

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible To Receive Universal Service Support)	WT Docket No. 09-197
)	
Federal-State Joint Board on Universal Service Lifeline and Link Up)	WT Docket No. 03-109
)	
TracFone Wireless, Inc., Petition for Declaratory Ruling)	

**COMMENTS of BUDGET PREPAY,[®] INC. and
GREATCALL, INC.**

Budget Prepay[®], Inc. (“Budget PrePay”), and GreatCall, Inc. (“GreatCall”), by counsel, hereby submit these Comments, pursuant to a Public Notice¹ concerning a petition for declaratory ruling filed by TracFone Wireless, Inc. (“TracFone”).² TracFone requests that the Commission issue a declaratory ruling regarding the Link Up support that eligible telecommunications carriers (“ETCs”) may receive, the designation of wireless ETCs, and the requirement that ETCs must offer service using their own facilities to be eligible for Universal Service Fund (“USF”) support.³

Budget PrePay, based in Bossier City, Louisiana, and founded in 1996, provides low-cost prepaid home telephone services on a nationwide basis through a system of more than 6,800 ac-

¹ *Wireline Competition Bureau Seeks Comment on TracFone Petition for Declaratory Ruling on Universal Service Issues*, WC Docket Nos. 09-197, 03-109, Public Notice, DA 10-2324 (rel. Dec. 8, 2010) (“*Notice*”).

² TracFone Wireless, Inc., Petition for Declaratory Ruling, WC Docket No. 09-197, CC Docket No. 96-45 (filed Dec. 1, 2010) (“TracFone Petition”).

³ *See Notice* at 1.

tive agents providing service to over 60,000 customers. Budget PrePay also offers prepaid wireless handsets, wireless recharge minutes, long distance calling cards, and a bill payment system.

Budget PrePay operates as a competitive local exchange carrier in several states, and also has been designated as a wireline ETC in several states and as a wireless ETC in Louisiana. Budget PrePay currently has applications pending for wireless ETC designations in Arkansas and Oklahoma, and plans to submit additional applications for wireless ETC designations in other states in 2011.

GreatCall provides digital wireless services on a common carrier basis, offering customers affordable mobile wireless phone service at flat rates without fixed-term contracts, credit checks, or termination fees. GreatCall has been providing services under the “Jitterbug” brand name since 2006. The Jitterbug service is designed primarily for senior citizens, offering customers the opportunity to purchase phones that are simple and easy to use. Its service plans include simple access to live representatives who can complete calls, program functions into the phone, and provide additional concierge services such as programming contacts and adding calendar events to the customer’s phone.

GreatCall is a Delaware corporation, providing service through a combination of its own facilities and pursuant to a Mobile Virtual Network Operator arrangement with Verizon Wireless, which is authorized to provide service via Commercial Mobile Radio Service licenses granted by the Commission.

DISCUSSION

Budget PrePay and GreatCall will address in these Comments two issues raised by the Petition filed by TracFone. The first issue relates to the test the Commission should apply in determining whether an ETC has established a customary charge for commencing telecommunica-

tions service, so that the ETC would qualify for Link Up reimbursement from the USF for reductions in that charge for qualifying low-income customers.

The second issue Budget PrePay and GreatCall will address involves the factors the Commission should take into account in determining whether an ETC is using its own facilities, in whole or in part, to provide service that is supported by federal universal service support mechanisms.

I. A Carrier Has Established a Customary Charge for Commencing Telecommunications Service If It Applies That Charge to All Customers in Any Jurisdiction in Which the Carrier Operates as an ETC.

The Commission's rules provide that ETCs "may receive universal service support reimbursement for the revenue they forgo in reducing their customary charge for commencing telecommunications service" ⁴ This formulation raises the issue of how the Commission should determine whether a carrier seeking Link Up reimbursement has in fact established a customary charge. As TracFone observes, "the charges must be the usual or regular charges carriers routinely impose on their customers for commencing service." ⁵ In contrast, TracFone argues, "when a carrier imposes an activation fee only when the fee is covered by the USF, then it does not impose a 'customary' activation fee on its customers." ⁶

The policy objective, according to TracFone, is to ensure that ETCs are reimbursed only for service activation charges that low-income customers otherwise would be required to pay, in the absence of the Link Up assistance program, and to avoid circumstances in which supposed

⁴ 47 C.F.R. § 54.413(a).

⁵ TracFone Petition at 4.

⁶ *Id.* at 5.

activation charges are “fabricated by carriers for the purpose of receiving funds from the federal USF.”⁷

An effective and sufficient means of achieving this policy objective would be for each state commission in which a carrier operates as an ETC (and for the Commission, in states for which the Commission is responsible for designating ETCs pursuant to Section 214(e)(6) of the Communications Act of 1934 (“Act”)⁸) to require an ETC to certify that it has established an activation charge that is equally applicable to both Lifeline/Link Up customers and non-Lifeline/Link Up customers.

If the ETC certifies that *all* customers in the state—not just Lifeline/Link Up customers—are required to pay the activation charge, then there should be no concern that the ETC has established an activation charge only for the purpose of receiving USF reimbursements in the case of its services provided to Lifeline/Link Up customers. A certification would ensure that Link Up reimbursements paid to the ETC are appropriately compensating the ETC for reductions made available by the ETC to Lifeline/Link Up customers in customary activation charges that are paid by all customers receiving the ETC’s services in the state involved.⁹

⁷ *Id.* at 4.

⁸ 47 U.S.C. § 214(e)(6).

⁹ Restricting the availability of reimbursements to cases in which ETCs are appropriately compensated for forgone customary charges, which Lifeline/Link Up customers otherwise would be required to pay, preserves USF resources for use in advancing the policy goal of ensuring that the Lifeline/Link Up support mechanisms contribute to increasing telephone service penetration rates for low-income consumers. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8955 (para. 335) (1997) (“*USF First Report and Order*”) (subsequent history omitted) (noting that “access should be provided to low-income consumers in all regions of the nation”) (internal quotation marks and footnote omitted). Studies have shown that the Lifeline/Link Up program has in fact been effective in increasing the level of telephone service subscriptions among low-income customers. *See, e.g.*, Daniel A. Ackerberg, Michael H. Riordan, Gregory L. Rosston & Bradley S. Wimmer, “Low-Income Demand for Local Telephone Service: Effects of Lifeline and Linkup,” Stanford Institute for Economic Policy Research Paper No. 07-32 (Jan. 2008) at 6-7, <http://www.siepr.stanford.edu/papers/pdf/07-32.pdf>.

It would not be necessary or appropriate, however, to require that a carrier must apply an activation charge to its customers in states in which the carrier is *not* operating as an ETC, in order for the carrier to be eligible for Link Up reimbursements in states in which it *is* an ETC. There are two reasons such a requirement is not needed.

First, a carrier may find sound business reasons for not applying any activation charge in states in which it is not operating as an ETC, such as differences in competitive circumstances as well as lower costs. For example, in states in which the carrier is not an ETC and is not participating in the Lifeline/Link Up program, it would not incur costs associated with the program, such as costs related to collecting and maintaining Lifeline/Link Up customer information, and related to Lifeline/Link Up certifications.

Second, it would not be necessary, for purposes of preserving and advancing the Commission's Lifeline/Link Up goals, to require a carrier to impose activation charge in states in which it is not operating as an ETC, as a prerequisite for a finding by a commission in a state in which the carrier is an ETC that the carrier has established a customary activation charge. The key issue is whether there is any evidence that a carrier is "manufacturing" an activation charge merely for the purpose of obtaining a Link Up reimbursement in connection with discounting the charge to low-income customers.

If the carrier is applying the customary charge indiscriminately to all customers in the state in which it is seeking Link Up reimbursements, then the charge is "customary": All customers must pay it. There would be no basis for concluding that the activation charge is tailored for the narrow purpose of garnering Link Up reimbursements. Whether the carrier applies activation charges in other states, where it does not have any ETC designations, has no bearing on this analysis.

II. If a Carrier Uses Its Own Facilities for the Transmission or Routing of Any USF Supported Service, Then the Carrier Is Eligible for ETC Designation Pursuant to 47 U.S.C. Section 214(e).

The Act requires that an ETC must “offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services”¹⁰ There is nothing in the statute prescribing a minimum amount of facilities that a carrier must deploy in order to qualify as providing the required service using a combination of facilities and resale.

TracFone argues in its Petition that the statute makes clear that an ETC must use at least some of its own facilities to provide USF-supported services, and TracFone seeks clarification from the Commission that a carrier is not permitted to rely on its *wireline* facilities to meet the Section 214(e) facilities requirement in connection with the carrier’s providing *wireless* USF-supported services, “unless those wireline facilities are being used to transmit or route the wireless services that are designated for support.”¹¹

Although TracFone appears to concede in its Petition that it is sufficient for the carrier to meet the facilities-based test by using its own facilities to offer one or more (but not necessarily all nine) of the supported services, it has taken a different view in opposing Great Call’s application for ETC status.

The Commission’s existing rules and decisions provide adequate clarity, by focusing on two related issues. The first issue involves how a carrier’s facilities must be used in order to meet the Commission’s definition of facilities for purposes of Section 254 of the Act. The Commission has defined facilities to mean “any physical components of the telecommunications network

¹⁰ 47 U.S.C. § 214(e)(1)(A).

¹¹ TracFone Petition at ii; *see id.* at 13-14, 17-18.

that are used in the transmission or routing of the services that are designated for support” pursuant to the Commission’s universal service rules.¹² Thus, if a carrier is using its own physical facilities to transmit or route a supported service, then this use of the carrier’s facilities meets the Commission’s definition of “facilities.”

The second issue is whether a carrier’s eligibility for USF support further turns on whether it is using its own facilities in the transmission or routing of all nine of the supported services designated in the Commission’s rules, or whether it is sufficient for the carrier’s own facilities to be used to transmit or route a lesser number of supported services. The Commission resolved this issue thirteen years ago, in the *USF First Report and Order*, finding that:

the statute does not require a carrier to use its own facilities to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide *at least one of the supported services*. . . . [I]f 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 [in the *USF First Report and Order*], 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.¹³

Thus, the Commission has interpreted the statute to mean that a carrier is eligible to be designated as an ETC and receive USF support if, in the jurisdiction in which it is designated, it provides transmission or routing for at least one supported service through its own facilities. There is no Commission requirement that a carrier must use its own physical facilities to transmit or route all

¹² 47 C.F.R. § 54.201(e).

¹³ *USF First Report and Order*, 12 FCC Rcd at 8870-71 (para. 169) (emphasis added) (footnote omitted), quoted in GreatCall, Inc., Reply Comments, *Telecommunications Carriers Eligible To Receive Universal Service Support*, GreatCall, Inc., *Petition for Designation as an Eligible Telecommunications Carrier in Alabama, et al.*, WC Docket No. 09-197, filed Nov. 15, 2010, at 4. See also *USF First Report and Order*, 12 FCC Rcd at 8871 (para. 170) (indicating that “section 214(e) does not mandate the use of any particular level of a carrier’s own facilities”).

nine of the supported services (or even more than one supported service). Given the statutory command, nor could there be.

TracFone alludes to this Commission finding that a carrier need only provide transmission or routing for one supported service in order to meet the Commission’s “facilities” test,¹⁴ but this Commission finding is not the subject of the TracFone Petition. Budget PrePay and GreatCall have focused on this issue in these Comments simply to underscore the fact that this rule—providing that a carrier’s provision of transmission or routing for one supported service is sufficient to meet ETC eligibility requirements—has long been in place, is not being challenged by TracFone, and is not the subject of any clarification being sought by TracFone in its Petition.

The rule in fact requires no clarification because the Commission has made a definitive finding that the Act does not require a carrier to use its own facilities to provide all of the nine supported services, and that the Act makes it sufficient for a carrier to provide only one supported service through the use of its own facilities. The Commission has explained that, “by declining to specify the level of facilities required, we believe that Congress sought to accommodate the various entry strategies of common carriers seeking to compete in high cost areas.”¹⁵ Ensuring competitors have adequate flexibility to devise business plans serves the public interest by increasing competitive options for consumers.

CONCLUSION

If the Commission decides to issue a Declaratory Ruling in response to the TracFone Petition, the Commission should clarify that an ETC will be treated as having established a customary charge for commencing a telecommunications service if it applies that charge to all cus-

¹⁴ See TracFone Petition at 15 (citing *USF First Report and Order*, 12 FCC Rcd at 8870 (para. 169)).

¹⁵ *First Report and Order*, 12 FCC Rcd at 8871 (para. 169).

tomers—including both Lifeline/Link Up customers and non-Lifeline/Link Up customers—in any jurisdiction in which the carrier is operating as an ETC. Further, any such Declaratory Ruling must not disturb the Commission’s longstanding decision that a carrier need only provide one supported service through the use of its own facilities in order to establish ETC eligibility.

Respectfully submitted,

BUDGET PREPAY[®], INC.
GREATCALL, INC.



By: _____

David A. LaFuria
Todd B. Lantor
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

December 23, 2010