

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible to Receive Universal Service Support	)	WC Docket No. 09-197
	)	
GreatCall, Inc.	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in Alabama, et al.	)	

**REPLY COMMENTS OF GREATCALL, INC.**

GreatCall, Inc. (“GreatCall”), by its attorneys and pursuant to the Commission’s Public Notice, DA 10-1906 (released October 1, 2010), hereby files its Reply Comments in the above-captioned proceeding. GreatCall appreciates the opportunity to participate in the FCC’s Lifeline and Link-up programs so that its core demographic constituency, older Americans, can participate fully in accessing advanced wireless and communications devices and services tailored to their needs. Many Americans at or near retirement age are on fixed incomes and often qualify for federal low-income assistance programs. As such, GreatCall’s application for ETC status presents the Commission with an opportunity to expand access to this demographic group, which is sometimes left behind in the digital revolution by companies who gear products and service offerings to younger Americans.

In response to the comments filed by TracFone Wireless, Inc. (“TracFone”) and the National Emergency Number Association (“NENA”), the following reply comments are respectfully submitted.

**I. GreatCall Today Provides Service to Customers Using a Combination of Its Own Facilities and Resale, and is Therefore Eligible to Be Designated as An Eligible Telecommunications Carrier Without Forbearance.**

As stated in its Petition, GreatCall is today providing the nine supported services through a combination of its own facilities and resale. For most of its customers, GreatCall provides operator services and directory assistance through its own facilities, and the remainder of the supported services via resale. The remainder of its customer base, approximately 15%, take service through a separate platform whereby their calls are transmitted by GreatCall's own mobile telecommunications facilities.<sup>1</sup>

Operator services and directory assistance are provided through a call center that contains physical facilities that deliver these supported services directly to customers throughout the nation. GreatCall owns, operates and maintains computers and other facilities that transmit and route the supported services to and from customers. These facilities are housed in buildings leased by GreatCall. GreatCall pays salaries and benefits to employees who provide the supported services.

In every respect, these physical facilities are telecommunications network components that are used to transmit and route operator services and directory assistance functions to GreatCall's customers. As such, GreatCall is eligible to be designated as an eligible telecommunications carrier ("ETC") without the need for forbearance from the FCC.

TracFone claims that GreatCall must seek a grant of forbearance from the facilities-based requirement because GreatCall is a pure reseller. TracFone is wrong. As stated above, GreatCall uses its own facilities to provide two of the nine supported services, consistent with 47 U.S.C. Section 214 and the Commission's rules. Moreover, fifteen percent of its customer base operates

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<sup>1</sup> These facilities are owned by GreatCall through its wholly-owned subsidiary, Accessible Wireless.

on a platform whereby calls are transmitted via GreatCall’s mobile telecommunication facilities that are owned and operated by GreatCall.

Ignoring the clear language set forth in Section 214(e)(1) of the Act which permits designation of a carrier using a combination of facilities and resale, TracFone seeks define GreatCall’s facilities as failing to meet the FCC’s definition of “facilities” which “means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support.”<sup>2</sup> As set forth above, GreatCall owns and operates physical components used in the transmission and routing of two of the supported services. These physical components are an integral part of GreatCall’s network that provides the supported services.

TracFone also refers to the Commission’s *1997 USF Order*, which said that a pure reseller would not be designated as an ETC if its only facilities consist of “its own billing office or some other facility that is not a ‘physical component’ of the network as defined in this Order.”<sup>3</sup> GreatCall makes no claim that it operates a “billing office” which should be considered as providing any of the nine supported services. GreatCall’s facilities ***actually provide two of the nine supported services*** in full compliance with the law’s requirements.

TracFone also cites a footnote in the *1997 USF Order* which excludes operation support system functions such as pre-ordering, ordering, provisioning, maintenance, repair and billing functions from the definition of facilities.<sup>4</sup> Again, GreatCall has not claimed that its operation support system functions are facilities used in providing the nine supported services.

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<sup>2</sup> TracFone Comments at p. 4. See 47 C.F.R. Section 54.201(e).

<sup>3</sup> *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8862 at n.388 (1997) (“*1997 USF Order*”).

<sup>4</sup> TracFone Comments at p. 4.

TracFone then properly notes that a carrier must provide at least one of the supported services through its own facilities.<sup>5</sup> But then it inadvertently misstates the requirement, claiming that facilities means physical facilities used for the routing of telecommunications services.<sup>6</sup> That is inaccurate. In fact, “facilities means any physical components of the telecommunications network that are used in the transmission or routing *of the services that are designated for support* pursuant to subpart B of this part”<sup>7</sup> (emphasis added). The physical facilities that GreatCall owns and operates, providing operator services and directory assistance, *are used to transmit and route two of the nine services that are designated for support.*

In its multiple citations of the *1997 USF Order*, Tracfone omits an important passage that is four square on point with GreatCall’s Petition:

We conclude, therefore, that, if a carrier uses its own facilities to provide at least one of the designated services, and the carrier otherwise meets the definition of "facilities" adopted above, then the facilities requirement of section 214(e) is satisfied. *For example, we conclude that a carrier could satisfy the facilities requirement by using its own facilities to provide access to operator services, while providing the remaining services designated for support through resale.*<sup>8</sup>

That should settle it. In view of this precedent, the fact that GreatCall is providing two of the nine supported services using facilities that it owns and operates requires a conclusion that GreatCall is providing the supported services through a combination of its own facilities and resale. TracFone’s position that GreatCall is a pure reseller is wrong.

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<sup>5</sup> TracFone Comments at p. 5.

<sup>6</sup> *Id.*

<sup>7</sup> 47 C.F.R. Section 54.201(e).

<sup>8</sup> *1997 USF Order, supra*, at 8870-71 (emphasis added). *See id.* at 8871 (“[S]ection 214(e) does not mandate the use of any particular level of a carrier's own facilities.”)

## **II. GreatCall is Using Its Facilities to Provide Services Throughout the Country.**

The Commission's *1997 USF Order* made clear that a facility need not be physically located within an ETC service area. For example, a switch in San Antonio, Texas used to provide the supported services in a service area encompassing Dallas, Texas would be considered "facilities" for purposes of determining whether a carrier was eligible to receive universal service support for the service area encompassing Dallas.<sup>9</sup>

TracFone seeks to limit the Commission's prior pronouncement that a facility need not be physically located within a designated ETC service area, by claiming that the facility must be used to transmit or route supported services within the state where ETC designation is sought.<sup>10</sup> There is no support for TracFone's position; in fact the FCC's prior rulings cited above say exactly the opposite.

GreatCall's facilities do provide operator services and directory assistance functions throughout the country. When any GreatCall customer, wherever they are located, dials for directory assistance or operator services, they are routed through facilities in California owned by GreatCall through its wholly-owned subsidiary. These facilities transmit the supported services to the customer at their location. GreatCall's use of facilities in this manner is consistent with the FCC's prior ruling that universal service mechanisms should not create "artificial incentives to deploy redundant facilities when those facilities are not otherwise economically justified."<sup>11</sup> Moreover, it is important to note that the Commission did not want to

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<sup>9</sup> *1997 USF Order, supra*, at 8874-5.

<sup>10</sup> TracFone Comments at 6-7.

<sup>11</sup> *1997 USF Order, supra*, at 8874.

erect entry barriers for competitors that “would unduly restrict the class of carriers that may be designated as eligible telecommunications carriers.”<sup>12</sup>

It also appears that TracFone seeks to limit the applicability of a Commission ruling in this case to ETC designations made by the FCC pursuant to 47 U.S.C. Section 214(e)(6).<sup>13</sup> To do so would be a mistake. Instead, the Commission should reaffirm its prior interpretation of the federal statute, to prevent protracted litigation in the states if and when carriers using a combination of facilities and resale apply for ETC status in the states. In particular, the Commission has ruled:

Although the states have the ultimate responsibility under section 214(e) for deciding whether a particular carrier should be designated as eligible, we are fully authorized to interpret the statutory provisions that govern that determination. This language appears in a federal statute, establishing a federal universal service program. It is clearly appropriate for a federal agency to interpret the federal statute that it has been entrusted with implementing.<sup>14</sup>

As TracFone correctly notes, a facility located in one state cannot be deemed to constitute facilities for purposes of ETC designation in another state unless that facility is being used to transmit or route universal service fund-supported services to the other state.<sup>15</sup> In GreatCall’s case, that is exactly what the company is doing and it is entirely appropriate under applicable law.

Taken to its logical conclusion, TracFone’s statement would require GreatCall to set up separate physical facilities to provide directory assistance and operator services in each of the 50

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<sup>12</sup> *Id.* at 8862.

<sup>13</sup> TracFone Comments at p. 6 (“A state commission must determine whether a carrier’s own facilities are being used to provide universal service-supported services within a particular service area in its state to designate the carrier as an ETC in its state. Similarly, the Commission must determine whether a carrier is using its own facilities to provide service within the state that is the subject of a carrier’s petition to the Commission for designation as an ETC in a particular state.”)

<sup>14</sup> 1997 *USF Order*, *supra*, at 8870.

<sup>15</sup> TracFone Comments at p. 6-7.

states. As shown above, that is not the law, nor was it the Commission's intent when it adopted its rules. Facilities used to provide the supported services need not be located within the designated ETC service area. Moreover, the Commission should affirm that this is a federal program, operated pursuant to a federal statute, and that state commissions must adopt the same standard when reviewing petitions for ETC status filed by carriers using a combination of facilities and resale.

**III. GreatCall Has Provided Sufficient Information to Demonstrate that it is Providing Two of the Nine Supported Services Through its Own Facilities.**

TracFone attempts to erect barriers that do not exist in the law, claiming for example that GreatCall should be required to elaborate on its Petition by identifying specific customer locations where it provides facilities-based services. GreatCall's facilities which provide transmission, operator services and directory assistance services, are all located in California. These facilities, owned by GreatCall through its wholly-owned subsidiary, serve customers located throughout the United States. All customers, whether they be Lifeline or otherwise, will receive services from these California-based facilities, which route and transmit two of the supported services (directory assistance and operator services).

To be clear, when GreatCall provides directory assistance or operator services, it is not reselling the facilities of any other carrier. GreatCall operates physical facilities used to provide directory assistance and operator services, including the ownership and lease of real estate, buildings, computers, telecommunications facilities, and personnel, including all of the construction, operating and maintenance expenditures associated with the facilities. If GreatCall were applying for funding under the high-cost support mechanism, it is beyond dispute that federal high-cost support could be used to provide these supported services, consistent with 47

U.S.C. Section 254(e)<sup>16</sup> and 47 C.F.R. Section 54.7. Moreover, for about 15% of its customer base, GreatCall uses facilities that it owns through its wholly-owned subsidiary to transmit calls in addition to providing operator services and directory assistance.

GreatCall has attested to these facts in its Petition and that attestation is continuing with respect to any factual assertions set forth herein. To the extent that the Commission requires any additional information as to how GreatCall provides two of the supported services through its own facilities, GreatCall would be happy to provide it.

Lastly, it is important to recall that the entire purpose of imposing a requirement that at least some of the services be provided via a carrier's facilities was to prevent pure resellers from accessing high-cost support.<sup>17</sup> Here, GreatCall is not applying for high-cost support, and thus any such concern does not exist.

#### **IV. As a Facilities-Based Carrier, GreatCall Must Be Designated Without the Forbearance Requirements That Have Been Placed on Pure Resellers.**

By page 12 of its Comments, TracFone's motives become clear. As a pure reseller, TracFone was required to obtain a grant of forbearance from the FCC in order to be designated as an ETC. In granting forbearance, the Commission imposed additional regulatory requirements on TracFone. Understandably, TracFone would like to see the same requirements imposed on all of its competitors, even when it is not legally appropriate.<sup>18</sup>

Here, GreatCall is not a reseller. It is a facilities-based carrier that provides services through a combination of facilities and resale. It does not require forbearance from the federal

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<sup>16</sup> "A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

<sup>17</sup> *1997 USF Order*, supra, at 8866 (wherein the FCC expressed concern that a pure reseller would over-recover from the high-cost mechanism if it obtained discounted services and a high-cost subsidy.)

<sup>18</sup> GreatCall notes that the National Emergency Number Association also filed comments seeking obligations consistent with those imposed on pure resellers, naming TracFone and Virgin Mobile USA.

statute to be designated. Accordingly, it is not appropriate for the Commission to impose obligations tailored to pure resellers, who require forbearance from the facilities-based requirements of the Act, on carriers such as GreatCall.

**V. GreatCall is Eligible for Link-Up Support.**

Lastly, TracFone asserts that GreatCall's customers should not be eligible for Link-Up subsidies, again because GreatCall is a pure reseller. As stated above, GreatCall is not a pure reseller and therefore it is eligible to participate in the Link-Up program. TracFone asserted that GreatCall's failure to report its activation charge somehow disqualifies it from participating in the program. Authority for such a statement was not provided, and none can be found.

Suffice it to say, GreatCall will comply with all FCC rules for providing Link-Up discounts to consumers. To the extent that the Commission requires disclosure of GreatCall's activation fee, it is \$35.00 for all rate plans. This information can be accessed at <http://www.greatcall.com/Plans/>.

**VI. Conclusion.**

For all of the reasons set forth above, GreatCall urges the FCC to grant the subject Petitions at the earliest possible date.

Respectfully submitted,



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Certificate of Service

I, Steven M. Chernoff, hereby certify that on November 15, 2010, a true and correct copy of the foregoing "Reply Comments of GreatCall, Inc." was sent by electronic mail to the parties listed below:

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