

**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 State of Connecticut)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the Commonwealth of Massachusetts)	
)	
Petition 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”) in several states, despite the fact that, as a pure reseller, it concedes that it does not meet the threshold statutory criteria. TracFone’s petitions rely entirely on the request that the Commission forbear from the 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).²

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

² See TracFone Petition for Forbearance, CC Docket No. 96-45 (filed June 8, 2004) (“*TracFone Forbearance Petition*”); TracFone Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45, at 4-6

Verizon opposes the instant petitions for the reasons stated in previously filed opposition comments.³ As Verizon pointed out in prior comments, TracFone has the burden to prove that it would be in the public interest to grant its petitions.⁴ However, granting ETC status to pure resellers would not be in the public interest. One key 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 reasonably comparable to rates charged in urban areas. *See* 47 U.S.C. § 254.⁵ Providing universal service subsidies to non-facilities based providers does nothing to further those goals.⁶ Indeed, the Commission has twice rejected the argument that resellers be allowed to be eligible for ETC status, with its most recent order on the subject being released just last month.

(filed Nov. 9, 2004) (“*Connecticut Petition*”); TracFone Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45, at 4-6 (filed Nov. 9, 2004) (“*Massachusetts Petition*”).

³ *See* Comments of Verizon to the TracFone Petition for Designation as Eligible Telecommunications Carrier in the State of New York and Petition for Forbearance from Application of Section 214 (filed July 26, 2004) (“*Verizon Forbearance Comments*”) (attached at Attachment B); Comments of Verizon to the Petitions Concerning Eligible Telecommunications Carrier Designation And the Lifeline and Link-Up Universal Service Mechanisms, CC Docket No. 96-45, WC Docket No. 03-109 (filed Sept. 20, 2004) (“*Verizon Lifeline ETC Comments*”) (attached at Attachment C).

⁴ This is required both as a condition for forbearance, and as part of the ETC criteria. *See* 47 U.S.C. § 160(a)(3); 47 U.S.C. § 214(e)(6).

⁵ *See also Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 19 FCC Rcd 10800, ¶ 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”).

⁶ *See Verizon Forbearance Comments*, at 2-11.

In the *First Universal Service Order*, 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.⁷ The Commission reasoned that, if both the reseller and the provider from whom it was purchasing services were eligible to receive universal service support, this would lead to a “double recovery” of universal service funds. *First Universal Service Order*, ¶ 179. It also found that such a double recovery system would favor resellers over other carriers, which would not be competitively neutral, would send the wrong economic signals, and “would *not* promote competitive market conditions.” *Id.* (emphasis added).

TracFone has attempted to distinguish the *First Universal Service Order*, by claiming that the Commission’s analysis applies only to the resale of incumbent LEC wireline services. *TracFone Forbearance Petition*, at 9. TracFone claims that resale of Commercial Mobile Radio Service (“CMRS”) is distinguishable because (1) “most” of the carriers from which it purchases services are not ETCs; and (2) even those carriers that are ETCs “are not subject to rate regulation of any type” and are “not required to reflect their receipt of universal service support in the wholesale rates which they charge TracFone.” *Id.* TracFone argues, therefore, that the Commission’s “double recovery” rationale does not apply to its services.

However, this is precisely the type of argument the Commission rejected in its recent *Reconsideration Order*. One carrier, Mobile Satellite Ventures (“MSV”), sought reconsideration of the *First Universal Service Order*, asking that the Commission allow

⁷ See *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, ¶ -179 (1997) (“*First Universal Service Order*”).

resellers to receive universal service support “when they resell the services of a facilities-based carrier that is not a recipient of universal service subsidies.”⁸ The Commission denied the MSV petition in an order released last month. In doing so, it reaffirmed that “the statute expressly mandates that, in order to be eligible for universal service subsidies, a carrier must use its ‘own facilities’ or a combination of its own facilities and another carrier’s services in the provision of supported services.” *Reconsideration Order*, ¶ 9. “[P]ure resellers cannot receive support consistent with this statutory requirement.” *Id.*

TracFone offers no reasons why the Commission should overturn its prior rulings on this issue. The arguments TracFone raises are ones that have already been considered and rejected by the Commission. Indeed, if anything, changes in the competitive marketplace since the *First Universal Service Order* present even more reason to deny the petition today. Due to the growing number of ETC petitions, and the rapid growth in the size of the universal service fund, several commenters have suggested that Commission should *limit* the portability of high cost support, so that consumers are not subsidizing redundant networks in places where it is not efficient for even one to operate without universal service support, and so that CALLS support is not diluted from its intended purpose.⁹

In the face of oppositions to its petition for forbearance, TracFone’s ETC petitions now “narrow[] the scope” of its original ETC requests and seek ETC status only to

⁸ *Federal-State Joint Board on Universal Service*, Order on Reconsideration, FCC 04-237, ¶ 8 (rel. Nov. 29, 2004) (“*Reconsideration Order*”).

⁹ *See, e.g.*, Verizon Comments, CC Docket No. 96-45, at 3-7 (filed June 21, 2004).

provide “Lifeline service.”¹⁰ In addition to the pure reseller issue, the amended “Lifeline only” nature of TracFone’s ETC petitions present an additional reason to deny ETC status. 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.¹¹

Conclusion

The Commission should deny TracFone’s petition for forbearance and petitions for ETC designation in Connecticut and Massachusetts.

Respectfully submitted,



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¹⁰ See, e.g., 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). See also *Connecticut Petition*, at iv (“TracFone seeks ETC designation solely to enable it to offer Lifeline service to eligible low income consumers”); *Massachusetts Petition*, at iv (same).

¹¹ See *Verizon Lifeline ETC Comments*, at 2-6; *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, ¶ 54 (2004).

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 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.

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

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

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 State of New York, CC Docket No. 96-45, at 4-5 (filed June 7, 2004) (“ETC Petition”).

The Commission should deny TracFone's petitions. It is not in the public interest to grant ETC status to TracFone or other pure resellers, especially given the current strain on the high cost fund, which will only be exacerbated if pending ETC petitions are granted. 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.³ 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.

Argument

I. It Would Not Be in the Public Interest to Grant TracFone's Petitions

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.⁴ However, granting ETC status to pure resellers would not be in the public interest. 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 reasonably comparable to rates charged in urban areas. *See* 47

³ *See Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, ¶ 179 (1997) ("First Universal Service Order").

⁴ *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.").

U.S.C. § 254.⁵ 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).

In addition, the facts in TracFone’s petition 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.*, ¶ 28.⁶ In addition, 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* the public interest to grant the petition, since it would lead to higher universal service charges to all consumers, and no competitive benefits.⁷

⁵ See also *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127, ¶ 74 (rel. June 8, 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.”).

⁶ 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).

⁷ 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

TracFone argues that granting its petition for forbearance will “promote competition” in rural areas, by “encouraging CMRS resellers to enter the market for such services and to offer services to consumers in competition with those offered by wireline carriers, including ILECs.” *See* Forbearance Petition, at 11. However, based on the facts TracFone sets forth in its ETC petition, it is plain that granting forbearance would *skew* competition in high cost areas, because it would allow TracFone to use the universal service support to subsidize its prices so they are significantly below those of the facilities-based providers in those areas. That is because while other carriers in high-cost areas may need high-cost support in order to build facilities and/or make service affordable, 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. ETC Petition, at 12; Forbearance Petition, at 3. 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, “[a] TracFone customer in Creston (Ashe County), North Carolina pays the same per minute charge for service as a TracFone customer in New York City, Miami or Washington, DC.” *Id.*

Also incorrect is TracFone’s assertion that, “without forbearance, potential customers of TracFone’s services located in high-cost areas will be harmed because TracFone will not have the opportunity to make available to those potential customers

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”).

wireless services at rates made possible to Universal service support.” *Id.* at 8. As TracFone states in its petitions, it *already* is providing customers in high costs areas access to the same services – at the same rates – that are being made available to TracFone’s customers in low-cost, urban areas. *See* Forbearance Petition, at 3; ETC Petition, at 2. Moreover, TracFone emphasizes the already “affordable service” it provides to consumers. 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 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.” 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 \$53 million in universal service funding is at issue in New York state.⁸

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

⁸ Using current universal service totals, Verizon calculates that if TracFone’s petition were granted, and every customer in New York State were to receive a subsidy for one wireline and one wireless phone, the impact to the fund could be as much as \$53,492,375, of which \$43,694,951 is rural support and \$9,797,424 in non-rural support. *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.

service fund. *See, e.g.*, U.S. Cellular (“USCOC”) Virginia Petition, at 11 (filed April 13, 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).

Rather than addressing the tangible harms to consumers from growing universal service burdens, TracFone argues that “allowing CMRS resellers to become ETCs will benefit consumers in high cost areas” by giving them “additional carriers from which to purchase basic telecommunications services, including wireless services.” Forbearance Petition, at 7. Again, this claim of competitive benefits does not apply to pure resellers. TracFone states that its services consist solely of resale of other CMRS carrier services. Forbearance Petition, at 3; ETC Petition, at 2. Thus, any place where TracFone is able to provide service presumably *already* is being served by at least one other wireless carrier – the carrier that is selling use of its network to TracFone, at wholesale prices. Indeed, TracFone states that, “as a CMRS reseller, [TracFone] will always be subject to competition from a multiplicity of providers, including its underlying CMRS carriers from whom it purchases service on a wholesale basis for resale.” Forbearance Petition, at 5. Moreover, since TracFone already is offering service to customers throughout the state, granting its ETC petition would not provide customers with any “additional carriers.” 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.”

II. The Commission Should Not Forbear from Applying the Statutory Requirement that Any ETC Must Provide Services Using Its Own Facilities, or a Combination of Facilities and Resale

The Act requires that, in order to be designated as an ETC, a carrier must 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). By its own admission, TracFone does not meet this test, because it offers service solely through reselling services provided by other CMRS carriers. Forbearance Petition, at 3; ETC Petition, at 2. TracFone nonetheless argues that the Commission should forbear from the facilities-based requirement of the Act, and once the forbearance petition has been granted, grant its petition for ETC status. Because TracFone does not demonstrate that the forbearance test has been met, both petitions should be denied.

Section 10 of the Act gives the Commission flexibility to forbear from applying any statutory regulation, only if it determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a).

In the *First Universal Service Order*, the Commission denied requests to forbear from the facilities-based requirement of the ETC statute to allow pure resellers to be eligible to receive ETC status, finding that forbearance did not satisfy the “public interest” part of the forbearance test. The Commission reasoned that, if both the reseller

and the provider from whom it was purchasing services were eligible to receive universal service support, this would lead to a “double recovery” of universal service funds. *First Universal Service Order*, ¶ 179. It also found that such a double recovery system would favor resellers over other carriers, which would not be competitively neutral, would send the wrong economic signals, and “would *not* promote competitive market conditions.”

Id. (emphasis added). Specifically, the Commission stated:

[I]f pure resellers could be designated eligible carriers and were entitled to receive support for providing resold services they, in essence, would receive a double recovery of universal service support because they would recover the support incorporated into the wholesale price of the resold services in addition to receiving universal service support directly from federal universal service support mechanisms. . . . [W]e conclude that it is neither in the public interest nor would it promote competitive market conditions to allow resellers to receive a double recovery. Indeed, allowing such a double recovery would appear to favor resellers over other carriers, which would not promote competitive market conditions. Allowing resellers a double recovery also would be inconsistent with the principle of competitive neutrality because it would provide inefficient economic signals to resellers.

First Universal Service Order, ¶ 179.

TracFone attempts to distinguish the Order, by claiming that the Commission’s analysis applies only to the resale of incumbent LEC wireline services. Forbearance Petition, at 9. TracFone claims that resale of CMRS service is distinguishable because (1) “most” of the carriers from which it purchases services are not ETCs; and (2) even those carriers that are ETCs “are not subject to rate regulation of any type” and are “not required to reflect their receipt of universal service support in the wholesale rates which they charge TracFone.” *Id.* TracFone argues, therefore, that the Commission’s “double recovery” rationale does not apply to its services.

As an initial matter, by stating that “most” of its services are not provided by ETCs, TracFone concedes that some of its wireless services *are* being purchased from ETCs. *See* Forbearance Petition, at 9. This leads to exactly the double recovery problem the Commission identified in the *First Universal Service Order*. Just because 100% of TracFone’s vendors are not currently ETCs does not mean that the Commission’s rationale is inapplicable.⁹ In addition, if the Commission denies the pending ETC petitions of carriers who are seeking ETC status in New York, it would not be in the public interest to grant ETC status to TracFone, whose services are entirely derivative of those carriers’ services.

TracFone also argues that, even among its vendors that are ETCs, there is not a “double recovery” problem, because those ETCs are not *required* to pass the universal service funds through in the wholesale prices they negotiate with TracFone. Forbearance Petition, at 10. Of course, as a realistic matter, TracFone can use the fact that ETCs are receiving universal service subsidies to negotiate for lower wholesale rates. Moreover, the Commission’s analysis does not depend on whether or not the universal service subsidies are actually passed through to TracFone. Regardless of whether these wholesalers pass the universal service subsidies on to TracFone in the form of lower wholesale rates, that doesn’t alleviate the fact that there would be double universal service *payment* for the same service – one subsidy to the ETC wholesaler for the services (“lines”) it sells TracFone, and another to TracFone for the services it sells its

⁹ Moreover, even among those of TracFone’s vendors that are not currently ETCs, a number of them are seeking – or may soon seek – ETC status, so it is possible that many more would become ETCs in the future. In fact, Dobson Cellular, which TracFone identifies as one carrier from whom it purchases services, has filed a petition with the Commission seeking ETC status in New York. *See* Public Notice, DA 04-1445, 19 FCC Rcd 6405 (2004).

customers. In addition, because those ETC carriers must certify that they are using the universal service support only “for the provision, maintenance, and upgrading of facilities and services for which the support is intended,” 47 U.S.C. § 254(e), at a minimum, they should be using the funds to invest in the facilities and services they are offering TracFone, which gives TracFone the indirect benefit of this support.

TracFone offers no reasons why the Commission should overturn its prior ruling denying forbearance on this issue. Indeed, if anything, changes in the competitive marketplace since the *First Universal Service Order* present even more reason to deny the petition today. Due to the growing number of ETC petitions, and the rapid growth in the size of the universal service fund, several commenters have suggested that Commission should *limit* the portability of high cost support, so that consumers are not subsidizing redundant networks in places where it is not efficient for even one to operate without universal service support, and so that CALLS support is not diluted from its intended purpose.¹⁰

In addition, in the upcoming portability proceeding, the Commission should critically examine the oft-repeated premise that high cost subsidies contribute “competitive benefits” in these areas. As more than one Commissioner has recognized, there are serious questions concerning the wisdom of using ratepayer dollars to subsidize “multiple competitors to serve areas in which the costs are prohibitively expensive for even one carrier.”¹¹ Using universal service funds to artificially “create” competition by

¹⁰ See, e.g., Verizon Comments, CC Docket No. 96-45, at 3-7 (filed June 21, 2004).

¹¹ *Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd 19613, 19746 (2001) (“MAG Plan Order”); see also Jonathan S. Adelstein, Commissioner, FCC, Remarks before the National

funding multiple ETCs in high cost areas, “may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.”¹² Where competition is already flourishing *without* universal service support, there is no factual basis to petitioners’ claims about the purported “competitive benefits” of giving them additional federal funding.

Granting TracFone’s ETC petition would only serve to further add to the strain on the universal service fund. In fact, if competitive ETCs were to get funding for additional lines throughout the study areas where they are seeking to be designated, just the petitions at issue in the recent ETC public notices and the recently granted Virginia Cellular and Highland Cellular ETC designation orders could increase the size of the rural universal service high cost fund by approximately \$430 million per year, and capture up to \$230 million in non-rural, CALLS-based high cost support. *See Verizon Comments, CC Docket No. 96-45 (filed June 21, 2004), at 2 and Attachments B & C thereto.* As CALLS support is capped at \$650 million per year, this would further dilute the amounts available to the fund’s intended use (replacing interstate access support), and threatens to unravel the access charge reform established by the CALLS Order.¹³

Granting ETC status to CMRS resellers, as TracFone suggests, would only add to that

Association of Regulatory Utility Commissioners (Feb. 25, 2003), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-231648A1.pdf.

¹² *MAG Plan Order*, Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd at 19746.

¹³ *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) (“CALLS Order”), *aff’d in part, rev’d and remanded in part sub nom; Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

burden. *See supra* n. 8 & Attachment B (calculating cost of more than \$53 million if all New York customers received a subsidy for one wireless phone and one wireline phone, which is possible if TracFone's petition for ETC status in New York is granted).

And the pending ETC petitions appear to be just the tip of the iceberg. Many petitioners appear to be undertaking a strategy to seek high-cost support in *all* states in which they operate. *See Verizon Comments, CC Docket No. 96-45, at Attachment B (filed June 21, 2004).* Indeed, many states have two or more wireless carriers seeking high cost support for the same state. *See id.* at Attachments B, C. For example, in New York (where TracFone is seeking ETC status), at least three separate wireless companies either are seeking or already have sought ETC status.¹⁴ To the extent that wireless companies begin to consider high-cost funding as part of their business plan for competing in rural and high cost areas, they put pressure on other wireless carriers to seek the same funding, in order to remain competitive. Thus, it is conservative to estimate that, without any changes to the Commission's portability rules, if the Commission were to grant all of the pending ETC petitions, and state commissions were to grant the ETC petitions pending before them, the cumulative impact will easily total hundreds of millions of dollars per year in additional high cost support. This is on top of the already "dramatic" recent increase in ETC funding commitments previously noted by the

¹⁴ *See Public Notice, DA 04-1445, 19 FCC Rcd 6405 (2004) (Dobson Cellular seeking ETC status in New York); Application of Sprint Corporation for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket 96-45 (filed September 2, 2003); Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket 96-45 (filed April 3, 2003); see also Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket 96-45 (filed May 28, 2003).*

Commission.¹⁵ The Commission should not permit ETC petitions by resellers to add to this strain.

III. 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. ETC Petition, at 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.”¹⁶ It gives no indication of which of its underlying wholesale providers give it the ability to provide E911 capability.

¹⁵ See *Highland Cellular Order*, ¶ 25 (noting that, in the first quarter of 2001, three competitive ETCs received approximately \$2 million in high cost support; by fourth quarter 2003, it had grown to 112 competitive ETCs receiving \$32 million per quarter); see also Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2004*, Appendix HC1 (estimating that 121 competitive ETCs would receive approximately \$41 million during the first quarter of 2004) available at www.universalservice.org/overview/filings.

¹⁶ 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)).

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.

Conclusion

The Commission should deny TracFone's petition for forbearance and petition for ETC designation in New York.

Respectfully submitted,



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July 26, 2004

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

				Total High Cost	Total High Cost	Total High Cost	Total High Cost		
				Quarterly	Annual	Quarterly	Annual		Total Overall
State	SAC	Study Area Name	Rural	(Rural)	(Rural)	(Non-Rural)	(Non-Rural)		Annual
NY	150073	Berkshire Tel. Co.	R	\$218,796	\$875,184	\$0	\$0		
NY	150076	Cassadaga Telephone Corporation	R	\$60,424	\$241,697	\$0	\$0		
NY	150077	Champlain Tel. Co.	R	\$396,959	\$1,587,835	\$0	\$0		
NY	150078	Chautauqua & Erie Tel. Corp.	R	\$425,784	\$1,703,136	\$0	\$0		
NY	150079	Chazy & Westport Tel. Corp.	R	\$258,224	\$1,032,896	\$0	\$0		
NY	154534	CITIZENS TEL CO OF NY	R	\$665,449	\$2,661,796	\$0	\$0		
NY	154532	CITIZENS TELECOM-NY	R	\$1,604,410	\$6,417,641	\$0	\$0		
NY	150081	Citizens Telephone Company of Hammond NY, Inc.	R	\$419,873	\$1,679,493	\$0	\$0		
NY	154533	CITIZENS-RED HOOK	R	\$716,582	\$2,866,328	\$0	\$0		
NY	150085	Crown Point Tel. Corp.	R	\$239,746	\$958,986	\$0	\$0		
NY	150088	Delhi Tel. Co.	R	\$142,758	\$571,032	\$0	\$0		
NY	150089	Deposit Telephone Co. dba TDS Telecom	R	\$200,790	\$803,160	\$0	\$0		
NY	150091	Dunkirk & Fredonia Telephone Company	R	\$310,563	\$1,242,252	\$0	\$0		
NY	150092	Edwards Tel. Co. dba TDS Telecom	R	\$174,649	\$698,594	\$0	\$0		
NY	150093	Empire Tel. Corp.	R	\$312,048	\$1,248,192	\$0	\$0		
NY	150072	FC of Ausable Valley, Inc.	R	\$253,689	\$1,014,756	\$0	\$0		
NY	150100	FC of New York, Inc.	R	\$0	\$0	\$0	\$0		
NY	150122	FC of Seneca Gorham, Inc.	R	\$177,297	\$709,188	\$0	\$0		
NY	150128	FC of Sylvan Lake, Inc.	R	\$254,841	\$1,019,364	\$0	\$0		
NY	150095	Fishers Island Tel. Corp.	R	\$53,898	\$215,592	\$0	\$0		
NY	150121	Frontier Telephone of Rochester, Inc.	N		\$0	\$0	\$0		
NY	150106	Fulton Telephone Company dba ALLTEL	R	\$155,337	\$621,348	\$0	\$0		
NY	150097	Germantown Tel. Co. Inc.	R	\$323,555	\$1,294,221	\$0	\$0		
NY	150099	Hancock Tel. Co.	R	\$145,480	\$581,921	\$0	\$0		

NY	150109	Jamestown Telephone Company dba ALLTEL	R	\$72,510	\$290,040	\$0	\$0	
NY	150104	Margaretville Tel. Co. Inc.	R	\$132,342	\$529,369	\$0	\$0	
NY	159001	MCimetro Access Transmission Services, LLC	N		\$0	\$193,782	\$775,128	
NY	150107	Newport Telephone Company, Inc.	R	\$128,014	\$512,054	\$0	\$0	
NY	150108	Nicholville Tel. Co. Inc.	R	\$316,283	\$1,265,131	\$0	\$0	
NY	159007	NPCR, Inc.	R	\$92,757	\$371,028	\$0	\$0	
NY	159007	NPCR, Inc.	R	\$47,079	\$188,316	\$0	\$0	
NY	150110	Ogden Telephone Company	R	\$109,656	\$438,624	\$0	\$0	
NY	150111	Oneida County Rural Tel. Co.	R	\$342,075	\$1,368,299	\$0	\$0	
NY	150112	Ontario Tel. Co. Inc.	R	\$143,193	\$572,772	\$0	\$0	
NY	150114	Oriskany Falls Tel. Corp. dba TDS Telecom	R	\$5,847	\$23,388	\$0	\$0	
NY	150116	PATTERSONVILLE TEL	R	\$112,197	\$448,790	\$0	\$0	
NY	150118	Port Byron Tel. Co. dba TDS Telecom	R	\$150,025	\$600,101	\$0	\$0	
NY	150113	Red Jacket Telephone Company dba ALLTEL	R	\$31,209	\$124,836	\$0	\$0	
NY	150125	State Tel. Co.	R	\$95,112	\$380,448	\$0	\$0	
NY	150084	Taconic Tel. Corp.	R	\$447,942	\$1,791,768	\$0	\$0	
NY	150105	The Middleburgh Telephone Company	R	\$199,431	\$797,724	\$0	\$0	
NY	150129	Township Telephone Co. dba TDS Telecom	R	\$154,049	\$616,195	\$0	\$0	
NY	150131	Trumansburg Home Tel. Co.	R	\$336,640	\$1,346,559	\$0	\$0	
NY	155130	Verizon - New York Inc.	N		\$0	\$2,255,574	\$9,022,296	
NY	150133	Vernon Telephone Co. dba TDS Telecom	R	\$64,479	\$257,916	\$0	\$0	
NY	150135	WARWICK VALLEY-NY	R	\$431,745	\$1,726,980	\$0	\$0	
TOTALS:				\$10,923,738	\$43,694,951	\$2,449,356	\$9,797,424	\$53,492,375
Data was obtained from Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2004, Appendix HC1 (Universal Service Administrative Company).								

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

In the Matter of)	
)	
Petitions Concerning Eligible)	CC Docket No. 96-45
Telecommunications Carrier Designations)	
And the Lifeline and Link-Up)	WC Docket No. 03-109
Universal Service Support Mechanisms)	

COMMENTS OF VERIZON¹

Introduction and Summary

The Public Notice seeks comments on petitions by AT&T and TracFone, which ask the Commission to change the rules regarding eligible telecommunications carrier (“ETC”) status so that carriers can participate *only* in Lifeline and Link-Up support programs, without offering their customers high cost support services.² The petitions should be denied. The statute does not permit ETCs to pick and choose the universal service supported services they will provide customers. Moreover, if the petitions were granted, it is likely that customers would face the choice of receiving *either* high cost *or* low income support, as carriers who could become ETCs for one purpose but not another might not offer both services. There also would be considerable costs and administrative

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

² See Public Notice, DA 04-2750 (rel. Aug. 30, 2004). AT&T’s petition is for reconsideration of an FCC order denying its previous request. See AT&T Petition for Limited Reconsideration, WC Docket No. 03-109 (filed July 21, 2004) (“AT&T Petition”). TracFone’s requests are for pending ETC petitions in New York, Virginia, and Florida, where it has amended its petitions to “narrow[] the scope” of its requests and seek ETC status only for “Lifeline service.” See, e.g., 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”).

burdens associated with administering a dual ETC regime. Both the Joint Board and the Commission have rejected similar arguments in the past, and the Commission should reject these petitions as well.³

Argument

I. The Commission Should Not Allow ETCs to Provide Only Lifeline Support, But Not Other Universal Service Support, to Customers

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. It should reject these petitions as well.

First, section 254(e) restricts receipt of universal service support to eligible telecommunications carriers (“ETCs”) designated under section 214(e). AT&T originally proposed that non-ETCs receive Lifeline support. However, Verizon pointed out that such a proposal was not consistent with the Act, because section 254(e) restricts universal service support to ETCs.⁴ AT&T has responded by now arguing that there should be

³ *See Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, ¶ 54 (2004) (“Lifeline Order”); *Federal-State Joint Board on Universal Service*, Recommended Decision, 18 FCC Rcd 6589, ¶ 61 (2003) (“Recommended Decision”). AT&T filed the instant petition for reconsideration because it claims that the *Lifeline Order* did not adequately address its arguments. *See* AT&T Petition, at 1-3.

⁴ *See* Verizon Reply Comments, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 01J-2, at 4 (filed Feb. 28, 2002). In the First Universal Service Order, the Commission opined that it would be possible to allow non-ETCs to receive Lifeline support. *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC 8776, ¶¶ 369-370 (1997) (“First Universal Service Order”) (stating that the Commission has “authority under sections 1, 4(i), 201, 205 and 254 to extend Lifeline to include carriers other than eligible telecommunications carriers” but “decline[ing] to do so at the present time”). However, because of the restrictions of Section 254(e), it would appear that in order to provide payments to non-ETCs, such payments could not be funded by universal service support.

separate “ETC” designations, one for high cost support and another for Lifeline support.⁵ This suggestion makes a mockery of the statutory requirements of 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.

There also 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 originally denying AT&T’s suggestion, “[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, 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.⁶ The Commission also is considering proposals to limit high cost support to

⁵ *See* AT&T Comments, WC Docket 03-109, at 2-6 (filed Aug. 18, 2003); AT&T Petition, at 1.

⁶ *See* Recommended Decision, ¶ 4; 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.

only one primary line per customer.⁷ Granting the AT&T and TracFone petitions 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.

In addition, there would be little or no benefit to consumers if the petitions were granted. AT&T points out that “[i]n most states,” CLECs *already* “are required by state law to provide Lifeline Service at below cost rates as a condition to local market entry.” AT&T Petition, at 3. In addition, resellers that purchase services from ILECs are able to provide Lifeline services to their customers by purchasing Lifeline service at wholesale rates from the ILEC.⁸ Thus, AT&T’s petition frankly reveals that it is not designed to increase the number low-cost offerings to low-income consumers, but instead to increase the compensation AT&T receives for these customers, without AT&T having to also undertake the other, “costly” obligations of becoming an ETC. *See AT&T Petition*, at 3-4 (claiming that because it is so “costly” to comply with state ETC requirements, CLECs “often provide Lifeline service without applying for ETC certification”).

TracFone’s arguments fare no better. As an initial matter, TracFone’s petitions for ETC status independently should be rejected without reaching the “Lifeline” question, because TracFone is a pure reseller, and thus is not eligible for ETC status, regardless of the criteria.⁹ TracFone has admitted as much, and sought forbearance from the statutory

⁷ *See Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 19 FCC Rcd 10805, ¶ 3 (2004).

⁸ Recommended Decision, ¶ 61.

⁹ Verizon Comments, *TracFone Petition for Forbearance and TracFone Petition for ETC Designation in New York*, CC Docket No. 96-45, at 7-14 (filed July 26, 2004) (“Verizon Forbearance Comments”).

requirement that an ETC provide services using its own facilities.¹⁰ Faced with numerous oppositions to its petition for forbearance and its petition seeking ETC status in New York, TracFone sought to amend its petitions to “narrow” the scope of its request to seek only Lifeline support.¹¹ Thus, TracFone asks that the Commission both forbear from the statutory requirements for ETC status *and* revamp the entire system for administering the ETC program so that it can be eligible for support for those services it wishes to provide. Both requests should be denied.

TracFone’s primary arguments are that many of its customers are “low income consumers,” many of which are ones that “other wireless carriers do not want to serve.”¹² 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 offer Lifeline services to *all* customers in their designated service areas, not just those that they “want to serve.”¹³ Many of the wireless carriers from whom TracFone purchases resale services already have become ETCs, or are seeking ETC status, in the territories where TracFone is seeking to become a “Lifeline” ETC. Thus, even with the more “narrow” request to receive ETC support only for Lifeline services,

¹⁰ See TracFone Petition for Forbearance, CC Docket No. 96-45 (filed June 8, 2004) (“TracFone Forbearance Petition”).

¹¹ See, e.g., Amended Virginia ETC Petition; 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) (“Amended Florida ETC Petition”); 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) (“Amended New York ETC Petition”).

¹² Amended Virginia ETC Petition, at 2; Amended Florida ETC Petition, at 2.

¹³ See 47 U.S.C. § 214(e)(1)(B).

TracFone's request for universal service support still presents the problem of "double recovery" that caused the Commission years ago to reject similar requests for forbearance.¹⁴

TracFone also has argued that Lifeline service is "underutilized" in the states in which it seeks "Lifeline ETC" designation.¹⁵ However, as Verizon has pointed out in numerous occasions, the test for success of this universal service program should not be measured based on the number of customers that receives support from the Lifeline program, but whether overall telephone subscribership is adequate.¹⁶ Regardless, the Commission has recently adopted several measures designed to increase participation in the Lifeline program. *See Lifeline Order*, ¶¶ 2, 7-18. If the Commission wishes to examine other methods for further increasing participation in the Lifeline program, the way to do that is to invite comments in a further notice of proposed rulemaking, not to entirely rewrite the ETC process so that TracFone can participate.

¹⁴ Verizon Forbearance Comments, at 7-10; *First Universal Service Order*, ¶ 179.

¹⁵ TracFone Reply Comments, *Petitions for Designation as an Eligible Telecommunications Carrier in the State of Florida and Commonwealth of Virginia*, CC Docket No. 96-45, at ii (filed Sept. 7, 2004).

¹⁶ *See* Verizon Comments, WC Docket No. 03-109, at 4-5 (filed Aug. 23, 2004); *see also* Verizon Comments, WC Docket No. 03-109, at 7-13 (Aug. 18, 2003).

Conclusion

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

Respectfully submitted,



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September 20, 2004

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.
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