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

In the Matter of	**:**	
	:	
TracFone Wireless, Inc.	**:**	**WC Docket No. 09-197**
	:	
Petition for Declaratory Ruling	**:**	**WC Docket No. 03-109**

COMMENTS
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Dated: December 23, 2010

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 1

DISCUSSION 2

I. Link Up support should only be provided for "connections" tied to carrier facilities. 2

II. Wireline ETCs must receive approval from the appropriate authority prior to offering wireless lifeline service or modifying a wireless lifeline service offering. 6

III. Wireless ETCs must provide service using, in part, their own facilities to be eligible for universal service support. 8

CONCLUSION 10

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INTRODUCTION AND SUMMARY

On December 8, 2010, the Federal Communications Commission (FCC) issued a public notice seeking comment on a petition for declaratory ruling filed by TracFone Wireless, Inc. (TracFone) on December 1, 2010. TracFone's petition asks the FCC for a declaratory ruling "regarding the Link Up support eligible telecommunications carriers (ETCs) may receive, the designation of wireless ETCs, and the requirement that ETCs offer services using their own facilities."[1] The issues raised in TracFone's petition are matters of concern to the Ohio Public Utilities Commission of Ohio and its staff and are

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[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 (December 8, 2010).

germane to matters presently pending before the Ohio Commission.[2] Accordingly, the staff of the Ohio Commission (Ohio Staff) is pleased to present its comments to the FCC for consideration.

DISCUSSION

It is no secret that since wireless carriers began offering Lifeline service, the size of the universal service fund has increased dramatically. As such, when considering issues involving the universal service fund, including those issues raised in the TracFone petition, key underlying policies, specifically controlling the size of the fund and ensuring against waste, fraud, and abuse of the fund must be taken into account. Accordingly, Ohio Staff generally agrees with TracFone's assertion that forbearance is necessary for non-facilities-based Lifeline service and will briefly address each of the issues raised in TracFone's petition.

I. Link Up support should only be provided for "connections" tied to carrier facilities.

As the TracFone petition points out, the purpose of the Link Up program is to provide eligible low-income subscribers with discounts on initial customary charges for

[2] *See In the Matter of Application of Nexus Communications Inc. dba TSI for Designation as an Eligible Telecommunications Carrier in the State of Ohio for the Limited Purpose of Offering Lifeline and Link Up Service to Qualifying Households*, Case No. 10-432-TP-COI (April 2, 2010); *In the Matter of the Commission Investigation into the Provision of Pre-Paid Lifeline Service by Competitive Eligible Telecommunications Carriers*, Case No. 10-2377-TP-COI (November 3, 2010).

commencement of telecommunications service.[3] TracFone argues that pursuant to the FCC's rules, an ETC should only receive reimbursement for reducing its customary charges for commencing service or for deferring the payment of such charges.[4] Ohio Staff generally agrees with TracFone's assertion that ETCs should only receive reimbursement from the Link Up program for commencing service or for deferring such a charge without interest. Ohio Staff believes, however, that "commencing service" means an actual physical connection of facilities and does not include "activation" as alluded to in the TracFone petition.[5]

47 C.F.R. 54.411 (a) provides:

> (a) For purposes of this subpart, the term Link Up shall describe the following assistance program for qualifying low-income consumers, which an eligible telecommunications carrier shall offer as part of its obligation set forth in §§54.101(a)(9) and 54.101(b):
>
> (1) A reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection ***at a consumer's principal place of residence***. The reduction shall be half of the customer charge or $30.00, whichever is less; and
>
> (2) A deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed to the consumer shall be for connection charges up to $200.00 that are deferred for a period not to exceed one year. ***Charges***

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[3] *See In the Matter of TracFone Wireless, Inc. Petition for Declaratory Ruling, Petition for Declaratory Ruling,* WC Docket No. 09-197, CC Docket No. 96-45 at 4 (December 1, 2010) (*TracFone Petition*).

[4] *See id.*

[5] *See id*. at 5-9.

> ***assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network.*** These charges do not include any permissible security deposit requirements. (Emphasis added).

Taken together, these subsections of §54.411(a) clearly indicate that the commencement of service involves an actual physical connection to the telecommunications network. The rule's reference to "a consumer's principal place of residence" foresees a physical joining of the carrier's facilities with those of the subscriber. While TracFone refers to a connection, it also refers to an "activation," which does not in itself necessarily imply a connection to the wireless carrier's facilities. Ohio Staff does not believe that TracFone intended for the terms "connection" and "activation" to be used interchangeably and, by using both terms, TracFone is, in fact, making a distinction between them. If, however, the rule was intended to contemplate something other than a physical connection to the carrier's facilities, then it would not include the phrase "at a consumer's principal place of residence" to further clarify the rule's apparent intent to require a joining of carrier and subscriber facilities. Consequently, reimbursement under the Link Up program must be predicated on a connection by the subscriber to the ETC's facilities.

Ohio Staff agrees with TracFone that connection charges must be "customary" to qualify for Link Up reimbursement. According to TracFone, "customary" charges are usual or regular charges routinely imposed by carriers upon their subscribers for the commencement of service.[6] Furthermore, such charges must be actual charges that must

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[6] *See TracFone Petition* at 4.

be paid by subscribers to commence service.[7] TracFone alleges that at least one ETC is essentially fabricating "customary" charges for the purpose of receiving reimbursement from the Link Up program.[8] To the extent that this allegation is true, Ohio Staff agrees that such "conduct constitutes waste, fraud and abuse of USF funds, is in facial violation of applicable Commission rules, and must not be countenanced by the Commission."[9] If it can be proven that any ETC engages in such conduct, Ohio Staff urges the FCC to take swift and decisive action to protect the integrity of the universal service fund. Additionally, for the reasons stated above, reimbursement for "customary" charges should be made where an actual connection to facilities is involved regardless of how "customary" such charges may otherwise be. An ETC should seek a forbearance prior to assessing any "customary" charge not related to an actual connection if it wishes to receive reimbursement from the universal service fund.

Ohio Staff believes that the FCC's rules are clear that Link Up reimbursement is tied to a connection to a carrier's facilities. What is unclear, however, is what constitutes "wireless facilities" for purposes of Link Up reimbursement. As more wireless carriers enter the Lifeline market, they will wish to provide connection discounts to subscribers and, in turn, receive reimbursement from the universal service fund. Consequently, Ohio Staff requests guidance from the FCC regarding what constitutes "wireless facilities" for purposes of the Link Up program.

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7 *See TracFone Petition* at 4.

8 *Id.*

9 *Id.* at 4-5.

II. Wireline ETCs must receive approval from the appropriate authority prior to offering wireless lifeline service or modifying a wireless lifeline service offering.

TracFone posits that wireline ETCs may not provide wireless Lifeline service as an ETC without first being designated as an ETC by the appropriate authority.[10] Carriers designated as ETCs for the purpose of offering wireline Lifeline service may not rely on their wireline designation for purposes of offering wireless Lifeline service.[11] In other words, carriers wishing to provide both wireline and wireless Lifeline service must first be designated as an ETC by the appropriate authority for each service type prior to offering both services. Ohio Staff believes that the Communications Act contemplates two separate designations and agrees with TracFone's position. However, it is Ohio Staff's position that not only must a carrier receive ETC designation prior to offering wireless Lifeline service, but it should also receive approval from the appropriate authority prior to modifying its wireless Lifeline service offering in any way.

Historically, Lifeline service was provided by wireline carriers who were most often the incumbent local exchange carrier (ILEC) in an area. These carriers, under the oversight of their respective state commissions, provided a predetermined discount to eligible subscribers. Often, this was a discount on the rate for basic local exchange service, but in recent years has come to include discounts on packages as well. In either case – basic service or a package – the discount amount was the same and the value

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10 *TracFone Petition* at 9.

11 *See id*. at 10-12.

received by the subscriber was clearly understood. The introduction of wireless Lifeline service, however, has in many respects muddied the waters in terms of the value received by eligible subscribers.

Some wireless carriers, particularly those offering prepaid wireless Lifeline service, have chosen to offer eligible subscribers Lifeline service at no cost. This is a distinct departure from traditional Lifeline offerings in which the subscriber receives a discount, but is still responsible to pay any remaining difference between the amount of the discount and the cost of the service. Nevertheless, like carriers offering traditional Lifeline service, wireless carriers may be reimbursed up to maximum allowable reimbursement per subscriber, per month, from the universal service fund. However, unlike traditional Lifeline service in which the value received by the subscriber is the amount of the discount, the value received by a wireless subscriber is determined by whatever the wireless carrier's offering may be. Wireless carriers, of course, may offer a variety of airtime minute and feature combinations to their subscribers. Some subscribers may receive more airtime minutes and fewer features such as texting or data service, while others may opt for fewer airtime minutes with more features.

It is the duty of the appropriate authority, be it a state commission or the FCC, to ensure that eligible subscribers and the broader base of rate payers who support the universal service fund receive adequate value for the stated purpose of Lifeline. When designating a carrier as a wireless ETC, the designating authority makes a determination that, at that time, subscribers and ratepayers are, in fact, receiving adequate value from the wireless carrier. Unlike traditional wireline Lifeline service in which the value pro-

vided does not change even if the service offering does, the value provided by a wireless carrier offering Lifeline service at no cost may change when a service offering changes. Consequently, should a wireless carrier wish to alter or modify its Lifeline service offering from that which it proposed in its application for ETC designation, it should first receive approval from the appropriate designating authority. Otherwise, the designating authority will not be able to protect the integrity of the universal service fund by ensuring that subscribers and ratepayers receive adequate value from the wireless carrier.

III. Wireless ETCs must provide service using, in part, their own facilities to be eligible for universal service support.

Ohio Staff agrees with TracFone that Section 214(e)(1)(A) unequivocally requires a carrier designated as an ETC to provide service using, in part, its own facilities, to be eligible to receive universal service support.[12] Consequently, any wireless carrier that is not providing service using, at least in part, its own facilities, should request a forbearance from the FCC to be eligible to receive such reimbursement.

Historically, all ILECs were by default ETCs and, as a condition of being eligible to apply for universal service support, were required to provide services to eligible low-income subscribers through the Lifeline and Link Up programs. The reimbursements provided under these programs were intended to offset a portion of the costs incurred by the ILEC in providing service to these subscribers, including facilities-related costs. In recent years, a distinction has been made between high-cost support and Lifeline/Link Up

[12] *See TracFone Petition* at 13, quoting 47 U.S.C. 214(e)(1)(A) (2010).

reimbursement when designating ETCs. Nevertheless, Ohio Staff believes that the underlying purpose of Lifeline and Link Up reimbursement remains. If a carrier seeking designation as an ETC does not connect its own facilities or provide service using its own facilities, it should not be eligible to receive reimbursement for the costs of doing so without first receiving a forbearance from the FCC.

As a part of the section 214 facilities-based requirement, Ohio Staff agrees with TracFone that it is not sufficient for a carrier seeking ETC designation to simply own facilities to qualify for universal service support in a given state.[13] Ohio Staff also agrees that a carrier wishing to provide wireless Lifeline service may not rely upon the fact that it owns wireline facilities in a particular state to satisfy the facilities-based requirement.[14] The carrier must own facilities sufficient to provide the type of service it wishes to offer in a state and use at least a portion of those facilities to provide the service within that state for which it will seek reimbursement as an ETC.[15] Otherwise, a carrier designated as an ETC could own a switch of any type that it uses in only one particular state, but potentially be eligible to receive Lifeline support in every state. Ohio Staff believes that the facilities-based requirement is intended to prevent such a result.

While Ohio Staff strongly supports a narrow reading of the 214 facilities-based requirement, it also recognizes that entrance of wireless carriers into the Lifeline market raises questions as to what constitutes "wireless facilities." Consequently, Ohio Staff

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13 *See TracFone Petition* at 17.

14 *See id.*

15 *See id.*

requests guidance from the FCC as to how wireless facilities should be defined for purposes of satisfying the facilities-based requirement.

CONCLUSION

Wireless Lifeline service provides many new and exciting service opportunities to eligible low-income subscribers that were not previously available to them. With these opportunities, however, come new issues that must be addressed to ensure that the integrity of the universal service fund is protected. Ohio Staff commends TracFone for raising some of these issues in its petition, and encourages the FCC to provide the clarifications sought by TracFone in light of the additional concerns and recommendations raised by Ohio Staff in these comments. Ohio Staff appreciates the opportunity to comment in this proceeding.

Respectfully submitted,

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