

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
TracFone Wireless, Inc.	)	
	)	
Petitions for Designation as an Eligible	)	
Telecommunications Carrier in the	)	
District of Columbia	)	
_____	)	

**REPLY COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply to the comments which were filed on or about February 27, 2008, in response to TracFone’s Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia (“ETC Petition”). The comments filed by National Association of State Utility Consumer Advocates (“NASUCA”) support the grant of TracFone’s ETC Petition. The comments filed by United States Telecom Association (“USTA”) demonstrate a misunderstanding of TracFone’s prepaid service model and raise issues that have been previously addressed and resolved by the Commission. Thus, USTA’s comments present no justification for delaying or denying grant of TracFone’s ETC Petition.

NASUCA states in its comments that its concerns regarding TracFone’s ETC petitions have been satisfied.<sup>1</sup> In particular, NASUCA notes that in previously filed comments regarding TracFone’s petitions for designation as an ETC in Delaware, New Hampshire, and Pennsylvania, it proposed that “TracFone be required to offer the Lifeline discount to all of its customers, not

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<sup>1</sup> Letter from Charles A. Acquard to Marlene H. Dortch re Petition of TracFone for Designation as an Eligible Telecommunications Carrier in the District of Columbia, February 27, 2008.

just subscribers of the two plans outlined in its petitions.”<sup>2</sup> NASUCA then acknowledges that TracFone explained in reply comments concerning the Delaware and New Hampshire ETC petitions that TracFone only offers the two plans described in its ETC petitions.<sup>3</sup> Thus, NASUCA has indicated that its stated concerns regarding TracFone’s Lifeline proposal have been satisfied.

USTA urges the Commission to defer action on TracFone’s ETC Petition because the Commission is currently considering proposals for broader universal service reform.<sup>4</sup> TracFone concurs with those who believe that USF distribution reform is imperative, and it has supported both interim relief (*i.e.*, the proposed interim cap on high cost support) and long-term reform, including utilization of reverse auctions. However, the fact that the Commission is considering reform measures to control the size of the USF does not justify delay in consideration of ETC petitions. USTA’s suggestion is unjustified and ignores the reality of conducting business in a regulated industry. Carriers subject to regulation by the Commission are continuously impacted by Commission decisions that interpret or amend the Commission’s rules or establish new rules. The Commission may not stop applying current rules to carriers simply because there is a proceeding that may result in changes to those rules. Neither should it defer action on matters that are governed by existing rules simply because those rules may be subject to possible revision in a rulemaking proceeding. Indeed, in the past, when the Commission has been faced with the possibility of a separate ongoing proceeding impacting a current proceeding, the

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<sup>2</sup> Id. at 2 (citing In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Delaware and New Hampshire, CC Docket No. 96045, Initial Comments of the National Association of State Utility Consumer Advocates and the Public Utility Law Project of New York, Inc., January 14, 2008 and TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications carrier in the Commonwealth of Pennsylvania, Letter from David C. Bergmann, February 8, 2008).

<sup>3</sup> Id. at 2.

<sup>4</sup> See USTA Comments, at 2.

Commission has acted based on the rules in effect at the time of the current proceeding. For example, in the context of several ETC designation orders, the Commission noted that the Federal-State Joint Board was reviewing the Commission's rules concerning the USF, including the process for designating ETCs. The Commission acknowledged that the outcome of that proceeding could potentially result in changes to the criteria used for continued eligibility to receive universal service support.<sup>5</sup> Nevertheless, the Commission acted on those requests notwithstanding the pendency of a proceeding which could result in future rule changes.

This is not the first time that USTA has asked the Commission to delay its consideration of TracFone's ETC petitions. In 2005, USTA urged the Commission to defer any decision on TracFone's Petition for Forbearance with respect to the facilities-based service requirements of 47 U.S.C. § 201(e) and 47 C.F.R. §§ 54.201(d)(1) and (i) for designation as an ETC.<sup>6</sup> USTA suggested that the Commission "remain focused on the important goal of resolving the universal service contributions proceeding ... ."<sup>7</sup> USTA further requested the Commission to "first initiate a rulemaking addressing procedures for implementing and enforcing Linline[sic] discounts to prepaid service providers."<sup>8</sup> Despite USTA's dilatory tactic of attempting to link TracFone's ETC petitions to larger scale universal service reform and commencement of a rulemaking proceeding that would delay grant of TracFone's Petition for Forbearance, the Commission wisely granted the petition in an order dated September 8, 2005.<sup>9</sup> Similarly, the Commission

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<sup>5</sup> See Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 6422, ¶¶ 3-4 (2004); Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 1563, ¶¶ 3-4 (2004).

<sup>6</sup> See TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004, as amended by TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004 ("Petition for Forbearance").

<sup>7</sup> Letter from Robin E. Tuttle, USTelecom, to Marlene Dortch, FCC, CC Docket No. 96-45, filed August 17, 2005, at 2.

<sup>8</sup> Id. at 5.

<sup>9</sup> Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR §

should consider TracFone's ETC Petition without waiting for the completion of broader universal service reform.

USTA also objects to TracFone's decision to only seek support from the low-income program of the USF. USTA comments that "[t]he Act does not allow ETCs to pick and choose which of the supported universal services they will offer."<sup>10</sup> Contrary to USTA's claim, there is no requirement that an ETC provide services supported by the low-income and high-cost universal service programs. Carriers designated as ETCs are eligible to receive universal service support distributed under the low income and high cost support mechanisms.<sup>11</sup> The Commission's rules provide that all ETCs "shall: (a) make available Lifeline service . . . to all qualifying low-income customers."<sup>12</sup> In addition, Section 54.101 of the Commission's rules lists services and functionalities that "shall be supported by federal universal service support mechanisms" and that must be offered by ETCs to receive universal service support. However, the Commission's rules do not require that carriers providing such services and functionalities seek high cost support. Nor do the rules require that carriers designated as ETCs utilize universal service funding to provide both low income and high cost supported service. Indeed, some ETCs currently offer Lifeline service, but do not receive high cost support.

Thus, while an ETC may provide the services listed in Section 54.101 to consumers in high cost areas, the ETC is not required to seek federal support for the provision of such services. If designated an ETC, a carrier may determine that it is able to provide the services required of an ETC without needing high cost support from the USF. There is ample precedent for the

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54.201(i), 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order").

<sup>10</sup> See USTA Comments, at 2.

<sup>11</sup> See 47 U.S.C. § 214(e)(1) ("[a] common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support); 47 C.F.R. § 54.201(a) (ETCs "shall receive universal service support distributed pursuant to . . . Subparts D [high cost] and E [low income] of this part.")

<sup>12</sup> 47 C.F.R. § 54.405(a).

Commission imposing conditions or limitations on grants of authority.<sup>13</sup> Previously, TracFone has notified the Commission that it would be willing to accept express conditions in all grants of its requests for ETC designation limiting its designation so as to be eligible for Lifeline support only.<sup>14</sup> As confirmed by the Commission in the TracFone Forbearance Order, TracFone's decision to restrict the scope of its ETC petitions to the Lifeline program is consistent with the laws and regulations governing universal service and with the public interest.<sup>15</sup>

Indeed, USTA's argument that TracFone should not be allowed to limit its receipt of USF support to Lifeline is ironic and duplicitous. One of the primary arguments advanced by USTA and its members against designation of wireless and other competitive (*i.e.*, non-incumbent local exchange carriers) carriers as ETCs is that designation of such competitive ETCs has caused growth in the high cost portion of the USF.<sup>16</sup> TracFone shares that concern. For that reason, TracFone has supported the proposed interim cap on high cost support.<sup>17</sup> It is also for that reason that TracFone has limited its ETC petitions to Lifeline service. Designation of TracFone as an ETC for Lifeline only will not cause the high cost portion of the USF to increase by one dime! TracFone has sought ETC designation in the District of Columbia and in several states because it believes that it has the ability to provide low income consumers with a Lifeline option which will enable such consumers to obtain the benefits of reliable wireless service not otherwise affordable

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<sup>13</sup> 47 U.S.C. § 154(i); *see, e.g., Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) (ETC designation subject to conditions described in order).

<sup>14</sup> *See, e.g., TracFone Wireless, Inc. Petitions for Designation as an Eligible Telecommunications Carrier in the State of Connecticut and the Commonwealth of Massachusetts*, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., filed December 29, 2004, at 9.

<sup>15</sup> *See TracFone Forbearance Order*, ¶ 6 ("If ultimately granted ETC status, TracFone will be eligible only for Lifeline support.").

<sup>16</sup> *See Letter from USTelecom Members to FCC*, CC Docket No. 96-45, filed November 30, 2007; *High-Cost Universal Service Support, et al.*, WC Docket No. 05-337, CC Docket No. 96-45, Comments of USTelecom, filed June 6, 2007, at 2.

<sup>17</sup> *High-Cost Universal Service Support, et al.*, WC Docket No. 05-337, CC Docket No. 96-45, Comments of TracFone Wireless, Inc. on Joint Board Proposal for Interim High Cost Funding

to them. According to the Commission's own data, in the District of Columbia only 21.5 percent of eligible low income households participate in Lifeline.<sup>18</sup> TracFone believes that, if given an opportunity, it can expand the reach of the Lifeline program to cover many low income households not currently benefiting from the Lifeline program.

Finally, USTA states that the Commission should impose the conditions set forth in the TracFone Forbearance Order on any designations of TracFone as an ETC. In the TracFone Forbearance Order, the Commission granted TracFone's Petition for Forbearance subject to certain conditions. The Commission required TracFone to submit a plan describing the measures it would take to implement each of these conditions.<sup>19</sup> In accordance with the TracFone Forbearance Order, TracFone filed its compliance plan with the Commission on October 11, 2005. In that compliance plan, TracFone described how it would comply with each of the Commission's stated conditions. TracFone commits to providing Lifeline service in the District of Columbia, as well as in other states for which the Commission grants TracFone ETC status, in accordance with that compliance plan.<sup>20</sup>

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Cap, filed June 6, 2007.

<sup>18</sup> See Lifeline and Link-Up, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 8302 (2004), at Table 1.A.

<sup>19</sup> TracFone Forbearance Order, ¶ 6.

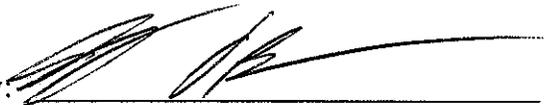
<sup>20</sup> On March 12, 2008, the Public Service Commission of the District of Columbia (DC PSC) submitted reply comments in which it urged the Commission to approve TracFone's petition only upon finding that it has complied with all statutory and regulatory requirements and with the conditions set forth in the TracFone Order, 20 FCC Rcd 15095 (2005). TracFone understands and respects the DC PSC's concerns and it will comply with all conditions consistent with the compliance plan which it filed on October 11, 2005. All TracFone phones are capable of dialing 911 irrespective of whether they have remaining prepaid airtime balances. In fact, such 911 access is required by the Commission. 47 C.F.R. § 20.18. As for the DC PSC's stated concern about TracFone's plan to utilize its underlying carriers' certifications rather than contacting each Public Safety Answering Point (PSAP), TracFone explained in detail in its October 2005 Compliance Plan why its plan would ensure that all PSAPs would have location information regarding TracFone customers' phones and why a condition requiring TracFone to contact each of the thousands of PSAPs would be unduly burdensome and would yield no added public safety benefits. Given that the District of Columbia has only one PSAP, TracFone is willing to provide direct notification to the Office of Unified Communication in order to satisfy

## CONCLUSION

For all of the reasons set forth in these reply comments as well as in TracFone's petitions for designation as an ETC in the District of Columbia, TracFone has demonstrated that the requirements for eligibility for designation as an ETC have been met. Accordingly, TracFone requests that the Commission promptly grant all its pending ETC petitions, including the ETC Petition regarding the District of Columbia, which is the subject of the comments addressed herein.

Respectfully submitted,

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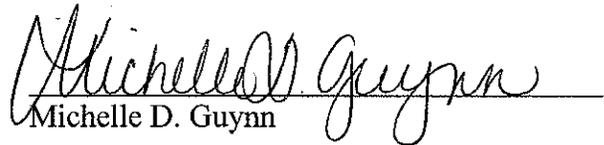
the DC PSC's concerns. Finally, TracFone will confirm Lifeline applications and verify continuing Lifeline eligibility in accordance with its all applicable requirements including those set forth in the TracFone Order.

**CERTIFICATE OF SERVICE**

I, Michelle D. Guynn, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that on March 13, 2008 a true and correct copy of the foregoing Reply Comments of TracFone Wireless, Inc., was mailed to the following:

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