

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

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act of 1996)	
)	
Developing a Unified Inter-carrier Compensation)	CC Docket No. 01-92
Regime)	
)	
Inter-carrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
)	
IP-Enabled Services)	WC Docket No. 04-36

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

Tracfone Wireless, Inc. (TracFone), by its attorneys, hereby submits its reply comments in the above-captioned proceedings. On November 26, TracFone filed initial comments limited to two issues:

1) if the Commission elects to establish a working telephone number-based Universal Service Fund contribution methodology to replace the current revenues-based methodology in whole or in part, that the Commission establish a contribution methodology which is appropriate for the special circumstances of prepaid wireless services and, more importantly, the economic circumstances of users of such services who are primarily low income consumers; and 2) that the

Commission should adopt a broadband Lifeline pilot program which would commit Universal Service funding to subsidize broadband Internet access service to low income households.

More than 100 parties have submitted comments on the proposals set forth in the Commission's Order on Remand and Report and Order and Further Notice of Proposed Rulemaking.¹ While many of the commenters focused on issues other than USF contribution methods for prepaid wireless and the proposed broadband Lifeline program, those parties who did address those issues generally supported the USF by the Minute plan and the proposal to establish a broadband Lifeline pilot project. Therefore, these reply comments will summarize that support and will address several points made by certain commenting parties which warrant response by TracFone.

I. The USF By the Minute Plan Enjoys Broad-based Support and Virtually No Opposition

Although the comments reflect differences of opinion regarding the various contribution methods proposed in Appendix A, Appendix B, and Appendix C of the Remand Order/FNPRM, most commenters favor some variant of a numbers-based contribution methodology either for all users or for residential users. Of the parties whose comments addressed the USF By the Minute plan for prepaid wireless, virtually all supported the plan.² Among the disparate parties who have endorsed the USF by the Minute plan are CTIA-The Wireless Association®, Virgin Mobile USA, L.P., OnStar Corporation, and the Mercatus Center Regulatory Studies Program at George Mason University. Several parties who opposed other proposals for alternative contribution methodologies for specific types of services expressed no objection to the USF by the Minute

¹ In the Matter of High-Cost Universal Service Support, et al, (*Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*), FCC 08-262, released November 5, 2008 ("Remand Order/FNPRM").

² As will be described below, one party -- Cincinnati Bell, Inc. -- criticized the plan. However, even it acknowledged the importance of an alternative contribution methodology for prepaid wireless services.

plan for prepaid wireless.³ These are in addition to entities such as AT&T and Verizon which previously have gone on record in support of the USF By the Minute plan.

The supporting comments of the Mercatus Center are especially significant. Unlike other commenting parties, the Mercatus Center has no pecuniary interest in the resolution of the intercarrier compensation/universal service reform issues before the Commission. Its stated purpose is to advance knowledge of the impact of regulation on society. In doing so, the Mercatus Center “conducts careful and independent analyses employing contemporary economic scholarship to assess rulemaking proposals from the perspective of the public interest.”⁴ Rather than addressing the views of any affected party or industry segment, the Mercatus Center evaluates the Commission proposals on “overall consumer welfare.”⁵ In light of this objectivity, the Mercatus Center’s analyses and conclusions are entitled to significant weight. The Commission’s attention is directed to the following statement from the Mercatus Center comments:

All three proposals would significantly reduce usage-based charges by eventually eliminating most revenue-based universal service contributions in favor of numbers-based contributions. The principal exception is the revenue-based contribution for prepaid wireless. This exception, however, may well be consistent with the general principle of minimizing charges on price-sensitive services. Many prepaid wireless users have low incomes, and their demand for telephone subscription is likely more price-sensitive than that of typical households. Revenue-based contributions may lighten the burden on these customers, thus encouraging them both to stay on the telephone network and to use their phones.⁶

TracFone concurs with that analysis. It is undisputed that prepaid wireless services are disproportionately used by low income consumers. As TracFone and others have described in

³ See, e.g., Comments of Qwest Communications International, Inc., Comments of Embarq.

⁴ Comments of the Mercatus Center at 1.

⁵ *Id.*

⁶ *Id.* at 7.

prior comments, the availability of pay-as-you-go prepaid services with no contracts, no deposits, no term commitments, and no early termination or underutilization charges makes wireless telecommunications service available to those consumers who otherwise would not be able to obtain wireless service. Moreover, basing USF contribution levels on actual usage of the service rather than on a flat per number charge will, as stated by the Mercatus Center, lighten the burden on those low income customers keeping them on the network.

Of the commenters who addressed the USF By the Minute plan, only Cincinnati Bell warrants response by TracFone. Cincinnati Bell has acknowledged and indicated its agreement with the two circumstances which render a numbers-based contribution methodology inappropriate for prepaid wireless services and those that use such services -- 1) the lack of any practical means for collecting USF assessments from end users; and 2) the fact that most prepaid wireless customers are low income consumers for whom prepaid services are a *de facto* “Lifeline” service.⁷ Nonetheless, Cincinnati Bell claims that the USF By the Minute plan would not adequately address either of those factors.⁸ As an alternative, Cincinnati Bell recommends that prepaid wireless services be subject to a numbers-based USF contribution but that the monthly amount be “discounted.”

TracFone respectfully urges the Commission not to adopt a per number discount plan in lieu of the USF By the Minute proposal. Proposals to “discount” numbers-based charges for prepaid wireless are not new. Several years ago, parties, including CTIA and T-Mobile, advocated such plans. CTIA proposed that the Commission establish a numbers-based contribution methodology, but that the monthly per number charge for prepaid wireless numbers

⁷ Comments of Cincinnati Bell at 22.

⁸ *Id.*

be reduced by fifty percent.⁹ TracFone opposed that proposal noting that CTIA's "discount" proposal would increase TracFone's USF contribution levels by nearly 1,600 percent.¹⁰ Recently, even CTIA has distanced itself from the nearly three year old "discount" proposal and has expressed support for the USF By the Minute plan.¹¹ Abandonment of the per number "discount" plans by those entities who initially supported such plans reflects a growing consensus that an across-the-board discount off the standard per number contribution would not take into account significant differences in usage levels among different providers. No one discount amount would be appropriate for the entire prepaid wireless industry and an attempt to create such a "one size fits all" discount would be unavailing.

Underlying Cincinnati Bell's objection to the USF By the Minute plan is the notion that prepaid wireless providers whose customers on average use more minutes per month than the average postpaid subscriber would receive no benefit.¹² This stated concern disregards the fact that the USF By the Minute plan as described by the Commission would cap prepaid providers' USF contributions at the monthly per number levels established for other providers.¹³ Moreover, Cincinnati Bell's theoretical possibility that a prepaid wireless provider's average customer usage would exceed that of a postpaid provider is so inherently improbable as to be outside the realm of a reasonable possibility. With more than 10 million prepaid wireless customers, TracFone is the nation's largest provider of prepaid wireless service. During the decade that it

⁹ See ex parte presentation filed by CTIA in CC Docket No. 96-45, January 25, 2006.

¹⁰ Ex parte letter from Mitchell F. Brecher, counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in CC Docket No. 96-45, January 31, 2006.

¹¹ Universal Service and Intercarrier Compensation Reform for a Mobile and Broadband World, Presentation by CTIA to Greg Orlando, Office of Commissioner Deborah Taylor Tate, October 2, 2008, at 5 ("Prepaid Wireless Numbers: May be assessed on a per-minute-of-usage basis, as proposed by TracFone;").

¹² Cincinnati Bell Comments at 22-23.

¹³ See, e.g., Remand Order/FNPRM, Appendix A at ¶ 138.

has offered prepaid service, its customers' usage has been consistently far below average post-paid customer usage levels. It would make no economic sense for a customer with average monthly usage such as the 826 minutes per month reported by CTIA,¹⁴ to purchase prepaid service in allotments of 30 to 100 minutes at rates at or above \$0.20 per minute. Once a customer's usage reaches such levels, it makes economic sense to purchase service pursuant to a traditional post-paid plan which contains "buckets" of monthly minutes of airtime. To suggest that usage levels by prepaid customers might be above the average postpaid customer usage levels simply disregards the economic realities of the wireless industry. As CTIA itself notes in its comments, "Prepaid phones are typically bought by customers that seek to control their spending by controlling their usage, and are sometimes bought by customers that want a wireless phone available for safety but may generate no usage at all during most months. The contribution level for prepaid wireless connections should recognize the particular characteristics of this service."¹⁵

II. The Commission Should Mandate an Adequately-Funded Broadband Lifeline Pilot Program

The initial comments expressed broad support for the Commission's proposal to establish a pilot project to fund broadband Internet access for low income households. While there may have been differences of opinion on particulars of the program, most commenters agreed that the time has come to provide financial support for broadband service. As TracFone noted in its initial comments, such a program would be an experiment. The program would afford the Commission the opportunity to test an approach to subsidize broadband deployment to low income households as a way to bridge the Digital Divide. Such a program should be viewed in that light -- it would be a learning experience. Establishment of a broadband Lifeline pilot

¹⁴ *Id.*

¹⁵ CTIA Comments at 20.

program is not intended to be the answer to rural broadband deployment, nor is it even intended to constitute a determination that broadband should be included as a Universal Service-supported service. Those are separate issues.

In its initial comments, TracFone explained that if the program is successful, there may be means other than the Universal Service Fund for obtaining financial support for broadband deployment to low income households. One concern of TracFone's is that the experiment be sufficiently funded to maximize its utility as a learning experience. In its initial comments, TracFone indicated that the \$300 million program proposed by the Commission with a \$100 limit on broadband access device support and a \$10 monthly limit on broadband access fees may be insufficient to obtain meaningful participation from Eligible Telecommunications Carriers. The potential insufficiency of the Commission's funding proposal was addressed by other commenters as well. Qualcomm has recommended that the pilot program be funded at the highest level initially proposed by TracFone.¹⁶ Connected Nation stated that the \$300 million may be insufficient to cover anticipated demand for the program.¹⁷ Therefore, TracFone urges the Commission to ensure that any broadband Lifeline pilot program be funded at levels so that the program can reach a significant number of qualified low income households and so that the Commission may learn as much as reasonably possible about the benefit of such programs and how to adjust them to achieve their objectives.

¹⁶ Comments of Qualcomm Incorporated, at 8.

¹⁷ Connected Nation Comments at 2.

Conclusion

For the reasons set forth in these reply comments, TracFone respectfully reiterates its support for a USF By the Minute contribution methodology plan for prepaid wireless if it adopts a telephone numbers-based universal service fund contribution methodology, and that it establish a broadband Lifeline pilot program with sufficient funding support so that the impact of Lifeline support on low income broadband Internet access penetration may be properly evaluated.

Respectfully submitted,

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