

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Petitions Concerning Eligible	)	
Telecommunications Carrier Designations	)	
and the Lifeline and Link-Up Universal	)	
Service Support Mechanism	)	
	)	

**COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its comments in response to the request by the Wireless Competition Bureau for comment on various filings concerning eligible telecommunications carrier (“ETC”) designations and the Lifeline and Link-Up universal service mechanism.<sup>1</sup> In particular, the Bureau seeks comment on a petition for reconsideration of a Commission Order, filed by AT&T Corporation (“AT&T”), in which AT&T asks the Commission to modify its rules governing certification as an ETC to receive low income support from the federal Universal Service Fund (“USF”),<sup>2</sup> and on TracFone’s amendments to its petitions for ETC designation in which TracFone has limited its petitions to request only low

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<sup>1</sup> 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, CC Docket No. 96-45 and WC Docket No. 03-109, DA 04-2750, released August 30, 2004.

<sup>2</sup> See AT&T Corp. Petition for Limited Reconsideration, WC Docket No. 03-109, filed July 21, 2004 (“AT&T Petition”).

income support from the USF.<sup>3</sup> As described in these comments, TracFone does not claim that the Commission's rules need to be modified to permit separate ETC certification criteria for carriers seeking only low income support from the USF. Rather, TracFone's amended ETC petitions simply advise the Commission that it will utilize its ETC status only to provide Lifeline service to qualified low income consumers, and that TracFone would accept the Commission conditioning the grant of its ETC status to limit TracFone to receipt of disbursements from the USF low income support program. The restricted scope of TracFone's ETC petitions is consistent with the applicable laws and regulations governing universal service and with the public interest.

## INTRODUCTION

On June 8, 2004, TracFone, a Commercial Mobile Radio Service ("CMRS") provider which provides its services on a prepaid basis, filed a Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and a Petition for Forbearance requesting that the Commission exercise its authority under Section 10 of the Communications Act (47 U.S.C. § 160) to forbear from applying or enforcing the requirement contained at Section 214(e)(1)(A) of the Act (47 U.S.C. § 214(e)(1)(A)) that carriers designated as eligible telecommunications carriers ("ETCs") provide service either using their own facilities or a combination of their own facilities and resale of another carrier's services. On June 21, 2004,

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<sup>3</sup> See TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed Aug. 16, 2004.

TracFone filed ETC petitions for Florida and Virginia.<sup>4</sup> TracFone's ETC petitions as initially filed, requested ETC designation without identifying the specific USF support which TracFone seeks.

On or about July 26, 2004, several entities filed comments in opposition to TracFone's Petition for Designation as an ETC in the State of New York and its Petition for Forbearance. Based upon review of the comments opposing TracFone's petitions, TracFone determined that virtually all of the objections to TracFone's petitions involved TracFone's participation as an ETC in the USF's high cost program. Therefore, in its reply comments, filed on August 9, 2004, TracFone narrowed the scope of its request for ETC designation to Lifeline service under the USF's low income program. In addition, on August 16, 2004, TracFone amended its pending ETC petitions for Florida, New York, and Virginia so as to comport with TracFone's clarified position in its recently-filed reply comments. TracFone further stated in its reply comments that it would accept a condition on its ETC designation limiting its access to the USF solely to the low income program to provide Lifeline service.<sup>5</sup> TracFone's decision to seek only disbursements from the USF low income program is lawful and consistent with current Commission rules.

In contrast to TracFone's amended ETC petitions, which neither propose nor require any revisions to the Commission's rules, the AT&T Petition asks the Commission to amend its rules as AT&T requested in comments filed in response to a Recommended Decision by the Federal-

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<sup>4</sup> TracFone's Petition for Forbearance applies to its previously-filed petitions seeking ETC designation in Florida, New York, and Virginia, as well as to future petitions seeking ETC designation in other states.

<sup>5</sup> See Reply Comments of TracFone Wireless, Inc., CC Docket No. 96-45, filed Aug. 9, 2004, at 3 n.4.

State Joint Board on Universal Service regarding Lifeline and Link-Up service.<sup>6</sup> The AT&T

Petition states:

In its Comments, AT&T asked the Commission to modify its rules, which provide for carriers to be certified *once* as eligible telecommunications carriers (“ETCs”) for both Lifeline and LinkUp (collectively, “Low Income Support”) and High Cost Support, and to provide instead for separate certification as an ETC for Low Income Support.<sup>7</sup>

TracFone takes no position on AT&T’s request that the Commission should amend its rules to provide for separate ETC certification for high cost support and for Lifeline. Furthermore, TracFone notes that while AT&T has claimed in its Petition that the Commission misconstrued its request, whether or not that is so is irrelevant to TracFone’s limitation of the scope of its ETC petitions to seek funds only from the USF low income support program.

#### COMMENTS

TracFone’s decision to limit its request for disbursements from the USF to Lifeline support is consistent with statutes and regulations concerning the designation of ETCs and promotes the public interest in making affordable telecommunications service available to all Americans, including low income consumers. TracFone’s amendments to its ETC petitions simply inform the Commission that grant of TracFone’s ETC petitions would not impact funds required for the high cost support program. By advising the Commission that it is only seeking funding from the USF to support TracFone’s proposed Lifeline program for qualified low income consumers and that it would accept a condition on its ETC status to that effect, TracFone is not attempting to avoid any of the legal requirements applicable to ETCs nor is it suggesting that any ETC requirement should not be applicable to TracFone. TracFone’s ETC petitions, as

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<sup>6</sup> See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 18 FCC Rcd 6589 (2003).

<sup>7</sup> AT&T Petition, at 1 (emphasis in original).

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 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 – qualified low income consumers who meet the Commission’s eligibility criteria for participation in the Lifeline program.

TracFone’s decision to limit its request for support to the Lifeline program will not place new burdens on the USF. By limiting its use of universal service support to provide a needed Lifeline service, TracFone will reduce the amount of support which it can receive from the USF which will thereby limit growth of the 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 USF by those carriers will be relatively less than the impact caused by carriers who seek both low income and high cost support. Moreover, TracFone would only receive universal service support for each TracFone customer line that qualifies for Lifeline service. To the 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.

The limited scope of TracFone’s ETC petitions is fully consistent with the laws regarding universal service. TracFone, once designated as an ETC, would not be required to participate in the high cost support program. Carriers designated as ETCs are eligible to receive universal

service support distributed under the low income and high cost support mechanisms.<sup>8</sup> The Commission's rules provide that all ETCs "shall: (a) make available Lifeline service . . . to all qualifying low-income customers."<sup>9</sup> In addition, Section 54.101 of the Commission's rules lists services and functionalities that "shall be supported by federal universal service support mechanisms" and that must be offered by ETCs to receive universal service support. However, the Commission's rules do not require that carriers providing such services and functionalities seek high cost support. Nor do the rules require that carriers designated as ETCs utilize universal service funding to provide both low income and high cost supported service. Thus, while an ETC may provide the services listed in Section 54.101 to consumers in high cost areas, the ETC is not required to seek federal support for the provision of such services. If designated an ETC, TracFone, may determine that it is able to provide the services required of an ETC without needing high cost support from the USF. Moreover, the Commission has the authority and has exercised the authority to designate a carrier as an ETC subject to specified conditions.<sup>10</sup> Therefore, TracFone's willingness to accept a restriction on its ability to seek high cost support as a condition of the Commission's grant of ETC status is lawful and appropriate.

TracFone's focus on providing Lifeline service would serve the public interest given

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<sup>8</sup> See 47 U.S.C. § 214(e)(1) ("[a] common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support); 47 C.F.R. § 54.201(a) (ETCs "shall receive universal service support distributed pursuant to . . . Subparts D [high cost] and E [low income] of this part.")

<sup>9</sup> 47 C.F.R. § 54.405(a). The Commission's rules also require all ETCs to offer LinkUp and toll limitation (see 47 C.F.R. §§ 54.101(a)(9) and 54.411). TracFone does not offer LinkUp, which facilitates reduced carrier connection charges, because TracFone does not charge consumers a connection charge. As explained in the ETC Petitions, there is no need for TracFone to offer a toll limitation feature to qualifying low-income customers because TracFone, unlike most wireline ETCs, does not impose additional charges for toll calls.

<sup>10</sup> 47 U.S.C. § 154(i); see e.g., Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 1563 (2004) (ETC designation subject to conditions described in order)

Congress's intent in enacting the legislative provisions which led to the federal Universal Service program, and given the low participation rate by persons eligible to participate in the Lifeline program. Among the important public interest objectives of universal service legislation noted by Congress is to make affordable telecommunications service available in all areas for low income Americans through the Lifeline program.<sup>11</sup> The Lifeline program developed by TracFone is intended to advance that objective. 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.

TracFone's concentration on Lifeline service will advance the public interest especially given the fact that Commission-compiled data demonstrate that the Federal Lifeline program remains significantly underutilized. For example, 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.<sup>12</sup> According to a recent Census Bureau report, the number of Americans living in poverty has

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<sup>11</sup> See, e.g., Conference Agreement on the Telecommunications Act of 1996, H.R. Conf. Rep. No. 458, 104<sup>th</sup> 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).

<sup>12</sup> 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).

increased by 1.3 million, to 35.9 million.<sup>13</sup> 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.

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, 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 Communications 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. Upon grant of its ETC petitions TracFone's plans to aggressively promote the availability of its Lifeline program, and TracFone expects that the level of participation by eligible households in the Lifeline program will increase.

### **CONCLUSION**

For the reasons stated in these comments, TracFone's ETC petitions, as amended, do not request the Commission to revise its rules concerning ETC certification. TracFone's ETC petitions inform the Commission that it will only utilize its ETC status to seek low income support from the USF under the Lifeline program and thereby provide Lifeline service to qualified low income consumers. TracFone's decision to limit the scope of its ETC petitions is

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<sup>13</sup> Reuters, *Poverty Spreads* (Aug. 26, 2004), available at: [http://money.cnn.com/2004/08/26/news/economy/poverty\\_survey/](http://money.cnn.com/2004/08/26/news/economy/poverty_survey/).

consistent with the laws applicable to universal service and promotes the public interest. Accordingly, the rule changes sought by AT&T are not necessary in order for the Commission to grant and appropriately condition TracFone's petitions for ETC designation so that it can offer Lifeline service to qualified low income consumers.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



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September 20, 2004

**CERTIFICATE OF SERVICE**

I, Michelle D. Diedrick, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on September 20, 2004, a copy of the foregoing Comments of TracFone Wireless, Inc. was filed electronically with the following:

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