

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

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| In the Matter of |) | |
| |) | |
| Telecommunications Carriers Eligible to |) | |
| Receive Universal Service Support |) | WC Docket No. 09-197 |
| |) | |
| Petition of NTCH, Inc. for Forbearance |) | |
| Pursuant to 47 U.S.C. § 160(c) from |) | |
| 47 U.S.C. § 214(e)(5) and 47 C.F.R. |) | |
| § 54.207(b) |) | |

COMMENTS OF NTCH, INC.

I. Introduction

NTCH, Inc. (“NTCH”) files these comments to clarify the context and rationale for its Petition for Forbearance, filed in conjunction with its Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama and Tennessee.¹ The recent history of limited designation for eligible telecommunications carriers (“ETCs”) makes it necessary to resolve the issue of how to treat service areas for limited-designation, facilities-based ETC applicants. For the reasons stated below, NTCH believes that the most appropriate resolution of this issue is forbearance from the statutory definition of “service area” for such applicants.

¹ See *Petition for Forbearance of NTCH, Inc.*, WC Docket No. 09-197 (filed Mar. 5, 2010); *Petition of NTCH, Inc. for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama and Tennessee*, WC Docket No. 09-197 (filed Mar. 5, 2010) (“*Petition for Forbearance*”).

II. Statutory Definition of Service Area

The Communications Act of 1934 is explicit that an ETC-designated service area may not partially overlap a rural study area.² If a telecommunications carrier seeks ETC designation for an area smaller than a rural telephone company's study area, it must seek to have the study area redefined.³ This requirement is set out in the Act's definition of "service area:"

(5) SERVICE AREA DEFINED.—The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. ***In the case of an area served by a rural telephone company, "service area" means such company's "study area"*** unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company. [Emphasis added].⁴

Moreover, this definition of "service area" is adopted nearly word-for-word into the Commission's rules:

(a) The term *service area* means a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.

² 47 U.S.C. § 214(e)(5).

³ *Id.*

⁴ *Id.*

(b) *In the case of a service area served by a rural telephone company, service area means such company’s “study area”* unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such a company. [Emphasis added].⁵

In view of this clear statutory mandate, a carrier wishing to provide Lifeline-only service must either request redefinition or forbearance from the service area definition if it wishes to serve only part of a rural study area.

III. Purpose of the Study Area Requirement

The primary purpose of the study area requirement is to protect rural LECs from cream-skimming by competitive ETCs—that is, the risk is that ETCs could potentially serve less costly parts of a study area while receiving a high level of support based on the incumbent LEC’s cost of providing service to the entire study area, including higher-cost areas.⁶ As we explained in our Petition for Forbearance, the study area requirement only makes sense in the context of high cost support, which is based on the incumbent’s embedded costs.⁷ Low income support is calculated on a per consumer basis.⁸ Therefore, for a Lifeline-only carrier, cream-skimming is impossible and no rational

⁵ 47 C.F.R. § 54.207(a),(b).

⁶ See *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6403-06 ¶¶ 73-79 (2005); *Petition for Forbearance* at 4-6.

⁷ *Petition for Forbearance* at 4-6.

⁸ 47 C.F.R. § 54.403.

reason remains to equate such a carrier's independently developed and administered service area with the entire rural study area of a LEC.⁹

IV. Application of the Study Area Requirement to “Limited-Designation”

ETCs

This seemingly obvious distinction between limited and full designation is missing from the statute because, previously, all ETCs were designated for all USF support mechanisms. This is no longer the case. The events that led to NTCH’s petition were set into motion in 2005, when the Commission granted a petition for forbearance by TracFone, Inc., releasing it from the facilities-based requirement of Section 214 for the purpose of providing Lifeline-supported services only.¹⁰ Additional forbearance from the study area requirement was not necessary because, as a wireless reseller, TracFone’s service area was not limited by the scope of its physical facilities or its FCC authorization. Therefore, in 2008, TracFone was granted ETC designation for entire states.¹¹

⁹ The remaining, rarely applied, Joint Board concerns also are not implicated here as the requested designation will not affect the rural incumbent’s statutorily-based competitive footing or increase its administrative burden. *See Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (1996).

¹⁰ *Petition for Forbearance of TracFone Wireless, Inc.*, Order, 24 FCC Rcd 4180, 4181 (2005) (“*TracFone Order*”).

¹¹ *Federal-State Joint Board on Universal Service*, Order, 23 FCC Rcd 6206, 6207 (2008). The issue did not come up in Virgin Mobile’s 2009 ETC designation for the same reasons. *See Virgin Mobile USA LP Petition for Forbearance and Petition for Designation as and Eligible Telecommunications Carrier*, Order, 24 FCC Rcd 3381, 3396 (2009) (designating Virgin Mobile, as a reseller, for its “licensed service areas” in the relevant states, except on federally-recognized tribally-owned lands). Virgin Mobile has also now applied for designation as a facilities-based ETC carrier. Apparently, its proposed service area will cover the entire study areas of the rural telephone companies in the area. *See Virgin Mobile USA, L.P., Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Alabama*, WC Docket No. 09-197 (filed Jan. 15, 2010), at 6-7.

Afterwards, however, the Commission received similar applications for limited designation from *facilities-based* carriers (including NTCH), who are necessarily limited in the areas they can serve.¹² To treat these pending petitions in the most rational way, the issue of service areas for limited-designation ETCs, made inevitable by *TracFone*, must be resolved. The study area redefinition process can be time-consuming even when it should be a relatively ministerial task. Redefinition requires approval by the Commission followed by as many as two to three years at the state level. Until the study area is redefined, the benefits to the consumer of Lifeline support cannot be realized. NTCH has confronted situations where the state delayed for several years to redefine a study area, thus leaving the carrier unable to obtain USF support until that ministerial event occurred.

As set forth above, in the Lifeline context, no rational purpose is served by making the states have to jump through the redefinition hoops or making the low-income public beneficiaries suffer while that sometimes lengthy process is completed. The redefinition requirement thus has demonstrable and immediate adverse consequences to consumers with no public interest benefit whatsoever. Particularly for a service called "Lifeline," the notion that service or support to deserving recipients should be delayed for

¹² See *Cricket Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket No. 09-197 (filed Dec. 22, 2009); *Virgin Mobile USA, L.P., Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Alabama*, WC Docket No. 09-197 (filed Jan. 15, 2010). Despite pleas from the Commission and Federal-State Joint Service Board, many states have created fragmented study areas that are difficult or impossible for a facilities-based carrier to cover due to its licensing limitations. For example, in the area of Tennessee for which NTCH has applied, the study area of Tennessee Telephone Company is split into four non-contiguous areas: a large area in the southwest, covering Decatur, Perry, and Wayne counties, with two small areas in the suburbs of Nashville in the center of the state, and another small area, 140 miles away from Nashville, in the suburbs of Knoxville in the east of the state.

no good reason should be rejected. Forbearance will enable all parties concerned to avoid a procedure which serves no useful purpose, is time-consuming, and is actually contrary to the public interest.

V. Conclusion

Forbearance will bring tangible, immediate benefits to low income consumers in rural study areas, and NTCH therefore urges the Commission to make provision for Lifeline-only service in these areas as soon as possible. It is appropriate and in the public interest for the Commission to promptly clarify the issues arising from the *TracFone Order* and allow limited-designation facilities-based ETCs to start immediately serving low income consumers in those parts of rural study areas that fall within their FCC-licensed coverage areas.

Respectfully submitted,

NTCH, INC.

By _____/s/_____

Donald J. Evans
Christine E. Goepf*
Fletcher, Heald & Hildreth PLC
1300 17th Street, 11th Floor
Arlington VA 22209
(703)802-0400

*Admitted in Massachusetts and the District
of Columbia
Counsel for NTCH, Inc.

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