

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

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| In the Matter of |) | |
| |) | |
| Telecommunications Carriers Eligible to Receive Universal Service Fund Support |) | WC Docket No. 09-197 |
| |) | |
| CRICKET COMMUNICATIONS, Inc. |) | |
| |) | |
| Petition for Forbearance |) | |

**COMMENTS OF TRACFONE WIRELESS, INC.
IN SUPPORT OF PETITION FOR FORBEARANCE**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments in support of the above-captioned petition of Cricket Communications, Inc. (“Cricket”) for forbearance from application or enforcement of Section 214(e)(5) of the Communications Act of 1934, as amended,¹ and Section 54.207 of the Commission’s Rules.² As will be explained in these comments, Cricket’s petition raises an issue of importance to all telecommunications carriers who seek designation as an Eligible Telecommunications Carrier (“ETC”) or who have been designated as an ETC for the limited purpose of providing services which are included in the low income program of the Universal Service Fund (“USF”).³ Accordingly, TracFone supports Cricket’s petition. However, it urges the Commission to make the relief granted in this matter applicable to all similarly situated ETCs, *i.e.*, all ETCs, especially wireless ETC, who have been designated as ETCs for the limited purpose of providing services supported by the USF low income program.

¹ 47 U.S.C. § 214(e)(5).

² 47 C.F.R. § 54.207.

³ The USF low-income program includes two services -- Lifeline and Link Up. Some ETCs provide only Lifeline. In these comments, TracFone will refer to such ETCs as “Lifeline only” ETCs.

Section 214(e)(5) of the Communications Act and its implementing regulation, Section 54.207, define “service area” as a geographic area defined by a state commission for the purpose of determining an ETC’s service obligations and support mechanisms. As implemented by the Commission in the context of establishing standards for wireless telecommunications carriers seeking designation as ETCs for areas served by rural telephone companies, such applicants have been required to conduct “cream skimming” analyses.⁴ The purpose for such cream skimming analyses is to determine that each ETC applicant seeking to serve areas served by rural telephone companies will, if designated as an ETC, serve the entirety of the rural telephone company service area, not just the most densely-populated portions of the rural telephone company’s service area, *i.e.*, that it will not engage in “cream skimming” within a rural telephone company’s service area.

The potential for facilities-based wireless ETCs obtaining high cost support to subsidize the build out of their wireless network to serve only the most lucrative portions of the rural telephone companies’ service areas, while leaving the rural telephone companies to serve by themselves the remainder of their service areas made the Commission’s cream skimming analysis requirement appropriate. However, as Cricket correctly notes in its forbearance petition, the Commission’s concerns which led to the cream skimming analysis requirement have no applicability to situations where wireless carriers seek ETC designation for the limited purpose of receiving USF support to provide low-income program services, *i.e.*, Lifeline and Link Up. That is so for facilities-based wireless Lifeline-only ETCs such as Cricket; it is even more so for those ETCs such as TracFone which provide service on a resale basis only and which own and operate no facilities of their own.

⁴ See, *e.g.*, Virginia Cellular, LLC, 19 FCC Rcd 1563 (2003) at ¶ 32.

Cricket's petition describes accurately and thoroughly why application of the cream skimming analysis requirement to Lifeline-only wireless ETCs is inappropriate and frankly, makes no sense. What Cricket's petition does not address is the extent to which the cream skimming requirement and related requirements regarding coverage areas of wireless Lifeline-only ETC applicants are being imposed unnecessarily by state commissions in their consideration of wireless Lifeline-only ETC designation matters. As a result, those proceedings have been unnecessarily prolonged and complicated and, most importantly, the availability of wireless Lifeline options for low-income households in many states has been -- and is still being -- delayed.

To date, TracFone has been designated as an ETC for the limited purpose of providing Lifeline service to low-income households in thirty-one jurisdictions. Of those, eleven designations were by the Commission pursuant to Section 214(e)(6) of the Act,⁵ the remaining twenty by state commissions, pursuant to Section 214(e)(2) of the Act.⁶ In addition, TracFone has ETC petitions pending in several other states. Some states have included as issues in their ETC proceedings whether TracFone must provide a cream skimming analysis. For example, the Oregon Public Utility Commission has included as an issue in TracFone's pending ETC designation proceeding: "*Will TracFone's designation result in creamskimming in the rural ILEC [incumbent local exchange carrier] areas in which it seeks designation?*"⁷ In short, the Oregon Commission intends to address whether TracFone will engage in "cream skimming" in any service area of any Oregon rural telephone company, despite the facts that: i) TracFone only seeks USF support to provide Lifeline service; ii) TracFone is only capable of offering Lifeline

⁵ 47 U.S.C. § 214(e)(6).

⁶ 47 U.S.C. § 214(e)(2).

⁷ Oregon Public Utility Commission , Docket UM 1437, Final Issues List submitted to Shani Pines, Administrative Law Judge.

service in areas where its underlying network providers have coverage. The need for a cream skimming analysis in these circumstances is unexplained and unexplainable.

The cream skimming analysis requirement has impacted TracFone's state ETC proceedings in other ways. In many states, TracFone has been required by state commission staffs to produce maps of its coverage area matched up against incumbent LEC study areas disaggregated by wire centers and Common Language Location Identifier (CLLI) codes. Wire centers and CLLI codes are wireline service area concepts; they have no relevance to wireless services. Wireless carriers would have no reason to produce maps showing their coverage areas by wireline rate centers or by CLLI code. Yet, in many states, TracFone has been required to undertake significant efforts to create maps by taking its underlying wireless network providers' coverage maps and superimposing them on ILEC maps broken out by wire center or CLLI Code. Such maps are not routinely available and they can be obtained only after great effort. In some states, they cannot be obtained at all.

Given that TracFone provides service on a resale basis only and that it only seeks ETC designation to provide Lifeline service, comparison of its coverage areas (which are themselves limited by the network "footprints" of its underlying vendors) is unnecessary. Designation of TracFone as a Lifeline-only ETC will have no impact on the availability of USF support to construct networks which compete with those of the incumbent LECs.⁸

⁸ Demands for such irrelevant coverage area information have also been included in discovery requests in state ETC proceedings. For example, the Indiana Office of Utility Consumer Counselor recently directed the following questions to TracFone: 1) Please identify and provide a map depicting all areas of the state for which TracFone is seeking ETC designation in this proceeding; 2) State the names of the incumbent local exchange carriers and any other companies known to TracFone to have previously been designated ETCs for the areas identified in your response to subpart "a" above.

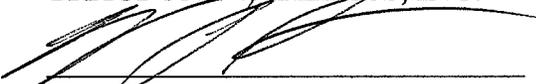
The Oregon and Indiana examples described herein are illustrative of the extensive scrutiny which state commission have undertaken into the scope of TracFone's resale coverage area. TracFone seeks ETC to provide Lifeline service in all portions of states where it is able to obtain wireless coverage from its underlying network providers. Since TracFone's network vendors include several of the largest national wireless carriers, it is able to provide Lifeline service in most portions of those states. In situations where TracFone's underlying network provider is not an ETC, the network facilities which TracFone will be using to serve customers were not subsidized by any USF high cost support. In situations where TracFone's underlying network providers are ETCs, those carriers already provided cream skimming analyses to the state commissions as a condition of obtaining ETC designation. Therefore, the imposition of a separate cream skimming analysis obligation on TracFone as a resale, Lifeline-only ETC is unnecessary, duplicative and wasteful. No such requirement should be imposed by any state commission.

For the reasons stated in these comments, TracFone supports the petition for forbearance of Cricket and respectfully urges the Commission to exercise its statutory responsibility pursuant to Section 10 of the Communications Act⁹ to forbear from application and enforcement of Section 214(e)(5) of the Act and Section 54.207 of the Commission's Rules to the extent necessary to relieve wireless Lifeline-only ETCs from any obligation to conduct cream skimming analyses. Alternatively, TracFone requests that the Commission issue a declaratory ruling that Section 214(e)(5) of the Act and Section 54.207 of the rules do not require wireless carriers seeking designation as Lifeline-only ETCs to conduct cream skimming analyses, and preempting states from imposing cream skimming analyses in such circumstances.

⁹ 47 U.S.C. § 160.

Respectfully submitted,

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CERTIFICATE OF SERVICE

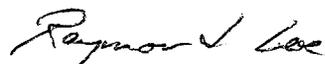
I, Raymond Lee, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that on July 26, 2010, a true and correct copy of the foregoing Comments of TracFone Wireless, Inc. in Support of Petition for Forbearance was sent via electronic-mail to the following:

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