Greenberg Traurig

Mitchell F. Brecher
(202) 331-3152
BrecherM@gtlaw.com

October 21, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: CC Docket Nos. 96-45, 98-171, 90-571, 92.237, 99-200, 95-116, 98-170, and NSD File No. L-00-72 EX PARTE PRESENTATION

Dear Ms. Dortch:

This letter is submitted on behalf of our client, TracFone Wireless, Inc. TracFone is the nation's leading provider of prepaid wireless telecommunications services. Although other carriers offer prepaid wireless services, TracFone differs from those other companies in several important respects. TracFone provides only prepaid service. All TracFone services are offered on a "pay-as-you-go" basis with no contracts, no duration or volume commitments, and no credit checks. TracFone's services are available to consumers to whom wireless services would otherwise not be available or, if available, would be unaffordable. Accordingly, a substantial portion of TracFone's customer base consists of low income, low volume users, which include minorities, students, transients, and the elderly.

Throughout this proceeding, TracFone has consistently and often articulated its position that the Commission should not abandon a revenues-based Universal Service Fund (USF) contribution methodology in favor of either a telephone numbers-based methodology or a connections-based methodology. TracFone continues to believe that of the methodologies under consideration, only a revenues-based plan would comply fully with the statutory requirements that "[e]very telecommunications carrier that provides interstate telecommunications service shall contribute on an equitable and nondiscriminatory basis" (47 U.S.C. § 254(d)). Moreover, as TracFone has explained and demonstrated with quantitative data, abandonment of the revenues-based methodology in favor of a methodology based on working telephone numbers would dramatically increase the USF contribution obligation imposed on prepaid wireless carriers, including TracFone. As noted in a prior submission in these dockets, a $1.00 per telephone number per month charge would increase TracFone's USF contribution assessments by approximately 1,300 percent.

According to more recent TracFone data, during the third quarter 2005, TracFone remitted to the USF approximately $0.05 per customer per month, based on its actual interstate telecommunications service revenues. Thus, a per number assessment of $1.00 would increase TracFone's USF costs twentyfold. An increase of this magnitude would be especially burdensome since prepaid wireless providers like TracFone have no opportunity to recover their USF contribution costs from their customers through line item charges on customer invoices (it does not render invoices). Thus, TracFone pays its USF assessments out of earned revenues.

Notwithstanding those concerns, it has been reported that the Commission is considering replacement of the current revenues-based contribution methodology with a numbers-based plan. If those reports are accurate, then TracFone urges the Commission to include in any such plan an acknowledgement that a numbers-based methodology would have an adverse impact on prepaid wireless providers and their consumers, and that the plan provide an alternative contribution methodology (*i.e.*, a methodology based on interstate telecommunications service revenues) for those services.

Specifically TracFone proposes that those providers of interstate telecommunications services which do not have ongoing billing relationships with their customers be allowed to continue to have their USF contributions based on their interstate telecommunications service revenues. In this regard, analogy to another telecommunications market segment – the prepaid wireline calling card segment – is instructive. Providers of wireline prepaid calling card services sell to consumers cards with specified amounts of usage paid for in advance. Consumers can use those cards from any telephone (including pay telephones), dial a toll-free access number, enter an authorization code associated with the card, and dial the called telephone number to complete a call. Since those prepaid calling cards can be used from any telephone, they are not associated with assigned telephone numbers. Thus, under a numbers-based contribution methodology, providers of such services could not be assessed USF contributions since there would be no assigned telephone numbers upon which to base the assessments. In order to comply with the statutory requirement that "[e]very telecommunications carrier that provides interstate telecommunications service shall contribute . . .," an alternative assessment methodology would be needed to impose USF assessments on such providers. The most appropriate alternative would be to base those carriers' USF assessments on their interstate telecommunications service revenues as is done today.

While prepaid wireless providers differ from prepaid wireline calling card providers in that the former assign working telephone numbers to their customers, prepaid wireless carriers are like prepaid wireline calling card companies in another, more important, respect. Neither prepaid wireless providers nor prepaid wireline calling card providers render invoices to customers for services provided. Thus, neither prepaid wireless carriers nor prepaid wireline companies have any ability to recover their USF contribution assessments from their customers as line item charges on customer bills. In short, those categories of providers are similar to each other, but are profoundly different from the many traditional wireline and wireless companies who can and do render periodic invoices to their customers, and who can and do recover their USF contributions from their customers through use of line item charges on those periodic invoices.

Prepaid wireless carriers are like prepaid wireline calling card providers since both are subject to the requirement that "every" provider of interstate telecommunications service contribute to the USF. Prepaid wireless carriers also are like prepaid wireline calling card companies in that neither has the opportunity nor the ability to recover their USF contributions from their customers though billing surcharges. Based upon the foregoing, TracFone proposes that, if the Commission chooses to implement a telephone numbers-based USF contribution methodology, that it acknowledge that the methodology is not appropriate for those service providers who are unable to recover their contribution costs from their customers through billed surcharges. Such providers should therefore be permitted to continue to have their USF contributions based on interstate telecommunications service revenues using the Commission-prescribed contribution factor in effect for the preceding quarter. If, in the future, it becomes necessary to increase the per number assessment, the contribution factor applicable to those carriers who remain subject to revenue-based contributions would be increased by the same percentage. For the reasons set forth in this letter, it is respectfully submitted that the proposal set forth herein would be the most equitable and nondiscriminatory manner to assess Universal Service Fund contributions on prepaid wireless providers.

Pursuant to Section 1.1206(b) of the Commission's Rules, this letter is being filed electronically in the above-captioned dockets. If you have any questions regarding this matter, please feel free to contact undersigned counsel for TracFone.

Respectfully submitted,

Mitchell F. Brecher
Counsel for TracFone Wireless, Inc.

cc: Ms. Michelle Carey
Mr. Scott Hanser
Mr. Scott Bergmann
Ms. Jessica Rosenworcel
Mr. Thomas Navin
Ms. Narda Jones
Ms. Cathy Carpino
Ms. Carol Pomponio
Mr. Jeremy Marcus
Mr. Gregory Guice