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

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| In the Matter of | ) | |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | |
| | ) | CC Docket No. 96-45 |
| TracFone Wireless, Inc. | ) | |
| | ) | |
| Petitions for Designation as an | ) | |
| Eligible Telecommunications | ) | |
| Carriers in the State of Florida and | ) | |
| Commonwealth of Virginia | ) | |

# REPLY COMMENTS OF TRACFONE WIRELESS, INC.


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## SUMMARY

In these reply comments, TracFone responds to comments filed concerning its requests for designation as an Eligible Telecommunications Carrier in Florida and Virginia, as amended. TracFone meets the criteria for ETC designation, with the exception of the facilities-based requirement about which TracFone has sought forbearance from the Commission. As explained in the ETC Petitions, there is no need for TracFone to offer a toll limitation feature to qualifying low-income customers because toll limitation is inherent in TracFone's plan.

Service to low income users is an important aspect of TracFone's prepaid wireless service. 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. Although TracFone will not seek access to high cost funds from the Universal Service Fund., TracFone does not intend to avoid any of the legal requirements for designation as an ETC nor any of the recordkeeping requirements established by the Commission or USAC. TracFone does not claim that there should be separate eligibility criteria for Lifeline as compared to high cost support.

TracFone recognizes that the commenters who have opposed TracFone's ETC petitions have articulated a concern about upward pressure on the size of the Universal Service Fund. While TracFone shares those concerns, TracFone also notes that one of the public interest objectives of the federal Universal Service program is to make affordable telephone service available to low income Americans living in all areas of the country. Contrary to BellSouth and Verizon's assertions, the purpose of universal service is not limited to providing service in high cost areas at rates comparable to the rates available elsewhere.

TracFone's prepaid wireless service to be offered pursuant to the Lifeline program supports and advances the public interest. 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. Moreover, 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 Florida, only 13.5 percent of eligible customers participate; in Virginia, only 6.6 percent of eligible customers participate; and nationally, the participation level is only 33.7 percent.

TracFone's service option will be affordable and attractive to low income individuals and TracFone expects that the availability of its service option will increase utilization of the important federal Lifeline program. TracFone's expectations comport with the essential purpose of the Universal Service low income program, i.e., to provide affordable service to low income individuals. Given the extremely low Lifeline participation rates in both Florida and Virginia, even if TracFone were able to double Lifeline participation rates those states, the impact on the Universal Service Fund would be negligible.

TracFone's decision to confine its request for support from the Universal Service Fund to the Lifeline program limits the potential impact on the fund. The impact on the Universal Service Fund by carriers only seeking low income support is relatively less than the impact caused by carriers who seek both low income and high cost support. Thus, Verizon's reliance on high cost support data to show the potential impact on the universal service fund if TracFone was designated as an ETC is irrelevant and misleading.

TracFone has met each of the public interest criteria for ETC designation articulated in the Commission's recent Highland Cellular and Virginia Cellular decisions. TracFone 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 August 23, 2004 in response to TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida and TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia ("ETC Petitions").[1]

## INTRODUCTION

TracFone's ETC petitions for Virginia and Florida reference TracFone's Petition for Forbearance, filed June 8, 2004. In its forbearance petition, TracFone requests that the

[1] On August 23, 2004, TDS Telecommunications Corp. ("TDS") filed an ex parte letter concerning TracFone's Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and Petition for Forbearance. The issues raised by TDS in the ex parte letter are similar to the issues raised in the Comments of TDS Telecommunications Corp. regarding TracFone's Florida and Virginia ETC Petitions, filed August 23, 2004. TracFone's instant Reply Comments also constitute its response to TDS's ex parte letter. In addition to TDS, comments in opposition to TracFone's Florida and Virginia ETC petitions were filed by Verizon and BellSouth. Supporting comments were filed by the National Consumers League ("NCL") and the League of United Latin American Citizens ("LULAC").

Commission exercise its authority under Section 10 of the Communications Act[2] to forbear from applying or enforcing the requirement contained at Section 214(e)(1)(A) of the Act[3] 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. In its forbearance petition, TracFone provided a detailed explanation as to why its forbearance request satisfies each of the standards for forbearance which are codified at Section 10 of the Act. In its reply comments filed on August 9, TracFone responded specifically to criticisms of its forbearance proposal. As described in these reply comments, TracFone otherwise meets the criteria for designation as an ETC in Florida and Virginia, and therefore, the Commission should grant the ETC Petitions.

Before addressing the substantive matters raised in the initial comments, TracFone wishes to address a fundamental point. Each of the commenters who have opposed TracFone's ETC petitions have articulated a concern about the size of the Universal Service Fund and have admonished the Commission not to grant additional ETC petitions which would place further upward pressure on the fund size. TracFone shares those concerns about the size of the USF and about the potential for increases in carrier contribution levels absent efforts to control the growth of the fund. However, those concerns must be placed in a proper context. Congress sought to achieve several important public interest objectives in enacting the legislative provisions which led to the federal Universal Service program. Among those important objectives was to make affordable telecommunications service available to all Americans, including low income consumers. The Lifeline program developed by TracFone is intended to advance that objective. TracFone does not seek an economic windfall, nor does it seek federal subsidy moneys in order

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[2] 47 U.S.C. § 160.

[3] 47 U.S.C. § 214(e)(1)(A).

to compete. It seeks to use federal Universal Service support for only one reason: to offer a subsidized, inexpensive wireless telecommunications service to eligible Lifeline customers so that all consumers, including low income consumers, can have access to the safety and security benefits as well as the convenience of wireless telecommunications.

## I. TRACFONE MEETS THE CRITERIA FOR DESIGNATION AS AN ETC

On August 16, 2004, TracFone amended its ETC Petitions for Florida and Virginia to reflect the fact that TracFone seeks ETC designation solely to enable it to offer Lifeline service to eligible low income consumers. Thus, TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. By stating that it will not seek distributions under the universal service high cost program if designated as an ETC, TracFone is not attempting to avoid any of the legal requirements applicable to ETCs. Rather, TracFone is proposing to limit its role as an ETC to providing needed wireless telecommunications service to a portion of the consuming public to whom wireless service is otherwise either unavailable or, if available, unaffordable – low income consumers who meet the Commission's eligibility criteria for participation in the Lifeline program. Moreover, by limiting its use of universal service support to provide a needed Lifeline service, TracFone will reduce the amount of support which it receives from the Universal Service Fund which will thereby limit growth of the fund.

Verizon and TDS incorrectly state that TracFone's proposal seeks to draw low income funds from the Universal Service Fund without satisfying the statutory requirements for ETCs serving high cost areas.[4] Verizon and TDS claim that the Commission denied a similar proposal

[4] Comments of Verizon, at 2-3; Comments of TDS on Florida petition, at 3-4; Comments of TDS on Virginia petition, at 3-4.

by AT&T in its recent Report and Order on Lifeline and Link-Up.[5] In that Order, the Commission stated that the Joint Board had recommended that the Commission "decline to establish rules that would provide Lifeline/Link-Up support directly to carriers that are not ETCs" and that "[c]ontrary to AT&T's assertion, establishing such rules would be inconsistent with section 254(e), which states that only ETCs may receive universal service support."[6] While AT&T has claimed in a petition for reconsideration that the Commission misconstrued its request, whether or not that is so is irrelevant to TracFone's limitation of the scope of its request to funds from the Universal Service Fund for low income support. TracFone's ETC petitions, as amended, demonstrate that TracFone intends to, and does, meet all requirements to be designated as an ETC (except for the "facilities-based requirement of Section 214(e) for which it has petitioned for forbearance). TracFone has never claimed that there should be separate eligibility criteria for Lifeline than for high cost support. Moreover, TracFone has not suggested in its ETC petitions, as amended, that any ETC requirement should not be applicable to TracFone because it is solely seeking low income support from the Universal Service Fund. TracFone is merely disclosing to the Commission that it will utilize its ETC status only to provide Lifeline service to qualified low income consumers. In that regard, TracFone has indicated that would be willing to accept an ETC designation specifically conditioned on TracFone using universal service funds only to provide support for its Lifeline program.[7]

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[5] See Lifeline and Link-Up, *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 03-109, FCC 04-87 (April 29, 2004) ("Lifeline Order").

[6] Lifeline Order, ¶ 54.

[7] See Public Notice – The Wireline Competition Bureau Seeks Comment on Petitions Concerning Eligible Telecommunications Designations and the Lifeline and Link-Up Universal Service Support Mechanism, DA 04-2750, released August 30, 2004. By that public notice, the Wireline Competition Bureau seeks comment both on AT&T's petition for reconsideration of the Lifeline Order so as to establish separate ETC certification procedures for carriers wishing to receive only low-income support, and TracFone's amended ETC petitions which propose to use its ETC status only to provide Lifeline service. TracFone plans to comment in response to that

Furthermore, TracFone's decision to limit its request for support from the Universal Service Fund to the Lifeline program will not, as claimed by TDS, place new burdens on the Universal Service Fund. Indeed, carriers that comply with the requirements for ETC designation, but only seek low income support, will not significantly increase the class of carriers eligible for support. In contrast, the impact on the Universal Service Fund by those carriers will be relatively less than the impact caused by carriers who seek both low income and high cost support.

Verizon's analysis of the potential impact on the universal service fund if TracFone was designated as an ETC is irrelevant and misleading.[8] First, Verizon's analysis is based high cost support. TracFone has unambiguously stated that if its ETC petitions were granted it would not seek high cost support from the Universal Service Fund; TracFone would solely seek low income support for its Lifeline service. Verizon's reliance on high cost support data grossly overstates the potential impact on the Universal Service Fund if TracFone were granted ETC status. In 2003, disbursements for high cost support represented over 58 percent of total disbursements from the Universal Service Fund, while disbursements for Lifeline support represented only 12 percent of total disbursements from the Universal Service Fund.[9] Second, Verizon assumes that every customer in Florida and Virginia would receive a subsidy if TracFone's ETC Petitions are granted. In fact, TracFone would only receive universal service support for each TracFone customer line that qualifies for Lifeline service -- just as Verizon receives when its qualified Lifeline customers elect to participate in the Lifeline program. Given the extremely low Lifeline

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public notice. However, as described in its amendments and in these reply comments, the Commission has ample authority under the Act and its rules to appropriately condition an ETC designation so as to limit it to low income support.

[8] Comments of Verizon, at 6 & n.13.

[9] See Universal Service Administrative Company 2003 Annual Report, Appendix B.

participation rates in both Florida and Virginia, even if TracFone were able to double Lifeline participation rates those states, the impact on the Universal Service Fund would be negligible. Moreover, the to extent that TracFone's designation as an ETC did increase the size of the fund, it would only do so by the amount of money which would be used for the specific purpose of providing TracFone's Lifeline service. Since available and affordable telecommunications service to low income consumers is a critical aspect of the federal universal service program, an increase in the fund size to achieve that goal hardly can be viewed as a reason to deny TracFone's ETC petitions.

As noted by BellSouth, one way for the Commission to address any concern about increasing the size of the Universal Service Fund is to expand the pool of providers required to contribute to the Universal Service Fund.[10] TracFone consistently has supported broadening the base of contributors to the Universal Service Fund to include all who derive revenues from the provision of interstate telecommunications.

TDS's stated objection that TracFone's customers would not have access to a toll limitation service is unfounded and wholly irrelevant to TracFone's qualifications for ETC designation. As explained in the ETC Petitions, there is no need for TracFone to offer a toll limitation feature to qualifying low-income customers because toll limitation is inherent in TracFone's plan. Moreover, unlike TDS's Quincy Telephone Company and other traditional wireline providers, TracFone does not impose separate charges for toll calls. With TracFone service "a minute is a minute" whether the call is between Arlington, Virginia and Richmond, Virginia, or between Arlington, Virginia and Richmond, California. TracFone's service is a prepaid service; no customers will be disconnected for failure to pay toll charges. TDS claims that TracFone "cannot give its customers the opportunity to ensure that toll usage does not

[10] Comments of BellSouth, at 6-7.

interfere with access to local services" and therefore, cannot be designated as an ETC.[11] TDS postulates the inherently improbable circumstance that some consumers purchasing TracFone's prepaid service might use their allotted minutes for long distance calls and will have no minutes left for local calls (*i.e.*, to connect them to the public network). This suggestion overlooks the fact that under TracFone's prepaid plan consumers have the ability to control or limit their charges for toll service (as well as local service) in a manner that customers of traditional post-paid (billed in arrears) services do not – by only purchasing the amount of service they can afford. TDS's objection seems to be with the prepaid nature of TracFone's plan rather than with the fact that TracFone is a wireless reseller or with any other aspect of its ETC qualifications. However, there is no legal requirement that ETCs provide their services on a post-paid basis, nor should there be such a requirement as prepaid services such as those offered by TracFone enable low income consumers to obtain affordable wireless telecommunications services in a manner not available from traditional post-paid carriers.

Another "red herring" objection raised by BellSouth is that TracFone will be unable to comply with Commission record keeping requirements as well as those of the Universal Service Administrative Company which require that a Lifeline customer's address must be its primary residence.[12] TracFone further notes that in addition to meeting the eligibility criteria for ETC designation, upon grant of ETC status, TracFone is fully capable of fulfilling all recordkeeping requirements established by the Universal Service Administrative Company ("USAC"), including the tracking of each consumer's primary residence. Had TDS bothered to inquire about how TracFone provides service before filing its opposition, it would have learned that every TracFone customer must provide a primary residence address at the time of purchase to

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[11] Comments of TDS on Florida petition, at 6-8; Comments of TDS on Virginia petition at 6-8.

[12] Comments of BellSouth, at 13.

receive service. In this regard, TracFone is no different than any other wireless provider. Thus, TracFone is no less able to identify the primary residence of each of its customers than is any other ETC.

## II. TRACFONE'S LIFELINE PROGRAM WILL SERVE THE PUBLIC INTEREST

### A. TracFone's Lifeline Program Will Offer Affordable Wireless Service to Qualifying Consumers in Florida and Virginia or In Any Other State Where it is Designated an ETC

Commenters in this proceeding have noted that wireless telephone service is an essential part of modern life and that traditional wireless service plans are not feasible for the low-income individuals. As noted by the NCL:

> Prepaid wireless service is a good option for low-income consumers because there are no long-term contracts, no credit checks, and no early termination penalties or late payment fees. With prepaid service, people pay only for the service that they can afford.[13]

Similarly, LULAC states:

> In today's rapidly evolving telecommunications marketplace, having a wireless phone is no longer a luxury. . . . Job seekers must have a means of being reached to schedule interviews; employers expect to be able to reach their employees on demand; in an emergency, help can be sought immediately.[14]

LULAC specifically endorses TracFone's ETC proposal stating as follows: "TracFone . . . provides a unique prepaid service ideally suited for low income and low volume users who might not otherwise have access to this technology."[15]

TracFone concurs with the views of NCL and LULAC and it recognizes the increasing importance of available and affordable wireless service to consumers of all income levels.

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[13] Comments of NCL, at 1.

[14] Comments of LULAC, at 2.

[15] Id.

Indeed it is for that reason that TracFone has sought designation as an ETC and has developed a special pricing plan for Lifeline subscribers. According to a recent Census Bureau report, the number of Americans living in poverty has increased by 1.3 million, to 35.9 million.[16] With the portion of the population living at or below the poverty level increasing, there is a heightened need for widely-available Lifeline programs to assure that all Americans, including those living at or below the poverty level, are able to obtain affordable telecommunications service, including wireless service. Contrary to the assertions of BellSouth and Verizon that the only purpose for the federal Universal Service program is to provide service in high cost areas at rates comparable to the rates available elsewhere,[17] availability of affordable service in all areas for low income Americans through the Lifeline program also is an important purpose of universal service.[18] For these reasons TracFone 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

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[16] Reuters, *Poverty Spreads* (Aug. 26, 2004), *available at*: http://money.cnn.com/2004/08/26/news/economy/poverty_survey/.

[17] Comments of Verizon, at 3, Comments of BellSouth, at 7-8.

[18] See, *e.g.*, Conference Agreement on the Telecommunications Act of 1996, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 130 at 131 ("New Section 254(b) combines the principles found in both the Senate bill and House amendment, with the addition of 'insular areas' . . . and 'low income consumers' to the list of consumers to whom access to telecommunications and information services should be afforded.") (emphasis added).

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.

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 does not offer LinkUp services to customers because such services are unnecessary. LinkUp support reimburses local service providers for providing discounted home telephone service connections. TracFone does not charge customers for service connections, and therefore, there is no need to offer LinkUp services.

TDS objects that TracFone's Lifeline rate would be more expensive than the wireline Lifeline service offered by its Quincy Telephone affiliate.[19] TDS's comparison of its own wireline rates to TracFone's prepaid wireless rates ignores the intrinsic benefits of wireless service to low income individuals described above.[20] Whether or not TracFone's wireless Lifeline service is less expensive, equal to, or more expensive than Quincy's or any other wireline ETC's Lifeline service is not relevant to TracFone's ETC petition. Wireline and wireless services are different. They are priced differently; they offer consumers different features and different benefits. For some Lifeline-eligible low income consumers, the Lifeline service to be offered by TracFone will meet their needs in a way that wireline service does not

[19] Comments of TDS on Florida petition, at 10.

[20] TDS Comments on TracFone's ETC Petition for Florida, at 10.

meet their needs. Those consumers may be willing to use purchase a Lifeline wireless service even if it is more expensive. That choice should be made by consumers – not by TDS.

TracFone's proposed Lifeline rate will be 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 per month, the average price per minute paid by customers was $0.13; for monthly 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. In addition, those plans require that consumers meet rigorous credit standards -- standards which often cannot be met by Lifeline-eligible consumers. 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. However, 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 feature-rich 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, no credit check requirements, and no expiration of purchased minutes for at least one year. This service will be available in New York, Florida, Virginia and in any other state where TracFone is awarded ETC status.

Verizon incorrectly posits that "TracFone would be able to use the universal service subsidies to decrease its already admittedly 'affordable' rates" and that such action is not consistent with the intended purpose of the universal service fund.[21] Verizon's unsupported assertion that TracFone plans to use universal service support to lower its rates across the board for competitive purposes is simply incorrect and, more importantly, reflects a total disregard for the purposes of universal service. Verizon fails to recognize that an essential purpose of the Universal Service low income program is to provide affordable service to low income individuals. That is precisely what TracFone is committed to doing if it is designated as an ETC. TracFone will appropriately use the universal service support it receives as an ETC to make its service more affordable to those who need it most, *i.e.*, low income consumers. Moreover, Verizon's view that providing universal service support to TracFone would not incent competition because wireless and wireline competition already exists, misses the purpose for TracFone seeking ETC status.[22] TracFone's ETC petitions are not aimed at increasing competition in particular areas; nor are they intended to enhance TracFone's competitive position in the marketplace. They are focused on offering Lifeline services to low income consumers.

### B. Other Criticisms of TracFone's ETC Proposal Leveled by Opponents do not Warrant Denial Either of TracFone's Applications for ETC Designation in Florida or Virginia 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.[23] 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

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[21] Comments of Verizon, at 5.

[22] Comments of Verizon, at 6; Comments of BellSouth, at 4-5.

[23] See Comments of NCL and LULAC.

some cases, frivolous.[24] 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 13.5 percent of households eligible for Lifeline in Florida participate in the Lifeline program. For Virginia, the percentage of eligible households participating in Lifeline is even lower -- only 6.6 percent. Nationally, only 33.7 percent of eligible households participate in Lifeline.[25]

In this regard, BellSouth's strident opposition to TracFone's ETC petitions is especially disturbing. According to Commission-compiled data, the Lifeline participation rates among households eligible for the Lifeline programs in the nine 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.[26] 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," would "place undue pressure on the size of the universal service fund" and would "adversely affect[ing] consumers.[27]

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[24] Those opposing TracFone's petitions include incumbent local exchange carriers, *e.g.*, Verizon, BellSouth, and TDS.

[25] 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).

[26] Id.

[27] Comments of BellSouth, at 2-3.

In Florida, more than 86 percent of eligible households are not participating in Lifeline and in Virginia, more than 93 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, such as Verizon, BellSouth and TDS[28] who have opposed TracFone's petitions, are not sufficiently advertising the availability of the Lifeline program in areas where it is most needed as they are specifically required to do by Section 214(e)(1)(B) of the Act. Perhaps some eligible consumers perceive greater needs for affordable wireless service than for wireline service and would participate in Lifeline if they could obtain affordable wireless service as part of the Lifeline program. The current immense underutilization of Lifeline services by eligible consumers could indicate that eligible consumers are not satisfied with the Lifeline services currently being offered by carriers, including those who have opposed TracFone's petitions. Eligible consumers may decide that a prepaid wireless service such as that offered by TracFone is their best choice for a Lifeline service. What TracFone does know is that it is prepared to aggressively promote the availability of its 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 expects 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. Commenters object that granting TracFone's forbearance petition and designating it as an ETC would do nothing other than enable TracFone to increase its profits.[29] Furthermore,

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[28] TDS is the corporate parent of Quincy Telephone Company, a Florida ILEC.

[29] See Comments of BellSouth, at 5-7.

commenters complain that the Commission's 1997 determination not to allow resellers to become ETCs – a decision made with specific reference only 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.[30] TracFone purchases service for resale more than 30 underlying vendors. Few, if any of those vendors, are designated ETCs in states where TracFone purchases service from them. Each contractual arrangement between TracFone and an underlying carrier is the result of an arm's length negotiation based on market conditions. TracFone is not aware of any situation in which it has received more favorable pricing as a result of any vendor receiving universal service support as an ETC. The assertion that TracFone ever has benefited in the form of subsidized wholesale prices from any vendor based on the vendor's ETC status is unsupported and unsupportable.

Commenters repeat arguments previously made in opposition to TracFone's Petition for Forbearance. 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.[31] TracFone will not reiterate its 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.

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[30] See Comments of BellSouth, at 5-7; Comments of Verizon, at 2.

[31] 47 U.S.C. § 160(c); see TracFone's Petition for Forbearance, at 5-10.

TracFone further notes that contrary to the commenters' positions, the purpose of universal service support is not solely to ensure that there is sufficient investment in infrastructure in high cost areas.[32] The very existence of the low income program, as well as the other universal service programs, demonstrates that infrastructure investment is only one of several goals of the universal service program. In addition, BellSouth improperly relies on a statement by Chairman Powell that one of Congress's goals is to promote facilities-based competition to support its position that pure resellers should not be designated as ETCs.[33] Chairman Powell's statement was made in a proceeding that concerned interconnection agreements and the prices of unbundled network elements provided by ILECs to wireline competitive local exchange carriers pursuant to Sections 251 and 252 of the Communications Act; it has no relevance to wireless carriers or wireless resellers or to whether such providers should be allowed to be designated as ETCs.

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

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[32] Comments of BellSouth, at 7-8; Comments of Verizon, at 3-4;

[33] Comments of BellSouth, at 8.

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.

Commenters also 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. Moreover, TracFone's vendors, as carriers subject to the Commission's jurisdiction, are required to comply with all statutory and regulatory requirements, which includes the provision of E911 capability.

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.

Finally, TracFone notes that 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.[34] In fact, in its ETC Petitions, 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.[35] Thus, TracFone's ETC petition meets the public interest standard established by the Commission for consideration of applications by wireless providers for ETC designation.

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

[35] TracFone Florida Petition, at 9-14; TracFone Virginia Petition, at 10-14.

## CONCLUSION

For all of the reasons set forth in these reply comments as well as in TracFone's petitions for designation as an ETC in Florida and Virginia and its petition for forbearance, TracFone has demonstrated that its revised ETC proposal to offer Lifeline service would serve the public interest, 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 Florida and Virginia so that TracFone may offer its Lifeline program to eligible Florida and Virginia consumers. TracFone is anxious to make available at the earliest possible time affordable and reliable wireless telecommunications service to low income consumers nationwide eligible to participate in the Lifeline program. Therefore, TracFone requests expeditious consideration of its forbearance petition and its amended petitions for designation as an ETC in the State of Florida and in the Commonwealth of Virginia.

Respectfully submitted,

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September 7, 2004

## CERTIFICATE OF SERVICE

I, Michelle D. Diedrick, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on September 7, 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 7th day of September, 2004

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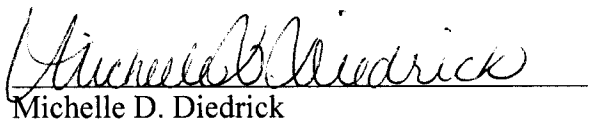

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