



**NOTICE AND SUMMARY  
EX PARTE PRESENTATION**

August 18, 2005

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Portals II, Room TW-A325  
Washington, DC 20554

Re: TracFone Wireless Petition for Forbearance, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

On August 17, 2005, James Olson and I, on behalf of the United States Telecom Association (USTelecom), along with Trenton Boaldin, President of Epic Touch Co., met with Jessica Rosenworcel, Legal Advisor to Commissioner Michael J. Copps, regarding the above-referenced proceeding.

The purpose of this meeting was to urge the Commission to deny the TracFone Petition for Forbearance because the public interest requirement for granting forbearance has not been met. Assuming the Commission wishes to consider forbearance from the requirement that an eligible telecommunications carrier (ETC) provide service, at least partially, over its own facilities, the better and more appropriate way to do so is by initiating a rulemaking on a number of procedural and enforcement matters raised implicitly in the TracFone Petition. Only after completing such a rulemaking should the Commission determine whether to grant forbearance from the facilities requirement of sections 214(e)(1)(A) and 254(e).

USTelecom also stressed that, in evaluating TracFone's Petition, the Commission must remain acutely aware of the potential for harm to the integrity and efficient management of the Universal Service Fund (USF or Fund). Perceptions and actual cases of fraud, abuse, waste, and mismanagement harm all universal service support programs. At a time when there have been allegations of significant fraud and abuse associated with the schools and library component of the Fund, such problems in other universal service programs should be at the forefront of the Commission's consideration of a request such as the one made by TracFone. While USTelecom is not suggesting that granting forbearance would necessarily result in such fraud and abuse, the potential exists without sufficient consideration of the problems inherent in TracFone's request. Accordingly, USTelecom believes it is important to take appropriate steps, namely a rulemaking to address issues associated with TracFone's request for forbearance, to avoid any further problems in the administration of universal service support.

USTelecom also urged the Commission to remain focused on the important goal of resolving the universal service contributions proceeding as part of an effort to ensure the integrity and continuing viability of the Fund. Without a rulemaking to fully consider the costs of granting TracFone's requested forbearance and the costs of implementing rules that establish procedures for administering Lifeline discounts to a prepaid wireless provider, the Commission cannot be sure that the benefits of forbearance outweigh the costs, particularly with respect to ensuring the integrity and viability of the Fund. To grant forbearance before such a rulemaking has been conducted in this particular case is putting the proverbial cart before the horse and would create a chaotic situation where there are no rules or procedures to implement TracFone's request and there are no enforcement measures established. In the meeting, USTelecom highlighted a number of potential problems that would need to be addressed, and for which rules should be put in place to establish procedures and enforcement before granting a Petition such as that of TracFone. Below, USTelecom identifies the problems discussed in regard to four discrete topics and adds further detail.

#### Prepaid, Minutes-Based Service Instead of Monthly, Subscription Service

- TracFone has not sufficiently explained how its prepaid, minutes-based service will be discounted in light of the current system of Lifeline discounts that is based on monthly, subscription service. In other words, there has been no consideration given to how many minutes would constitute a month's worth of service. If discounts will be provided on a minutes basis in addition to a monthly, subscription basis, then the record should include information on how minutes discounts would be calculated. Notably, discounts applied to minutes changes the current nature of the subsidy from one that covers basic access to service to one that subsidizes usage, which coincidentally increases the incentive for high-volume users to purchase multiple bundles and potentially receive multiple Lifeline support amounts.
- There is also insufficient information in the record on how discounts would be monitored to ensure that TracFone's wireless customers are not receiving greater Lifeline discounts than wireline service customers for comparable service. There is no information in the record on the revised processes that will surely be needed for the Universal Service Administrative Company (USAC) to administer reimbursement for Lifeline discounts provided by TracFone, nor is there any information on how USAC Lifeline reporting and reimbursement forms would need to be revised to accommodate discounts on minutes-based service.
- TracFone has not sufficiently explained how it will verify and re-verify whether purchasers of its service are Lifeline eligible, both from a financial and a household perspective. Placing retail vendors in the position of verifying a customer's financial data or confirming that the TracFone service will be the only Lifeline service used by the individual or household is suspect, particularly so without Commission rules that direct vendor processes and consequences for noncompliance. Further, the Commission needs more information on how re-verification of eligibility will be accomplished, especially in light of TracFone's own statements that its service benefits consumers that move often and may be difficult to reach by mail. The Commission should consider the need for

rules requiring termination of Lifeline discounts when a customer does not respond to a request for re-verification of eligibility or does not on his own re-verify eligibility.

- TracFone has not sufficiently explained how it will terminate Lifeline discounts on minutes already purchased when a customer becomes ineligible for further discounts after having already purchased but not having completed use of the discounted minutes purchased, whether because TracFone has affirmatively determined the customer is no longer eligible or because the customer has not responded to a request for re-verification of eligibility. TracFone should address whether or not it can prevent a customer from using any remaining minutes purchased at a discount – perhaps refunding the remaining money on the phone card or converting that money to a different service plan – after TracFone has determined that a customer is no longer Lifeline eligible or if the customer will continue to receive the Lifeline benefit even though it is longer eligible. These types of issues should be incorporated into rules addressing Lifeline discounts available to prepaid wireless service.
- An important underlying point applicable to all problems related to monitoring use of Lifeline discounted service and verification of eligibility for receipt of Lifeline discounted service provided by a prepaid, minutes-based plan as compared with a monthly, subscription plan is the lack of ongoing customer contact with the prepaid customers. Carriers providing monthly, subscription service have ongoing contact with their customers, which facilitates prevention of fraud and abuse because the customer can be identified, contacted, and readily disconnected from service. On the other hand, carriers providing prepaid, minutes-based service distribute their service up front and subsequent customer contact is not integral to the service. In effect, enforcement of Lifeline requirements would have to focus on getting back improperly distributed money, which is difficult at best. These differences must be fully considered and addressed before granting the requested forbearance.
- There is insufficient information in the record addressing the ability to confirm that consumers of a prepaid, minutes-based plan are actually receiving the full discount, particularly if the provider creates special Lifeline plans that are not directly comparable to unsupported plans. While TracFone does face competition, there is no Commission mechanism in place to prevent a retailer of prepaid service from manipulating the prices of its services and related services such as additional minutes so that a consumer is not receiving the full Lifeline discount. Even in competitive markets, creative pricing often allows providers to extract more than customers expect to pay. This would be an important topic to address in a rulemaking to ensure that consumers, the intended beneficiaries of Lifeline discounted service, actually receive that benefit.

### Wireless Service Instead of Wireline Service

- While there are some wireless Lifeline services today, the bulk of Lifeline service is provided via the landline, which facilitates monitoring and compliance with the fundamental objective of Lifeline service, *i.e.*, basic household access to the network. A rulemaking proceeding would provide the Commission with the venue to consider the likelihood that it will be materially more difficult to ensure that there are not multiple Lifeline-supported wireless phones in a single household.

### Increased Retail Distribution by Third Parties

- Lifeline service has traditionally been distributed by carriers themselves, however, TracFone proposes to distribute its service through retail establishments such as Wal-Mart. Therefore, the people who will be certifying compliance will not be working for the carrier receiving support. When the people certifying compliance work for the carrier receiving support it ensures more certain and stronger sanctions for facilitating or not preventing fraud and abuse (e.g., the employee can be reprimanded or fired). Yet, when third-party retail establishment employees are charged with enforcing compliance, one must believe that the sanctions for facilitating or not preventing fraud and abuse will be weakened because there is no direct relationship between the carrier and the retail employee. The core responsibilities of the retailer's cashier will have nothing to do with Lifeline service, and TracFone will not be in a position to take action itself against those who facilitate or fail to prevent fraud or abuse.

### Consequences of Multiple Prepaid, Wireless ETCs

- Even if the Commission tried to limit a grant of forbearance to TracFone by subjecting it to a number of new regulatory conditions, a successful market campaign by TracFone will inevitably lead to competitors seeking to do the same, resulting in other providers seeking forbearance such as that sought by TracFone. When multiple providers of prepaid, wireless service are competing to sign up Lifeline customers, the task of ensuring that recipients do not receive multiple subsidies becomes vastly more complicated than it is today. Each company does not know about the other companies' customers, so a customer may find it relatively easy to purchase Lifeline-supported service from several providers at the same time without the companies being able to verify that this is not occurring. Moreover, with multiple providers competing to sign up Lifeline customers, each of the other problems listed above will be further magnified.
- If there are additional filings for forbearance resulting from TracFone's success, the Commission will be put in the untenable position of tailoring grants of forbearance to each request, subjecting each carrier to new regulatory conditions, when it would be more appropriate and efficient to address an industry-wide matter through a rulemaking. In fact, it is fundamentally improper to impose rules – in essence regulate – through the forbearance process, which is intended to be deregulatory in nature.

There are no doubt a host of other procedural and enforcement issues associated with providing Lifeline discounts to prepaid wireless service. However, the lack of consideration and resolution of those discussed above is sufficient to warrant denial of TracFone's Petition for Forbearance. Without a rulemaking to consider these and other types of issues, the Commission cannot affirmatively state that the public interest requirement of forbearance has been met.

Finally, the forbearance requested by TracFone focused solely on the facilities requirement in section 214(e)(1)(A) of the Telecommunications Act of 1996 (Act), but did not include a request for forbearance from the related facilities requirement in section 254(e) of the Act.<sup>1</sup> It would be inappropriate for the Commission to grant forbearance from section 254(e) *sua sponte* without having provided an opportunity for notice and comment on forbearance from section 254(e).

For the substantive and procedural reasons elaborated above, USTelecom urges the Commission to deny TracFone's Petition for Forbearance. If the Commission wishes to consider the issues raised by TracFone, the appropriate procedure would be first to initiate a rulemaking addressing procedures for implementing and enforcing Lifeline discounts to prepaid wireless service providers.

In accordance with section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically with your office. Please feel free to contact me if you have any questions.

Sincerely,



Jeffrey S. Lanning  
Associate General Counsel

cc: Jessica Rosenworcel

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<sup>1</sup> Section 254(e) of Act states that "A carrier that received such 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).