

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

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In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply to the comments which were submitted on or about August 9, 2006, in response to the notice of proposed rulemaking portion (“Notice”) of the Commission’s Report and Order and Notice of Proposed Rulemaking issued in this proceeding.¹

BACKGROUND

In the USF Contribution Methodology Order & NPRM, the Commission made “interim modifications to the existing approach for assessing contributions to the federal universal service fund (USF or Fund) in order provide stability while [the Commission] continue[d] to examine more fundamental reform.”² In particular, the Commission raised the interim wireless safe harbor from 28.5 percent to 37.1 percent and required providers of interconnected Voice over the Internet Protocol (“VoIP”) service to contribute to the USF.³ In the Notice, the Commission stated that it sought “to further refine the record concerning the interim requirements established in the accompanying Order for mobile wireless providers and for interconnected VoIP providers,

¹ Universal Service Contribution Methodology, et al. (Report and Order and Notice of Proposed Rulemaking), FCC 06-94, released June 27, 2006 (“USF Contribution Methodology Order & NPRM”).

² Id. ¶ 1.

³ See id. ¶ 2.

while [the Commission] continue[d] to examine more fundamental contribution methodology reform.”⁴ The Notice specifically sought comment on whether to eliminate or raise the interim wireless safe harbor, how wireless providers can determine actual interstate and international end-user revenues, and on VoIP providers’ USF contribution obligations.⁵

In its comments, TracFone recommended that the Commission either eliminate the safe harbor or establish a safe harbor percentage that would encourage wireless providers to report actual interstate and international end-user revenues if the means to identify and report such traffic is available, suggested methods for determining interstate and international revenues, and noted its support for the Commission’s decision to access USF contribution obligations on VoIP service providers.

Rather than addressing the implementation issues raised in the Notice regarding the wireless safe harbor and contributions by VoIP providers, several commenters inappropriately used their initial comments as a platform to reiterate their preference for a numbers-based contribution methodology. Whatever the merits of such a contribution reform proposal, those questions are not before the Commission in the instant proceeding. Several commenters supported the retention of the wireless safe harbor, at least on an interim basis, and provided their opinions on the best methods for determining the jurisdictional nature of telephone calls for purposes of calculating interstate revenues. In these reply comments, TracFone requests the Commission to concentrate its efforts on the interim measures that will govern contributions to the USF until the Commission determines and implements a wholesale reform to the contribution system. TracFone further notes its agreement with those commenters who advocate a wireless safe harbor that is periodically re-evaluated based on changes in the marketplace. Finally,

⁴ Id. ¶ 65.

⁵ Id. ¶¶66-69.

TracFone recommends that the Commission permit wireless providers to use the most accurate, reasonably available technology, to identify actual interstate and international service usage.

I. The Commission Should Focus on Implementing and Maintaining an Effective Interim USF Contribution Methodology.

Several commenters, including, for example, AT&T Inc., BellSouth Corporation, and Time Warner, Inc., ask the Commission to cease its efforts to implement interim changes to the current revenue-based contribution methodology in favor of adopting fundamental reform to the methodology. Specifically, those commenters reiterate their previously-stated preference for a USF contribution methodology based on working telephone numbers, notwithstanding the fact that contribution methodology reform is not within the scope of the issues raised by the Notice.⁶ AT&T ignores the issues presented in the Notice, and instead states that “the Commission cannot allow this proceeding to divert it from the task of fundamental reform.”⁷ Similarly, BellSouth includes one reference to the interim contribution methodology measures described in the Notice and then focuses its comments on “replac[ing] permanently the current revenue-based methodology with one based on working telephone numbers.”⁸ While the Commission invited VoIP providers (who for the first time are being required to contribute to the USF) to suggest a permanent approach to USF contributions,⁹ it did not ask all telecommunications service providers to reiterate their arguments on whether the Commission should replace the revenue-

⁶ Significantly, only telecom service providers and their industry associations have used this proceeding to argue in favor of a numbers-based methodology. Not one consumer organization has commented in favor of a numbers-based system, despite the generally-acknowledged fact that ultimately it is consumers -- not service providers -- who bear the cost of contributing to the USF.

⁷ Comments of AT&T, Inc., at 1.

⁸ Comments of BellSouth Corporation, at 2; see Comments of the United States Telecom Association, at 3-5; Comments of Verizon, at 4-5

⁹ USF Contribution Methodology Order & NPRM, ¶ 68.

based contribution system with a numbers-based system or with any other alternative contribution methodology which is before the Commission in CC Docket No. 96-45.

The Commission should not be distracted by commenters' repetition of previously-raised positions regarding how to fundamentally reform the USF contribution methodology. Rather, the Commission should concentrate its efforts in this proceeding on ensuring that the current revenue-based contribution system is adjusted such that it works in an effective manner and that it generate sufficient funds to support universal service programs until such time as the Commission, based on a complete record which considers all relevant circumstances, considers more comprehensive USF reform. In fact, the same commenters who request the Commission to expeditiously adopt a numbers-based contribution methodology, also advise the Commission that implementation of a numbers-based system would require a minimum of one year.¹⁰ Thus, even if a new USF contribution methodology were to be adopted in the future, the current revenue-based system would need to remain in place for at least another year. As such, it is imperative that that Commission maintain a workable and fair revenue-based contribution methodology and that the interim implementation issues raised in the Notice be addressed and resolved based on a complete record.

Moreover, comprehensive review of the USF contribution methodology should be delayed, rather than expedited at this time. The Federal-State Joint Board on Universal Service ("Joint Board") recently invited comment on the merits of using reverse auctions to determine

¹⁰ Comments of BellSouth Corporation, at 5-6; Comments of CTIA - The Wireless Association, at 7; *see* Comments of Cingular Wireless LLC, n.4 ("Carriers should be provided with sufficient transition time when the new system is implemented."); Comments of Nebraska Rural Independent Companies, at 1-2 ("fundamental change may take significant time to implement").

the amount of high cost support to be provided to eligible telecommunications carriers.¹¹ The Joint Board explains in the Public Notice that “proposals to use auctions in the universal service context contemplate competitive bidding for the obligation to serve a specified area at an acceptable quality of service for a specified term, with the benefit of receiving universal service support to do so.”¹² The Joint Board further noted that “[b]y limiting the number of supported networks in each area and selecting the most cost-effective proposal(s), auctions could minimize the burden on consumers providing the support.”¹³ The high cost program accounts for more than 57 percent of support provided from the USF. The Universal Service Administrative Company (“USAC”) estimates that in 2006, the USF will provide \$4.2 billion of support to eligible telecommunications carriers under the high cost support program.¹⁴ Given that a substantial portion of the USF supports the high cost program, the adoption of a reverse auction plan to distribute high cost support could dramatically reduce the size of the fund necessary to meet the needs of the universal service support programs. Proponents of a numbers-based USF contribution methodology often assert that the size of the fund continues to grow and that reform is needed to support the continuously-growing fund. However, the potential adoption of a reverse auctions distribution methodology could significantly limit the rate of fund growth and possibly obviate the need for comprehensive contribution reform. As such, the Commission should examine possible means for utilizing USF funds more efficiently and for decreasing the

¹¹ Public Notice - Federal-State Joint Board on Universal Service Seeks Comments on the Merits of Using Auctions to Determine High-Cost Universal Service Support, WC Docket No. 05-337, CC Docket No. 96-45, FCC 06J-1, released August 11, 2006.

¹² Id. at 2.

¹³ Id. at 2-3.

¹⁴ USAC estimates the amounts of support to be allocated among the universal service support programs as follows: \$4.2 billion for high cost; \$820 million for low income; \$45 million for rural health care; and \$2.25 billion for schools and libraries. See <http://usac.org/about/universal-service/fund-facts/fund-facts.aspx>.

size of the USF prior to undertaking a complete overhaul of the contribution methodology. Until decisions are made which will determine the amount of funding needed to support universal service, modification of the contribution methodology would be premature and inappropriate. In the meantime, the Commission should concentrate on maintaining a fair and effective interim USF contribution system by promulgating appropriate rules to implement the increased wireless safe harbor, imposing reasonable guidelines for identifying and reporting interstate revenues for those carriers who choose to report based on actual revenues, and by providing greater detail to govern revenue reporting by VoIP providers.

II. The Commission Should Establish a Safe Harbor That Encourages Wireless Providers to Report Actual International and Interstate Revenues.

As stated in its initial comments, TracFone supports the elimination of the wireless safe harbor because virtually all wireless providers are able or should be able to identify the originating and terminating locations of calls, and therefore, should be able to report actual interstate telecommunications service revenues to the Commission, at least with respect to a substantial portion of their traffic. In the alternative, TracFone recommends that the Commission periodically adjust the wireless safe harbor and that wireless carriers be permitted to use the safe harbor only if they are able to demonstrate to the Commission that technical limitations impair their ability to compile actual interstate usage data.

Several commenters, including some that advocate a numbers-based contribution system, agree that the wireless safe harbor should be maintained.¹⁵ However, the commenters have different views as to the appropriate safe harbor percentage. If the Commission does not eliminate the safe harbor, TracFone urges the Commission to consider further increases in the

¹⁵ See Comments of Cingular Wireless, LLC, at 2-3; Comments of CTIA - The Wireless Association, at 8.

safe harbor based upon perceived changes in the wireless service marketplace so as to encourage wireless carriers to report actual revenues from interstate and international usage. Currently, wireless carriers may use one of three methods for reporting interstate revenues: (1) applying the safe harbor percentage; (2) undertaking a traffic study to estimate interstate usage; and (3) calculating actual interstate revenues. As Embarq Corporation notes, “carriers with higher actual interstate usage or carriers that conduct a traffic study that result in higher approximation of interstate revenue than that produced by the safe harbor rate may well choose to forego the exactness of actual data or the more precise approximation of a traffic study for a lower safe harbor rate.”¹⁶ Thus, the Commission should establish the safe harbor at a level which encourages wireless providers to report actual revenues, rather than relying on approximate numbers based on a safe harbor percentage or a traffic study where they have the means to do so. This position is consistent with the Commission’s “policy preference that providers contribute to the Fund based on their actual data rather than on a safe harbor percentage where possible.”¹⁷

TracFone also agrees with several commenters that contend that the wireless safe harbor should be periodically re-evaluated using actual data.¹⁸ The Commission should adjust the wireless safe harbor to reflect market conditions and to ensure that the USF receives all contributions to which it is entitled. Indeed, the “closer the Commission sets any safe harbor percentage to actual market conditions, the more accurate and contributor-neutral the Fund contributions and sufficient collections will be.”¹⁹ TracFone supports the position stated by the Nebraska Rural Independent Companies that the Commission adjust the wireless safe harbor on an annual basis.

¹⁶ Embarq Corporation’s Comments, at 3.

¹⁷ USF Contribution Methodology Order & NPRM, ¶ 28.

¹⁸ Embarq Corporation’s Comments, at 4; Comments of Rural Cellular Association, at 2-3.

¹⁹ Comments of Alexicon Telecommunications Consulting, at 8.

The Commission also sought comment on how wireless service providers should determine their actual interstate end-user revenues. Commenters express different views on the best way to identify interstate usage and associated revenue. TracFone detailed in its initial comments that the most accurate way to determine interstate usage for wireless customers is by using locations associated with originating and terminating cell sites where that information is available, and by using originating and terminating telephone numbers including NPAs (area codes) in situations where cell site location information is not available.²⁰ Finally, wireless carriers should only resort to using the safe harbor if location, cell site, and NPA data are unavailable.

TracFone recognizes that all wireless providers may not have access to or the resources to obtain location data for wireline calls or cell site data for wireless calls. Therefore, TracFone agrees with CTIA that “[w]ireless carriers should have the flexibility to rely on either originating/terminating cell sites, NPA-NXX, a combination of these methods, or any other similarly reliable data in determining the jurisdiction of calls.”²¹ However, wireless providers that choose not to determine actual interstate usage for USF purposes, and that intend to rely on the safe harbor, should be required to explain to the Commission why they are unable to access, or choose not to use, actual data such as cell site data and/or NPA data where such data are available.

²⁰ See *id.*, at 4 (“the use of NPAs is normally a reliable and statistically valid method to determine interstate and/or international location of a called party from either wireline or wireless originated calls”); Comments of Cingular Wireless LLC, at 4 (“NPAs are a reasonable proxy for the originating and terminating point of a call.”).

²¹ Comments of CTIA - The Wireless Association, at 9; see Comments of Rural Cellular Association, at 5 (“carriers should be permitted to classify traffic as interstate by relying on serving cell site locations or the calling and called parties’ NPAs, or some combination of the two methods”).

CONCLUSION

For the reasons set forth above and in TracFone's comments, the Commission should eliminate the wireless safe harbor and require all wireless service providers to report interstate end-user revenues based on actual data for purposes of determining USF contribution obligations. Alternatively, if the Commission concludes that a safe harbor remains necessary, then it should periodically adjust the wireless safe harbor to encourage wireless service providers to utilize available technology to determine actual interstate usage revenues. The Commission should also require wireless service providers to use cell site information where available to identify the jurisdictional nature of calls. Where cell site information is not available, jurisdictional determinations for USF reporting purposes should be based on the NPAs associated with each end of each call. Finally, the Commission should continue to require VoIP service providers to contribute to the USF.

Respectfully submitted,

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