

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

CC Docket No. 96-45

Federal-State Joint Board on Universal Service

Petition for Forbearance of Consumer Cellular,  
Inc.

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES  
ON PETITION FOR FORBEARANCE**

On June 30, 2009, Consumer Cellular, Inc. (“CCI”), a wireless reseller, filed a petition for forbearance in this docket pursuant to 47 U.S.C. § 160, seeking forbearance from the provision of 47 U.S.C. § 214(e)(1)(A) that requires eligible telecommunications carriers (“ETCs”) to provide service at least partly over their own facilities.<sup>1</sup> The company seeks forbearance solely in order to receive federal support for Lifeline service.<sup>2</sup> The Federal Communications Commission (“FCC” or “Commission”) put the petition out for public comment.<sup>3</sup>

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>4</sup> files these

---

<sup>1</sup> See CCI Petition at 2. Unless otherwise specified, all citations here are to filings in CC Docket No. 96-45.

<sup>2</sup> Id.

<sup>3</sup> Public Notice DA 09-1554 (rel. July 21, 2009).

<sup>4</sup> NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers.

comments on the Petition. Although, as stated before,<sup>5</sup> NASUCA fully supports increasing the options available to Lifeline-eligible consumers, it does not appear that the Commission can find that forbearance is in the public interest here without more specificity as to how CCI plans to apply the federal support it will receive upon designation as a Lifeline ETC.

CCI states that it is the exclusive provider of wireless services to AARP.<sup>6</sup> CCI states,

While CCI does not confine its service offerings to America's senior citizens, its focus on this large market segment is directly relevant to its request for forbearance in order to be allowed to participate in the Lifeline program. According to the most recent census data, approximately 1 in 5 Americans over the age of 65 live below the income threshold for Lifeline eligibility.<sup>7</sup>

CCI describes its offers as "specifically targeted to casual users, a market segment which includes large numbers [of] 50+ individuals,"<sup>8</sup> and says that it "offers a postpaid service that allows consumers to choose from a variety of rate plans."<sup>9</sup> It says that,

unlike virtually all other postpaid carriers, it does not require customers to sign long-term contracts or raise the threat of early termination fees. The company also provides a wide choice of handsets, including a free-phone option.<sup>10</sup>

On the consumercellular.com website, available plans appear to range from a \$10 per month plan that includes no minutes (minutes are 25¢ each) to a \$60 per month plan that

---

<sup>5</sup> See NASUCA combined comments on Petitions by i-Wireless, LLC ("i-Wireless") and Head Start Telecom, Inc. ("Head Start") (filed July 6, 2009).

<sup>6</sup> CCI Petition at 3.

<sup>7</sup> Id. at 3-4.

<sup>8</sup> Id. at 3.

<sup>9</sup> Id. at 4.

<sup>10</sup> Id. (footnotes omitted). It does appear that the free-phone option nonetheless requires a \$35 activation fee. Id., n.13.

includes 2000 minutes.<sup>11</sup> It appears that two additional lines can be added to each plan, for \$10 extra each per month.<sup>12</sup> Cellphones range from the free phone, a “basic” model, to \$50.<sup>13</sup>

The forbearance statute – 47 U.S.C. § 160 – requires the Commission to forbear from any statute or regulation if (1) the provision is not necessary to ensure that charges and practices for a service are just and reasonable and not unreasonably discriminatory; (2) the provision is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. The CCI petition follows, and is largely based on,<sup>14</sup> the grant of forbearance from the facilities-based services requirement of 47 U.S.C. § 214(e)1)(A) to TracFone Wireless, Inc. (“TracFone”) in 2005<sup>15</sup> and to Virgin Mobile USA, L.P. (“Virgin Mobile”) earlier this year.<sup>16</sup>

NASUCA filed comments on the TracFone petition that, inter alia, focused on how TracFone was going to apply the Lifeline discount.<sup>17</sup> TracFone clarified that it would “apply” the discount by offering two services specifically to Lifeline customers, indicating that “customers who qualify for Lifeline will receive up to \$10.00 worth of wireless service at no charge each month.”<sup>18</sup>

---

<sup>11</sup> See <https://www.consumercellular.com/CartSystem/PlansAndLines.aspx>. The plans that include minutes all charge 25¢ per minute for usage above the plan limits.

<sup>12</sup> Id.

<sup>13</sup> <https://www.consumercellular.com/CartSystem/NewPhones.aspx>.

<sup>14</sup> CCI Petition at 2.

<sup>15</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095 (2005).

<sup>16</sup> *Petition of Virgin Mobile USA, L.P. for Forbearance*, CC Docket No. 96-45, Order (released March 5, 2009).

<sup>17</sup> *TracFone Wireless, Inc. Petitions for Designation as an ETC*, CC Docket No. 96-45, NASUCA/PULP Comments (January 14, 2008) at 6-7.

<sup>18</sup> Id., TracFone Reply Comments at (emphasis added).

There appear to be substantial variations in the number of free minutes TracFone is offering in various states.<sup>19</sup>

On the other hand, Virgin Mobile offers a uniform 120 free minutes and a free (refurbished) handset.<sup>20</sup> This appears substantially superior to TracFone's plan, although still including less usage than the Commission has determined would be a reasonable amount to meet consumers' needs.<sup>21</sup>

As a "traditional" post-paid cellphone providers – although with features CCI asserts distinguish its service<sup>22</sup> -- CCI's service is different from both TracFone and Virgin Mobile, and much closer to the Lifeline service provided by "traditional" facilities-based wireless ETCs. One would like to assume that CCI will simply apply the Lifeline discount to a Lifeline customer's plan, but such assumptions have no place in a Commission determination of whether forbearance is in the public interest.<sup>23</sup> But "simply applying the Lifeline discount" could also be problematic with CCI's "\$10 a month without usage and 25¢ a minute" plan: The discount could offset the monthly fee, but how many minutes would be allowed a Lifeline customer?<sup>24</sup> And one would

---

<sup>19</sup> See <http://www.allbusiness.com/society-social/families-children-family/12271130-1.html>.

<sup>20</sup> See Virgin Mobile ex parte (October 24, 2009).

<sup>21</sup> It should be recalled that, in the Hurricane Katrina Order, the FCC estimated that consumers receiving 300 wireless minutes a month in exchange for the maximum federal low-income funding was a reasonable benefit. *Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 16883 (2005) ("*Hurricane Katrina Order*") at ¶ 12.

<sup>22</sup> CCI Petition at 4 (no requirement of long-term contracts); 5 (availability of information about minutes remaining on plan); id. (ability to switch plans during plan month).

<sup>23</sup> It is also not clear whether CCI would use the Link-Up benefit to offset the handset activation charge.

<sup>24</sup> If only a few minutes are included, and with additional minutes priced at 25¢, CCI's "cheapest" plan could be a worse deal for Lifeline customers than TracFone's 60-some free minutes plan.

hope that CCI would allow the discount to be used on its usage package plans, but that is not a forgone conclusion.<sup>25</sup>

CCI should be required to explain how its Lifeline discounts will be applied before the Commission can address its petition. The petition cannot be granted as filed.<sup>26</sup>

Respectfully submitted,

/s/

David C. Bergmann  
Assistant Consumers' Counsel  
Chair, NASUCA Telecommunications Committee  
Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
614.466.8574

NASUCA  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910  
301.589.6313

August 20, 2009

---

<sup>25</sup> See *In the Matter of Sprint Spectrum L.P. Petition for Declaratory Ruling*, WC Dockets Nos. 03-109 and 07-138, NASUCA Comments (August 9, 2007).

<sup>26</sup> If CCI supplements its petition, the supplemented version should be sent out for fresh public comment. See *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, FCC 09-56 (rel. June 29, 2009), ¶¶ 29, 40.