

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

In the Matter of)	
)	
TracFone Wireless, Inc.'s Petition for Waiver of 47 CFR § 54.403(a)(1))	WC Docket No. 03-109
)	

COMMENTS OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments on the above-referenced petition of TracFone Wireless, Inc. (TracFone).¹ ITTA is an alliance of mid-size telephone companies. ITTA members collectively serve 30 million access lines in 44 states, and offer subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services.

TracFone asks the Commission to waive Commission Rule 54.403(a)(1)² in order to enable TracFone to obtain Lifeline support of \$6.50 per customer. The instant petition follows TracFone's March 2009 Petition for Rulemaking, wherein TracFone asked the Commission to amend Commission Rule 54.403(a)(1) in order to make available to all eligible telecommunications carriers (ETCs) Tier 1 Lifeline support of \$6.50 per customer, provided those ETCs pass the full amount of Lifeline support through to the Lifeline customer;³ the Commission has not yet ruled on the initial TracFone petition,

¹ Public Notice, DA 09-1271 (rel. Jun. 5, 2009).

² 47 CFR § 54.403(a)(1).

³ See, *Petition for Rulemaking to Revise Universal Service Support Available to Eligible Telecommunications Carriers: Petition for Rulemaking of TracFone Wireless*, RM-11526 (filed Mar. 5, 2009).

filed three months prior to the instant Petition. In brief, ITTA supports the consumer welfare interests that both petitions address, but recommends that the Commission reject the instant Petition for Waiver, and instead consider the prior Petition for Rulemaking within the context of overall comprehensive Universal Service Fund (USF) reform.

As ITTA demonstrated in its comments on the Petition for Rulemaking, Tier 1 support is designed to offset the subscriber line charge (SLC), which is currently capped at \$6.50. The correlation of Tier 1 support and the SLC reflects the fact that this level of support has been found to act as a “reasonable proxy” for interstate loop costs.⁴

Accordingly, incumbent local exchange carriers (ILECs) providing Lifeline service are entitled to Tier 1 support in an amount equal to the SLC they charge. That level of support is extended to competitive eligible telecommunications carriers (CETCs), which are entitled to an amount equal to the Tier 1 support received by the relevant ILEC. In both petitions, TracFone asks the Commission to disassociate Tier 1 support from the SLC charged by the ILEC, and to instead declare that Tier 1 support be fixed arbitrarily at \$6.50 per month.

ITTA stated previously that TracFone’s interest in increasing consumer benefits is commendable. Accordingly, while ITTA identified several questions left open by the first TracFone petition, ITTA recommended that the Commission consider various potential refinements to the Lifeline mechanism within the context of comprehensive

⁴ See, *Federal-State Joint Board on Universal Service: Report and Order*, CC Docket No. 96-45, FCC 97-157, at para. 367 (1997) (“ . . . we are therefore confident that this [SLC] amount is a reasonable proxy for the interstate portion of other eligible telecommunications carriers’ costs. Thus, we conclude that we may require an amount equal to the SLC cap for primary residential and single-line business connections to be

USF reform. But, whereas the Petition for Rulemaking contemplated a regulatory universe in which *all* Lifeline customers could benefit from the proposed (or another) new regulatory approach, the instant Petition for Waiver seeks to confer benefit only on Lifeline customers of a single provider, namely, TracFone.

In its comments on the Petition for Rulemaking, ITTA advised the Commission to undertake review of the TracFone proposal within the context of comprehensive USF reform. Within that approach, the TracFone proposal could be weighed against other possible revisions to the Lifeline program, and analyzed in a more productive manner. For example, a threshold question in comprehensive USF reform may be whether there should be a standard, Nationwide “Lifeline benchmark” rate, rather than a carrier-by-carrier or even exchange-by-exchange effective Lifeline rate that results in today’s Lifeline program. ITTA does not either endorse or oppose the proposition of whether this should be a constructive change in policy, but merely raises this as an example of the complex public interest issues surrounding Lifeline that should be determined in comprehensive reform, and not addressed in isolation. Accordingly, the instant Petition for Waiver should be rejected. The Commission has already conferred significant benefit upon TracFone and other wireless carriers by enabling them to obtain Lifeline support that is based upon recovery of costs that they never incur and which they do not assess their end-users. The instant Petition for Waiver simply seeks to add to that support an additional benefit that would accrue only to TracFone and its customers only, and not to any of its wireless or wireline competitors or their customers, since TracFone would

deducted from carriers’ end-user charges without infringing on state ratemaking authority.”)

obtain \$6.50 of Lifeline benefit even where the relevant ILEC's SLC is below the cap. This result would be anti-competitive and would enable TracFone to offer to Lifeline eligible customers an incentive borne of regulatory action that its competitors cannot match.

The instant Petition, like the first, disregards the rationale upon which current Tier 1 support is premised. Tier 1 support today is intended to be a proxy for interstate loop costs, and relies upon the determination that the SLC represents a fair approximation of that amount. Accordingly, the variance among states and carriers is a natural reflection of loop cost characteristics that may tend to differ from region to region. The uniform discount proposed by TracFone brushes this aspect aside. Ultimately, the issues raised by TracFone's filing extend beyond the four corners of the Petition. For example, if Lifeline support is wholly divorced from carrier costs, should that support be modified to be based upon a benchmark Lifeline rate that enables eligible subscribers throughout the Nation to obtain service at a uniform rate? Alternatively, if Lifeline support continues to be premised on the notion of relieving subscribers of interstate costs, does a uniform discount rate conflict with that approach, and does that uniform rate compound or otherwise mirror the ill effects of the identical support rule? These are questions suitable for discussion within the context of a conversation that contemplates the full community of Lifeline providers and subscribers. Consideration of this issue within the narrow confines of a carrier-specific result, by contrast, creates unnecessary disparity among Lifeline providers at a time when the Commission and the industry are working toward comprehensive reform. If, as TracFone claims, the SLC is not a reasonable proxy for Lifeline support to wireless CETCs, then that is precisely the type of issue that is best

approached within the larger USF proceeding. And, yet, despite arguing that it is not a reasonable proxy, TracFone relies upon it in an attempt to maximize competitively disparate Lifeline benefits, without proposing an alternative cost-based proxy by which such support might be structured to benefit all Lifeline end-users. The instant Petition would enjoy greater credibility if it proposed an alternative cost-based proxy for all wireless carriers, rather than a narrowly-tailored result intended to benefit only the Petitioner. However, that form of argument, too, would be more suited to comprehensive reform of general applicability, rather than a Petition for Waiver that follows on the heels of a Petition for Rulemaking that has not yet been ruled upon.

Reasonable analysis of the TracFone proposal should include consideration of other means to attain whatever goals may be identified. This analysis should include consideration of the impact any proposal might have on the size of the Fund, and issues related generally to affordability. These are matters highly suited to investigation as the Commission continues its comprehensive re-examination of the USF structure.

Accordingly, ITTA recommends that the instant TracFone Petition be rejected, and the previously-filed Petition for Rulemaking be deferred to the general USF reform docket, where ultimate reformation of Tier 1 support matters may be best addressed following disposition of the identical support rule and implementation of cost-based mechanisms for competitive carriers.

Respectfully submitted,

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