

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

In the Matter of	)	
	)	
Wireline Competition Bureau Seeking Comment on	)	CC Docket No. 96-45
Petitions Concerning Eligible Telecommunications Carrier	)	WC Docket No. 03-109
Designations And The Lifeline and Link-Up Universal	)	
Service Support Mechanism	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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September 20, 2004

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**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> hereby files its initial comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) Public Notice seeking comment on the petitions concerning eligible telecommunications carrier (ETC) designations and the Lifeline and Link-Up universal service mechanism.<sup>2</sup>

**I. INTRODUCTION**

On July 21, 2004, AT&T Corp. filed a Petition for Limited Reconsideration of the Commission’s April 29, 2004 Report and Order and Further Notice of Proposed Rulemaking *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109 (Lifeline and Link-Up Order). AT&T asked the Commission to reconsider its decision not to provide separate ETC certification procedures for carriers seeking to receive only low-income universal service support. On August 16, 2004, TracFone Wireless filed amendments to its petitions seeking ETC designation in Florida, New York, and Virginia pursuant to section 214(e)(6) of the Act. In its amendments,

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *The Wireline Competition Bureau Seeks Comment on Petitions Concerning Eligible Telecommunications Designations and the Lifeline and Link-Up Universal Service Mechanism*, CC Docket No. 96-45, WC Docket No. 03-109, DA 04-2750 (rel. August 30, 2004) (Public Notice).

TracFone modified its request of universal service support to apply only to low-income support and not high-cost universal service support.

NTCA opposes AT&T's petition for separate ETC designation procedures for carriers seeking to receive only low-income support. As discussed below, the statutory requirements for ETC designation are the same for all carriers regardless of which type of universal service support a carrier is seeking to receive. Thus, separate ETC designation procedures for carriers seeking low-income support are unnecessary and would violate the Act. NTCA does not oppose TracFone's request to limit its ETC designation petitions to low-income support so long as TracFone adheres to the same statutory requirements that all carriers seeking universal service support must meet in order to obtain ETC designation.

## **II. THERE IS NO NEED FOR SEPARATE ETC PROCEDURES FOR CARRIERS SEEKING ONLY LOW-INCOME SUPPORT**

AT&T states it is not seeking an exemption from the statutory requirements of Sections 254(e) and 214(e).<sup>3</sup> AT&T's proposed separate procedures for seeking Lifeline and Link-Up support, however, would in effect establish an exemption from certain mandatory requirements contained in Sections 254(e) and 214(e). AT&T's petition in essence asks the Commission to rewrite the Act. The petition should therefore be denied.

Section 214(e)(1) is clear that only a common carrier designated as an ETC "shall be eligible to receive universal service support in accordance with section 254" of the Act. Section 254(e) is equally clear that only ETCs are eligible to receive "federal universal service support." And Sections 214(e)(1), (2) and (6) specifically mandate that common carriers meet three requirements in order to receive ETC designation:

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<sup>3</sup> AT&T Corp. Petition for Limited Reconsideration, WC Docket No. 03-109, p. 3 (Filed July 21, 2004).

- (1) offer services listed in the definition of universal service under section 254(c) throughout the designated service through the use of their own facilities or a combination of their own facilities and resale of services offered by another ETC;
- (2) advertise the availability of those services throughout the designated service area; and
- (3) in rural telephone service areas the state commission, or the FCC in cases where the state commission does not have jurisdiction over the carrier requesting ETC designation, must find that the designation is in the public interest.

Congress established these three specific requirements for all carriers seeking ETC designation, regardless of whether the carrier seeks only low-income support. These unambiguous conditions are the same for high-cost support and low-income support. Contrary to AT&T's assertions, these requirements are not onerous and are very relevant to providing all consumers, low-income included, with benefits and protections of universal service.

AT&T claims that it will provide Lifeline customers the same basic service that it provides to customers who pay full, undiscounted rates for service.<sup>4</sup> This statement is important because it goes to the heart of one of the benefits and protections afforded consumers under Sections 214 and 254 (i.e., that the carrier provide the listed services in the definition of universal service).<sup>5</sup> If AT&T's basic service does not provide the listed services in the definition of universal service, then low-income consumers would be deprived of universal service as defined by the Commission. Such a result would violate the Act. Low-income consumers are entitled to receive the same federally supported services as non-low-income customers. The existing ETC designation and universal service procedures are designed not to discriminate based on income. This requirement applies to all carriers seeking universal service support regardless of the type of support they seek to receive.

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<sup>4</sup> *Id.*, p. 4.

<sup>5</sup> 47 U.S.C. §54.101.

Similarly, Section 214(e)(1) requires all ETCs to advertise the availability of the services supported by universal service throughout the designated service area to all consumers. Again, this requirement applies to all carriers seeking any type of universal service support. Thus, there is no need to establish separate low-income ETC designation procedures to determine whether a carrier requesting ETC designation can advertise the supported services to low-income consumers. The Act already requires it.

AT&T further states “Low-Income Support should thus be provided to all carriers who meet the basic statutory requirements of Section 214(e)(1).” What AT&T is in effect proposing is that the “public interest” standard in section 214(e)(2), not apply to carriers seeking only low-income ETC designation petitions in rural service areas. This would also violate the Act. As stated above, Section 214(e)(2) requires a state commission or the FCC to make a determination that the ETC designation is in the “public interest” when a carrier seeks an ETC designation in a rural ILEC service area. This “public interest” determination is mandatory and is just as important for purposes of high-cost support as for low-income support. If Congress intended otherwise it would have stated so in the Act. Congress did not.

Moreover, the Federal-State Joint Board on Universal Service recently recommended that the Commission adopt permissive federal ETC guidelines for state commissions to consider in ETC designation proceedings.<sup>6</sup> The Joint Board recognized that the unchecked designation of multiple ETCs create a potential for uncontrolled growth of the universal service fund (USF).<sup>7</sup> The Joint Board’s proposed ETC guidelines are intended to assist state regulators in determining whether an ETC designation is in the public interest. These guidelines are also intended to improve the long-term sustainability of the USF by only allowing fully qualified carriers that are

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<sup>6</sup> In the Matter of the Federal –State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, ¶¶ 9-56, (rel. Feb. 27, 2004) (Joint Board Recommended Decision).

<sup>7</sup> Joint Board Recommended Decision, ¶ 67.

capable of, and committed to, providing universal service to be able to receive universal service support.

The Joint Board further stated that it believed that state commissions “making public interest determinations may properly consider the level of high-cost per-line support to be received by ETCs.”<sup>8</sup> This consideration should be the same for both high-cost support and low-income support. In the Universal Service Administrative Company’s (USAC’s) 2003 Annual Report, USAC states that it distributed over \$700 million in low-income support to over 6 million households last year. Many of the companies providing Lifeline and Link-Up services to these households are NTCA members. If the per-line support level is high enough in a specific service area and low-income consumers already have sufficient access to Lifeline and Link-Up services, then a state commission or the FCC may be justified in limiting the number of ETCs in a rural study area. Funding multiple ETCs in such areas could impose unnecessary strains on the USF and result in duplicative Lifeline and Link-Up services. It is critical that the USF be treated as a scarce national resource and be carefully managed to serve the public interest.

Furthermore, when determining whether an additional ETC designation is in the public interest, state commissions and the FCC should also consider whether universal service support would in fact promote comparability in between rural and urban areas and ensure sufficient Lifeline and Link-Up services to rural consumers. As Commission Adelstein stated “[those performing the public interest analysis] also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service.”<sup>9</sup> Congress sought to have specific, predictable, and sufficient Federal and State mechanisms to preserve and

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<sup>8</sup> Joint Board Recommended Decision, ¶ 43.

<sup>9</sup> Speech by Commissioner Jonathan Adelstein, “Rural America and the Promise of Tomorrow,” NTCA Annual Meeting & Expo, Phoenix, Arizona (February 3, 2003).

advance universal service.<sup>10</sup> It is therefore incorrect for regulators to ignore the ultimate sustainability of the high cost universal service program and the existing availability of Lifeline and Link-Up services as they consider the public interest of an additional ETC designation in a rural service area.

The statutory requirements for deciding ETC designations in rural services areas are the same for all carriers regardless of what type of universal service support a carrier seeks to receive. Separate ETC designation procedures based on the type of support requested are therefore unnecessary and inconsistent with Act. The current ETC designation procedures do not prohibit any qualifying carrier from receiving Lifeline and Link-Up support. AT&T's petition for separate ETC designation procedures for carriers seeking only low-income support should therefore be denied.

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<sup>10</sup> 47 U.S.C. § 254(b)(5).

### III. CONCLUSION

Based on the above reasons, the Commission should deny AT&T's petition for limited reconsideration of the Commission's *Lifeline and Link-Up Order*. NTCA does not oppose TracFone's request to limit its ETC designation petition to low-income support so long as it meets the same statutory requirements that all carriers must meet in order to obtain ETC designation.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Rita H. Bolden, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, FCC 03-109, DA 04-2750 was served on this 20th day of September 2004 by first-class, U.S. Mail, postage prepaid, to the following persons:

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