

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

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Lifeline and Link Up |) | WC Docket No. 03-109 |
| |) | |
| Emergency Petition for Interim Relief to Prevent the Disappearance of Payphones |) | |
| |) | |
| Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service |) | |

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
IN RESPONSE TO PETITIONS**

On December 6, 2010, the American Public Communications Council (“APCC”) filed two petitions with the Federal Communications Commission (“FCC” or “Commission”). The first petition asked the Commission “to grant emergency relief on an interim basis to halt the precipitous decline in the number of payphones serving the country” and asked “that the Commission immediately declare Eligible Telecommunications Carriers (‘ETCs’) providing payphone lines eligible for Lifeline support from the Universal Service Fund for those lines at the same level of dollar support as provided at the combined Tier 1, Tier 2, and Tier 3 Level.”¹ The second petition requested, on a more permanent basis, the Commission to initiate a rulemaking to

¹ APCC Emergency Petition for Interim Relief to Prevent the Disappearance of Payphones (December 6, 2010) (“APCC Emergency Petition”) at 1.

make ETCs providing payphone lines eligible for Lifeline support from the Universal Service Fund for those lines at the Combined Tier 1, Tier 2 and Tier 3 Level.”²

On December 16, 2010, the Commission issued a Public Notice that put both petitions out for public comment.³ Six comments were filed in response to the Public Notice. Four oppose the Petitions.⁴ Two – filed by entities that would benefit from the approval – supported the Petitions.⁵

The National Association of State Utility Consumer Advocates (“NASUCA”),⁶ while appreciating the benefits that payphones bring, “providing access to critical calling services to millions of Americans and ready, reliable access to the public network in times of crisis and during emergencies...”⁷ and recognizing that “payphones are in a state of crisis, with the deployed base having fallen by more than 75% over the last ten years...”⁸ nonetheless files these reply comments to also oppose the petitions. The opponents raise valid points, which are not refuted by either of the petitions or by the comments in support of the petitions.

² APCC Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service (December 6, 2010) (“APCC Rulemaking Petition”) at 1.

³ DA 10-2360.

⁴ Filed by Sprint Nextel Corporation (“Sprint”); TracFone Wireless, Inc. (“TracFone”); the United States Telecom Association (“USTelecom”) Verizon and Verizon Wireless (“Verizon”)

⁵ Filed by the Florida Public Telecommunications Association, Inc. (“FPTA”) and by Rosebud Telephone, LLC (“Rosebud”). Neither comment adds anything significant to the arguments contained in the APCC petitions.

⁶ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

⁷ APCC Rulemaking Petition at 1.

⁸ *Id.*

In the first place, the purpose of the Lifeline program is to assist low-income consumers.⁹ The payphone providers are not low-income, except perhaps incidentally as a result of the market decline for payphones.¹⁰ And the consumers who use those payphones, although many are likely low-income, are not necessarily low-income, as required by the Commission's current rules.¹¹

TracFone asserts that the payphone owners may not receive universal service support because they are not common carriers, and § 214 limits support to common carriers.¹² But that misses the point of APCC's petitions, which would give the support to the ETC common carriers, so long as they pass it through to the PSPs, the payphone owners.¹³ But TracFone is correct that there is nothing in APCC's petitions that would require the discounts to be passed through to the actual (low-income) users of the payphones.¹⁴ Indeed, as TracFone also points out, "nothing in APCC's proposal indicates or suggests that the subsidy funds would be targeted to support payphones at locations frequented by ... low income customers...."¹⁵

The Commission may add services to the definition of universal service.¹⁶ But the services that are added must be those that "have, through the operation of market

⁹ See 47 U.S.C. § 254(b)(3).

¹⁰ See Sprint Comments at 2-3; Verizon Comments at 1.

¹¹ See Verizon Comments at 5.

¹² TracFone Comments at 3-4.

¹³ APCC Rulemaking Petition at 29-30

¹⁴ TracFone Comments at 8-9.

¹⁵ Id. at 9.

¹⁶ 47 U.S.C. § 254(c)(1).

forces by customers, been subscribed to by a substantial majority of residential customers.”¹⁷

As noted above, NASUCA acknowledges the precipitous decline in the number of payphones. But another problem with APCC’s proposal is that, as Verizon states, “Petitioners offer no data to establish that the amount of subsidy they seek (\$10 per payphone per month) would keep any particular payphone in service.”¹⁸ This further undercuts APCC’s request for emergency relief. Even more, there is no claim that requiring the ILEC ETCs to discount the payphone lines they provide to PSPs will increase (“advance[.]”¹⁹) the number of payphones.

Simply put, payphones do not fit into the Lifeline paradigm, and no amount of alteration of the Commission’s current rules will make it so.²⁰ Payphones do fit into the paradigm of 47 U.S.C. § 276(b)(2) – and that is where APCC should direct its efforts. Sprint is incorrect in its assertion that § 276 focused only on competition,²¹ just as APCC is incorrect not to look to § 276(b)(2).²² Further, NASUCA must disagree with TracFone’s assertion that “[r]ather than promoting competition among payphone providers as directed by Congress, APCC’s requested subsidization would protect competitors from competition...”²³ Providing support to all payphone providers would

¹⁷ 47 U.S.C. § 254(c)(1)(B).

¹⁸ Verizon Comments at 3.

¹⁹ See 47 U.S.C. § 254(b).

²⁰ Which is not to say that there might not be a place for payphones in the universal service paradigm; just that Lifeline is not that place. Thus NASUCA disagrees with USTelecom that these issues should be addressed in a comprehensive review of low-income programs. USTelecom Comments at 2-3.

²¹ Sprint Comments at 5.

²² APCC dismisses action based on § 276(b)(2) as “not realistic” (APCC Rulemaking Petition at 18; see generally id. at 17-19), but it is certainly more feasible than the shot-in-the-dark argument in the two pending petitions. See USTelecom Comments at 4.

²³ TracFone Comments at 6 (emphasis in original).

no more protect them from competition than providing support to TracFone for its Lifeline customers protects TracFone from competition.

Finally, NASUCA must express disagreement with Verizon’s assertion that providing support for “pay-per-call wireline voice service would be a step backwards and would significantly detract from the Commission’s efforts to repurpose the [universal service fund] to support broadband expansion.”²⁴ Just as NASUCA has argued that under the Act the Commission must continue to support traditional voice service – rather than wholesale abandoning it in favor of broadband²⁵ – the Commission should re-look at § 276’s “public interest payphones” provision.

Respectfully submitted,

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February 2, 2011

²⁴ Verizon comments at 2.

²⁵ See, e.g., Docket Nos. 10-90, 09-51, 05-337, NASUCA Comments on Notice of Proposed Rulemaking (July 12, 2010) at 2-3.