

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

In the Matter of)
)
PETITION FOR RULEMAKING TO) RM-11526
REVISE UNIVERSAL SERVICE)
SUPPORT AVAILABLE TO ELIGIBLE)
TELECOMMUNICATIONS CARRIERS)

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”) hereby replies to the comments filed in response to its petition for rulemaking. On March 5, 2009, TracFone petitioned the Commission to commence a rulemaking proceeding in which it proposed that the Commission modify the definition of Tier One federal Lifeline support codified at Section 54.403(a)(1) of the Commission’s rules.¹ Under TracFone’s proposed rule modification, Eligible Telecommunications Carriers (“ETCs”), including wireless ETCs, would not be limited to Tier One support based on the Subscriber Line Charge (“SLC”) of the incumbent local exchange carrier (“ILEC”) serving the geographic area(s) where such ETCs offer Lifeline service. Under TracFone’s proposed rule change, such ETCs could receive Tier One support based on the capped SLC amount of \$6.50, irrespective of whether the ILEC imposed a \$6.50 SLC, conditioned upon the ETC providing its Lifeline customers with not less than an additional \$3.50 monthly benefit above the amount of support (including Tier One, Tier Two, and Tier Three) from the federal Universal Service Fund (“USF”). By public notice issued March 30, 2009, the Commission invited comment on TracFone’s petition.²

¹ 47 U.S.C. § 54.403(a)(1).

² Public Notice, Report No. 2885, RM-11526, released March 30, 2009.

Only one party -- the Independent Telephone & Telecommunications Alliance (“ITTA”) -- filed comments on TracFone’s petition. Therefore, TracFone’s reply comments will be limited to addressing certain matters raised by ITTA.

ITTA acknowledges that TracFone’s proposal to revise the measure of Tier One support would enhance consumer welfare. Nonetheless, it asks the Commission to defer consideration of the proposed rule change, pending comprehensive Universal Service Fund reform.³ There is no dispute that low income households who qualify for Lifeline would be advantaged by an increased monthly Lifeline benefit made possible by the proposed change to Tier One support. Whether that benefit would be in the form of additional free wireless airtime under TracFone’s SafeLink Wireless Lifeline program,⁴ or in the form of a greater monthly discount off of standard billed service rates as is the case with traditional Lifeline offerings, such as those of ILECs, low income households who participate in Lifeline would be the real beneficiaries of the rule change.

The Commission has been considering comprehensive universal service reform since the beginning of this decade. While there is broad consensus in favor of USF reform, there remain profound differences in how to reform USF. Whether and when the Commission will bridge those divides, forge a consensus and adopt a plan for comprehensive reform of the USF is problematic. No public interest benefit would result from delaying action on the modest proposal to revise Tier One support for undetermined months -- perhaps years -- until comprehensive USF reform is implemented.

ITTA asserts that TracFone has failed to provide “empirical evidence” that increasing Tier One support would improve Lifeline subscription. The absence of such “empirical

³ ITTA Comments, at 1.

⁴ In states where the full \$6.50 in Tier One support is available, TracFone’s SafeLink Wireless customers receive 68 minutes per month of free airtime. In jurisdictions where Tier One support is lower than \$6.50, the number of free minutes of airtime is correspondingly reduced.

evidence” is hardly a reason not to act favorably on TracFone’s rulemaking petition. It is important to bear in mind what is requested by a petition for rulemaking. Pursuant to the Administrative Procedure Act and the Commission’s rules, a petition for rulemaking asks the Commission to issue a notice of proposed rulemaking for the purpose of considering establishment of new rules or changes to existing rules. It does not seek immediate promulgation of a rule or a rule change. TracFone’s petition provides more than ample reason for the Commission to proceed to the next step in the rulemaking process -- to issue a notice of proposed rulemaking. During the proceeding initiated by a notice of proposed rulemaking, all interested parties (including ITTA) would have the opportunity to place on the record such evidence, empirical or otherwise, regarding the likely impact of the proposed rules or rule changes.

Moreover, the notion that increasing the available Lifeline benefits would increase Lifeline participation is inherently obvious. It is simple logic to conclude that if the available Lifeline benefits to qualified low income households were improved, more qualified households would perceive an incentive to enroll. What is also inherently apparent -- and well-documented - - is that the federal Lifeline program remains significantly underutilized. According to the most current available Commission data, less than thirty-four percent of qualified low income households nationally are enrolled in Lifeline. In numerous states, the Lifeline penetration rate is under ten percent.⁵

TracFone believes that improved Lifeline benefits, combined with aggressive and creative marketing, consumer education and outreach efforts, will lead to significant improvements in Lifeline participation. TracFone has been offering its SafeLink Wireless

⁵ Lifeline and Link-Up (Report and Order and Notice of Further Proposed Rulemaking), 19 FCC Rcd 8302 (2004), at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002).

Lifeline service as an ETC for less than one year. During that time, it has introduced the service in several states. Within the first several months, it has enrolled many thousands of Lifeline customers, most of which were not previously Lifeline participants. There are several reasons for this enrollment success: aggressive advertising, including large amounts of television and radio advertising, as well as print advertising in media targeted to low income households; the availability of **free** handsets and **free** service rather than discounts on monthly bills; the mobility features which are part of wireless service, etc. Wherever there is sufficient Tier One support, TracFone provides a 68 free minute monthly benefit. It is difficult to quarrel with the fact that a 68 minute monthly benefit provides more of an enrollment incentive than would a 55 minute benefit or a 42 minute benefit.

While TracFone does not dispute that ILEC SLC rates were used by the Commission as a “reasonable proxy” for interstate loop costs in 1997, it cannot be denied that the telecommunications market in 2009 is quite different than that which existed in 1997. In 1997, the only ETCs offering Lifeline were ILECs, and SLCs were a significant portion of the telephone costs borne by consumers of ILEC services. In the current market where Lifeline service is offered by ETCs not subject to SLC requirements and which do not impose SLCs on their customers, there is not the nexus between ILEC SLCs and consumer telecommunications costs which existed in 1997. Just as the market has changed in the last twelve years, so too, should the rules governing Lifeline support be modified to keep pace with those changes.

ITTA asserts that state Lifeline programs should also be considered by the Commission in considering changes to the federal support rules.⁶ TracFone’s petition is directed only at the Commission’s rules governing the federal USF programs, specifically, the federal Lifeline

⁶ ITTA Comments at 3.

program. TracFone does not receive any support from state Lifeline funds in any state where SafeLink Wireless is available. The rule change proposed by TracFone would increase the amount of available federal Lifeline support only. It has nothing to do with state programs or state funding.

Finally, ITTA attempts to somehow relate the proposed change in Tier One Lifeline support to the ongoing debate about the identical support rule.⁷ This argument is a “red herring” and provides no justification for denial of TracFone’s rulemaking petition. The identical support rule bases competitive ETCs’ **high cost support** payments on ILECs’ costs of providing service in high cost areas. In short, it is a high cost program rule and has no relevance or application whatsoever to the Lifeline program. Unlike the high cost program, in Lifeline, only the ETC providing Lifeline service to the low income household is entitled to support from the USF. ITTA’s effort to interject the identical support rule debate into the Commission’s consideration of TracFone’s petition regarding Tier One Lifeline support is little more than an attempt to confuse the issues surrounding appropriate USF support for the federal Lifeline program.

In conclusion, TracFone’s rulemaking petition asks the Commission to commence a proceeding looking toward a modest change in the rules governing federal USF support for Lifeline, specifically Tier One support. This change would not have a substantial impact on the USF but would enable those ETCs willing to do so to offer enhanced Lifeline benefits thereby

⁷ *Id.*, at 4.

encouraging increased participation in the very important, but significantly underutilized, federal Lifeline program. There is no reason for the Commission to delay consideration of these changes.

Respectfully submitted,

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