

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

In the Matter of)	
)	
Implementation of the DTV Delay Act)	MB Docket No. 09-17
)	
DTV Consumer Education Initiative)	MB Docket No. 07-148
)	
Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television)	MB Docket No. 07-91
)	
Implementation of Short-term Analog Flash And Emergency Readiness Act; Establishment Of DTV Transition "Analog Nightlight" Program)	MB Docket No. 08-255
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules)	WT Docket No. 06-169
)	
Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 98-86
)	

PETITION FOR WAIVER OF SECTION 54.418

TracFone Wireless, Inc. (TracFone), by its attorneys, pursuant to Section 1.3 of the Commission's Rules,¹ hereby petitions the Commission for waiver of 54.418 of the rules,² as revised and extended by the Commission's February 20, 2009 order in the above-captioned

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.418.

proceedings. See Implementation of the DTV Delay Act, et al (Second Report and Order and Notice of Proposed Rulemaking), FCC 09-11, released February 20, 2009.

Specifically, TracFone requests that the Commission's rule governing provision by Eligible Telecommunications Carriers ("ETCs") of notices to their Lifeline customers regarding the transition to digital television be waived so as to allow TracFone to provide its Lifeline customers with DTV transition notices utilizing alternative methods described in this petition. As will be explained in this petition, unless waived, the extended DTV transition notice rule will require TracFone to expend millions of additional dollars over the next several months -- moneys which can otherwise be used to inform low income households of the availability of free wireless handsets and wireless airtime and to actually provide such services to qualified low income households. Moreover, the alternative notification procedures proposed in this petition will result in TracFone's Lifeline customers being fully informed of the DTV transition without unduly limiting the resources available to TracFone to advertise the availability of its Lifeline service and to provide that service.

Introduction and Explanation of Need for a Waiver

TracFone has been designated by the Commission as an ETC in several jurisdictions.³ In addition, TracFone has been designated as an ETC by the state commissions for the states of Florida, Georgia and Michigan, and has pending applications for designation as an ETC in other states.⁴ As an ETC offering Lifeline service, TracFone is subject to the requirement codified at

³ See In the Matter of Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al, 23 FCC Rcd 6206 (2008); see also Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005).

⁴ TracFone has ETC applications pending in California, Ohio, West Virginia, Wisconsin, New Jersey, and Texas, and plans to soon file applications in other states as part of its effort to make available its SafeLink Wireless Lifeline program throughout much of the United States.

Section 54.418 that ETCs provide their Lifeline customers with notices about the DTV transition, either in the monthly bills or bill notices, or in separate monthly stand-alone mailers. Unlike traditional carriers, including other ETCs who render monthly invoices to their customers, TracFone's service, including its SafeLink Wireless Lifeline service, is entirely prepaid. TracFone customers either purchase wireless airtime in advance, or in the case of Lifeline customers, monthly allotments of prepaid airtime minutes are added automatically to their accounts. Because the service is entirely prepaid, no invoices are sent to customers and TracFone has no reason to send monthly mailings to customers, including its Lifeline customers, other than to comply with the DTV notification requirement.

TracFone received its first ETC designations in April 2008. However, it was not able to begin to offer its SafeLink Wireless Lifeline service until August 2008. This delay was necessary in order for TracFone to comply with certain conditions imposed by the Commission on TracFone's ETC designation, including a condition that it obtain certifications of 911 and E911 availability from Public Safety Answering Points where it offers Lifeline service. Since August, it has commenced offering that service in Tennessee, Virginia, Georgia, and Massachusetts, and is about to begin offering the service in additional states. TracFone recognizes that Section 54.418(c) allows for DTV transition notices to be provided to Lifeline customers in "whatever medium [the customers] receive information about their monthly bill."⁵ TracFone customers have real time access to their account balances (*i.e.*, how many minutes of airtime remain available) on their handset screens. Thus, TracFone customers, including its Lifeline customers, receive their account information, not in a mailed or even on-line invoice, but rather on the screen of the handsets themselves. For that reason, TracFone considered

⁵ 47 C.F.R. § 54.418(c).

meeting its DTV notification requirements by sending monthly SMS text messages which would appear on the customers' handset screens just as does the customers' airtime balance information.

TracFone elected not to utilize the SMS notification method because limitations in the capacity of SMS texting precluded TracFone from providing all of the information required by Section 54.418(b)(2). For that reason, it has sent monthly notices via U.S. mail to each of its Lifeline customers. Those notices are extremely expensive to prepare and send. To date, TracFone has spent **nearly a quarter million dollars** to send Lifeline customers DTV notices. Without the waiver requested by this petition, that amount is likely to increase **to one million dollars** -- or more -- by June. This amount includes the costs of postage, paper, envelopes, and labor to prepare and send the notices to thousands of Lifeline customers. As TracFone's SafeLink Wireless Lifeline customer base continues to grow over the next several months, the cost of sending DTV transition notices will continue to escalate.

It is questionable what impact, if any, mandatory DTV transition notices from wireless telephone companies will have on alerting customers about the DTV transition. Those same customers already receive frequent notifications about the DTV transition from television stations and cable operators, from television equipment manufacturers, and, perhaps most importantly, from the government itself as the Commission and the National Telecommunications and Information Administration have done an outstanding job in publicizing the DTV transition.

Notwithstanding its concerns about the cost burden of the DTV transition notice rule when applied to ETCs, like TracFone, who do not otherwise render invoices or send mailings to customers, and its recognition that information about the transition is available from other

sources, TracFone wants to participate in the DTV transition notification process in a meaningful, yet financially responsible manner. Accordingly, it proposes the following notification procedures to be used between March and June 2009:

1. Written Notifications with Handsets

As part of TracFone's SafeLink Wireless program, every customer receives from TracFone free of charge an E-911-compliant wireless handset programmed to operate with TracFone service and with the first month's allotment of free airtime minutes already loaded into the handset. These handsets are sent to the customers via express mail upon their enrollment. Commencing upon approval of this waiver request, TracFone will include with every sent handset a DTV transition notice which provides all of the information required by Section 54.418(b)(2). Such notices will be included with every handset sent to SafeLink Wireless customers from the date of approval of this request through June 30, 2009.

2. SMS DTV Transition Reminders

In addition to the handset notices described in the preceding paragraph, every SafeLink Wireless customer, including all current customers, as well as those enrolled between now and June, will receive from TracFone on their TracFone-provided handsets a SMS text message reminding them about the DTV transition. While these SMS messages will not include all of the information required by Section 54.418(b), they will remind each Lifeline customer of the DTV transition.

Sufficiency of this Proposal

Existing SafeLink Wireless Lifeline customers already have received mailed printed DTV transition notices from TracFone. All new SafeLink Wireless customers will receive written DTV transition notices from TracFone with the packages containing their handsets. Thus, all Lifeline customers -- existing and new -- either have received written notices or will receive notices regarding the DTV transition. In addition, all TracFone Lifeline customers will receive monthly SMS reminder notices on their handsets. TracFone believes that SMS messages are far more likely actually to read by customers than are mailed notices. Bear in mind that mailed notices would be sent on a stand-alone basis since there are no monthly invoices with which to enclose the notices. Consumers can -- and often do -- dispose of such mailings as unsolicited "junk mail" without reading their contents. In contrast, a SMS message sent to a wireless phone generally triggers a tone or vibrate stimulus which causes the customer immediately to view the message. Wireless customers seldom, if ever, delete text messages without first perusing their contents. Based upon the foregoing, it seems apparent that the combination of detailed DTV notices with all new phones and monthly SMS reminders will provide effective means to deliver the important DTV transition information to its Lifeline customers.

Conclusion

For the reasons set forth herein, TracFone respectfully submits that imposition on it of the monthly mailed DTV transition notice requirement applicable to ETCs would be economically burdensome, would divert resources from informing low income households of the availability of a wireless Lifeline alternative, and would not effectively communicate information to those customers regarding the DTV transition. It further submits that the alternative DTV transition notice proposal described herein will more efficiently and more effectively provide DTV transition information to TracFone's Lifeline customers. Accordingly, it is respectfully requested that this petition for waiver of Section 54.418 of the Commission's rules be granted in an expeditious manner.

Respectfully submitted,

TRACFONE WIRELESS, INC.



Mitchell F. Brecher
GREENBERG TRAUIG, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037

Its Attorneys

February 24, 2009