purposes but not others, and such carriers could choose to comply with the lower threshold ETC obligations, denying customers the benefit of a full ETC provider. Moreover, Lifeline/Link-Up customers are only allowed to receive support for one line.¹⁵ The Commission also is considering proposals to limit high cost support to only one primary line per customer.¹⁶ Granting TracFone’s request would mean that customers soon might have to face the choice of receiving Lifeline support from one carrier, or high cost support from another, but not both supported services from one ETC. The Commission has rejected such requests in the past, and it should do so again.

The only argument TracFone makes for allowing it to provide solely Lifeline supported services is the assertion that many of its customers are “low income consumers,” many of which are ones that “other wireless carriers do not want to serve.”¹⁷ TracFone offers no evidence to support these bare conclusions. Moreover, the fact is that all carriers that become ETCs – including “other wireless carriers” – have an obligation to advertise and serve *all* customers in their designated service areas, not just those that

¹⁵ See *Federal-State Joint Board on Universal Service*, Recommended Decision, 18 FCC Rcd 6589, ¶ 4 (2003); 47 CFR § 54.411(a)(1). TracFone’s petitions do not state how it would ensure that its customers would not receive Lifeline service for more than one line.

¹⁶ See *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 19 FCC Fcd 10805, ¶ 3 (2004).

¹⁷ Amended Virginia ETC Petition, at 2; Amended Florida ETC Petition, at 2.

they “want to serve.”¹⁸ Regardless, TracFone’s arguments do not provide sufficient reason for the Commission to change its policies regarding ETC designations.

Conclusion

The Commission should deny TracFone’s petition for forbearance and petition for ETC designation in Virginia and Florida.

Respectfully submitted,



Ann H. Rakestraw
Verizon
1515 North Court House
Road
Suite 500
Arlington, VA 22201
703.351.3174

Michael E. Glover
Edward Shakin
Of Counsel

August 23, 2004

¹⁸ See 47 U.S.C. § 214(e); see also 47 C.F.R. § 54.405 (all ETCs must make available Lifeline service to qualifying low-income consumers, and advertise its availability).

ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

ATTACHMENT B

State	SAC	Study Area Name	Rural	Total High Cost	
				Quarterly	Annual
VA	190217	AMELIA TEL. CORP.	R	\$300,670	\$1,202,678
VA	190219	BUGGS ISLAND TEL. COOP.	R	\$158,259	\$633,036
VA	190220	BURKE'S GARDEN TEL. CO., INC.	R	\$17,912	\$71,647
VA	190225	CITIZENS TEL. COOP.-VA	R	\$252,506	\$1,010,023
VA	190226	NTELOS, INC.	R	\$634,302	\$2,537,208
VA	190233	VERIZON SOUTH INC.-VA (CONTEL)	N	\$9,698,412	\$38,793,648
VA	190236	NORTH RIVER TEL. COOP.	R	\$51,619	\$206,476
VA	190237	HIGHLAND TEL. COOP.-VA	R	\$92,726	\$370,903
VA	190238	MOUNTAIN GROVE-WILLIAMSVILLE TEL. CO.	R	\$137,427	\$549,707
VA	190239	NEW HOPE TEL. CO.-VA	R	\$47,770	\$191,078
VA	190243	PEMBROKE TEL. COOP.	R	\$108,494	\$433,976
VA	190244	PEOPLES MUTUAL TEL. CO.-VA	R	\$418,943	\$1,675,771
VA	190248	SCOTT COUNTY TEL. COOP. INC.	R	\$323,855	\$1,295,421
VA	190249	ROANOKE & BOTETOURT TEL. CO.	R	\$695,842	\$2,783,368
VA	190250	SHENANDOAH TEL. CO.	R	\$505,434	\$2,021,736
VA	190253	VIRGINIA TEL. CO.	R	\$116,871	\$467,484
VA	190254	CENTRAL TEL. CO. OF VA	R	\$2,313,073	\$9,252,291
VA	190479	VERIZON SOUTH INC.- VA	R	\$371,322	\$1,485,288
VA	190567	UNITED INTER-MOUNTAIN TEL. CO.-VA	R	\$346,962	\$1,387,848
VA	193029	NEW CASTLE TEL. CO.	R	\$126,239	\$504,956
VA	195040	VERIZON VIRGINIA INC.	N	\$2,920,626	\$11,682,504
Totals:				\$19,639,262	\$78,557,047

Data was obtained from Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2004, Appendix HC1 (USAC)

ATTACHMENT B

State	SAC	Study Area Name	Rural	Total High Cost	
				Quarterly	Annual
FL	210291	GTC, INC.	R	\$259,722	\$1,038,888
FL	210318	FRONTIER COMM. OF THE SOUTH-FL	R	\$95,280	\$381,122
FL	210328	VERIZON FLORIDA INC.	N	\$7,285,605	\$29,142,420
FL	210329	GTC, INC.	R	\$304,165	\$1,216,659
FL	210330	SMART CITY TELECOMMUNICATIONS LLC DBA SM.CITY	R	\$2,444,068	\$9,776,270
FL	210331	ITS TELECOMMUNICATIONS SYSTEMS, INC.	R	\$326,845	\$1,307,381
FL	210335	NORTHEAST FLORIDA TEL. CO., INC.	R	\$631,631	\$2,526,524
FL	210336	ALLTEL FLORIDA, INC.	R	\$223,032	\$892,128
FL	210338	QUINCY TEL. CO.-FL DIV.	R	\$398,926	\$1,595,706
FL	210339	GTC, INC.	R	\$1,929,612	\$7,718,447
FL	210341	SPRINT-FLORIDA, INCORPORATED	R	\$5,042,943	\$20,171,772
FL	215191	SOUTHERN BELL-FL	N	\$2,558,895	\$10,235,580
Totals:				\$21,500,724	\$86,002,897

Data was obtained from Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2004, Appendix HC1 (USAC)