

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

In the Matter of

Lifeline and Link-Up : WC Docket No. 03-109

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

Richard Cordray
Ohio Attorney General

Duane W. Luckey
Section Chief

Sarah J. Parrot
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
614.466.4396 (telephone)
614.644.8764 (fax)
sarah.parrot@puc.state.oh.us

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INTRODUCTION AND SUMMARY

On October 21, 2009, the Federal Communications Commission (FCC) released a Public Notice seeking comment on a request from TracFone Wireless, Inc. (TracFone) for clarification of the Universal Service Lifeline program “one-per-household” rule as applied to group living facilities.¹ Specifically, on July 17, 2009, TracFone had filed a letter² requesting that the FCC clarify the scope of the one-per-household rule for universal service low-income support under the Lifeline program. The FCC now requests comment on the effects of the one-per-household rule for Lifeline support in the context of group living facilities. Further, the FCC requests comment on ways that

¹ *Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program “One-Per-Household” Rule as Applied to Group Living Facilities*, WC Docket No. 03-109, Public Notice, DA 09-2257 (rel. October 21, 2009).

² Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (filed July 17, 2009).

Eligible Telecommunications Carriers (ETCs) may offer Lifeline service to qualified residents of group living facilities while continuing to comply with the one-per-household rule. Finally, the FCC requests comment on whether and how ETCs that provide Lifeline-supported service to homeless individuals who do not use shelters could comply with the one-per-household rule.

In offering its comments in response to the FCC's Public Notice, the Public Utilities Commission of Ohio (Ohio Commission) recognizes the important public benefit of Lifeline-supported services and the desire to extend such benefit to as many eligible Ohio subscribers as possible consistent with the universal service objectives of both Congress and the FCC. While the Ohio Commission can appreciate TracFone's desire for the aggressive expansion of Lifeline-supported services, we believe that such zealotness must be tempered by the need to assure that the financial support provided through the payment of Universal Service Fund (USF) surcharges by Ohio's subscribers is properly allocated for customers who continue to satisfy the specified Lifeline eligibility criteria.

The Ohio Commission notes that, while TracFone's petition identifies a number of public policy issues, it is silent regarding how these issues should be addressed. In particular, the Ohio Commission highlights the fact that, unlike historical Lifeline support that pertains to fixed, identifiable, landline subscribers, TracFone's Lifeline support focuses on mobile, wireless customers that are more difficult to track. This issue is further compounded by the fact that TracFone's current petition seeks to expand such support to the homeless sector of the population, which by its very nature is transient and

more difficult to track. Based on this scenario, the Ohio Commission opines that, absent the adoption of sufficient implementation and enforcement measures, increased publicly funded Lifeline support may flow to TracFone without an equal benefit being received by the intended recipients. The FCC should adopt implementation and enforcement measures that establish an obligation on TracFone for the accountability and accuracy of its requests for reimbursement pertaining to its provision of service to Ohio's Lifeline subscribers.

Comments in this proceeding are due at the FCC on November 20, 2009. The Ohio Commission hereby submits its comments in response to the FCC's request for comments in the above-captioned proceeding.

DISCUSSION

I. Background

A. History of TracFone in Ohio

On September 5, 2008, as amended on May 13 and 18, 2009, TracFone, a non-facilities based wireless reseller, filed an application, with the Ohio Commission, to be designated as a non-rural ETC for the limited purpose of offering Lifeline service to qualified households. The application was filed pursuant to 47 U.S.C. § 214(e)(2) in PUCO Case No. 97-632-TP-COI.³

The application, which was the first of its kind in Ohio, was conditionally approved by the Ohio Commission on May 21, 2009, subject to a one-year review of the

³ *In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, Case No. 97-632-TP-COI (Application) (September 5, 2008).

company's operations in order to assess compliance with the FCC's ETC requirements and the requirements of our order of May 21, 2009. As outlined in our order, the Ohio Commission had many concerns regarding TracFone's operations, including the service offering; access to 911 and E911; compliance with the FCC's ETC orders; utilization of telephone numbers; and Ohio's Lifeline and ETC requirements. Therefore, the Ohio Commission ordered⁴ TracFone to submit a compliance plan detailing how the company would accomplish certification, annual verification, and measures that would guard against the potential for fraud and abuse regarding Lifeline support.

Specifically, within the compliance plan, TracFone was required to detail procedures with regard to inactive handsets and the failure of Lifeline subscribers to recertify their head-of-household status or to verify Lifeline eligibility on a random sampling basis. These processes were of particular concern to the Ohio Commission due to the fact that cell phone handsets are mobile instruments and are therefore difficult to track. The Ohio Commission instructed TracFone to include all customer notifications and safeguards, as well as a non-usage plan for inactive handsets, in the compliance plan. The non-usage policy was to help ensure that TracFone would not continue to seek reimbursement from the federal USF for unused handsets. Finally, the Ohio Commission, in the order of May 21, 2009, clarified that it is not our intent that TracFone's operations and service to customers will automatically cease at the end of the one-year time frame. Rather, we stated our intent that the company will continue to

⁴ *In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, Case No. 97-632-TP-COI (Supplemental Finding and Order) (May 21, 2009).

provide its Lifeline service without interruption, subject to verification of compliance, or until we order otherwise. To achieve a complete review, TracFone is required to maintain Ohio-specific information on a monthly basis and informally provide the Ohio Commission staff with quarterly reports.

B. Purpose of the Federal Universal Service Fund

The USF initially had a very clear goal – the universal availability of telephone service, which at the time meant support for the landline connection. Technology over time has altered the definition of telephone service from the wireline connection to include wireless service as an additional, or in some cases, as the primary telecommunications choice for consumers. Therefore, support from the fund expanded to include support to wireless service providers for the provision of low-income Lifeline consumers.

Specifically, Congress expanded the portion of the USF designated to assist low-income consumers in obtaining telecommunications service to include wireless and other services. Specifically, Section 254(b)(3) of the Telecommunications Act of 1996 provides that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services.⁵

⁵

47 U.S.C. § 254(b)(3) (2009).

C. Growth of the Universal Service Fund

According to Universal Service Administrative Company (USAC), as of September 30, 2009, it has distributed approximately \$5.2 billion of the USF to ETC beneficiaries.⁶ Of the \$5.2 billion, \$708.89 million was for low-income support.⁷ The amount of low-income support estimated for 2010 is over \$1.1 billion,⁸ which is more than 35 percent of what was disbursed for 2009. Coincidentally, it is also roughly half the size of the high cost cap of \$2.25 billion that was implemented in August 2008.⁹ It is no coincidence that this growth was experienced in the same year that TracFone was granted ETC designations in several states.¹⁰ Without TracFone's added disbursements, it is likely that the size of the fund would have stayed relatively the same. However, in light of the use of mobile wireless technology to meet the needs of those requiring Lifeline-supported services, the rate of the USF exhaust will continue to accelerate. Thus, the FCC must address overall USF reform as recommended previously by the Ohio Commission.¹¹

⁶ Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for First Quarter 2010* (November 2, 2009), at 3.

⁷ *Id.*

⁸ *Id.* at 16.

⁹ *In the Matter of High-Cost Universal Support Federal State Joint Board on Universal Service, Alltel Communications, Inc. et al., Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc., New Hampshire ETC Designation Amendment*, FCC 08-122 (rel. May 1, 2008).

¹⁰ *In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., et al.*, 23 FCC Rcd 6206 (2008) ("TracFone Designation Order").

¹¹ *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board*

D. “Me Too” Applications

For the past year, the FCC and the Ohio Commission have received an increase in ETC applications for the sole purpose of seeking USF Lifeline funding, including from nonfacilities-based wireless resellers that require forbearance from 47 U.S.C. § 214(e), which requires all ETCs to be facilities-based.

The Ohio Commission is concerned about the effect on the fund that these new entrants will have, especially with respect to the nonfacilities-based wireless reseller applicants. While we recognize that in all likelihood, perhaps as many as two-thirds of Ohio households eligible for Lifeline support are not currently receiving it and the use of mobile devices may be a good solution to reaching them, if the low-income portion of the fund continues its exponential growth each time a new nonfacilities-based wireless reseller ETC is designated, as discussed in the previous section, we could be looking at the need to double or triple the level of the USF in a relatively short period of time. As a result, the FCC may then find it necessary to cap the Lifeline fund similar to its prior decision to cap the High Cost fund.

II. TracFone’s Petition

The Ohio Commission views TracFone’s July 17, 2009, letter/petition to the FCC to be insufficient in detail as to the implementation and enforcement of its proposed provision of wireless phones to the homeless population in Ohio. Specifically, TracFone offers no explanation as to how it will certify/recertify homeless residents who stay at

on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Comments of the Public Utilities Commission of Ohio (April 18, 2008).

group living facilities, including homeless shelters, where the stay varies from one to ninety days. Further, TracFone offers no insight as to how it plans to track these individuals for random verifications. The homeless population is transient by nature, resulting in a number of issues with respect to tracking. Even under its existing business model, the ability to monitor who is actually using the wireless phone or to monitor the location of the wireless phone is a near impossibility. Given the nomadic nature of the homeless sector of our population, this concern will be exacerbated by the potential that, over time, the wireless phones could be handed out to the same individual in various group living facilities in various states. There is also an issue of knowing where to deliver the handset in the first instance due to the nomadic nature of these individuals.

Furthermore, TracFone has failed to explain what will happen to any unused handsets. There is a strong possibility that the homeless user's wireless phone could get lost, stolen, damaged, never received, or just discarded. Absent a detailed procedure, TracFone could indefinitely continue to collect support from the USF for all of these untraceable phones.

Because TracFone seemingly has no proposed implementation/enforcement relative to its proposed service for homeless populations, there appear to be no checks and balances in place to prevent misuse or fraud. In fact, a homeless individual who may frequent a shelter on occasion or a one-night stay could conceivably be eligible for Lifeline benefits with a TracFone handset, thus, making it difficult to ensure that only eligible individuals benefit from subsidized Lifeline service. While the Ohio Commission supports providing low income homeless households wireless Lifeline

services, we simply are not convinced that TracFone has proposed an effective method to accomplish this.

If the FCC authorizes TracFone to move forward with the provision of Lifeline service to homeless shelters, the Ohio Commission believes that it is critical that the FCC direct TracFone to provide a detailed implementation and enforcement plan for approval by both the FCC and the requisite states. Alternatively, it will be necessary for the FCC itself to devise a plan in order to deal with the intricacies of an expanded Lifeline program. Additionally, states, including Ohio, will require details as to how the current Lifeline rules, both federal and state, are affected by a Lifeline program accessible to those whose principal residence is a group living arrangement. For example, a determination will need to be made as to whether existing definitions (e.g., “principal residence”) need to be clarified. Having a clear program mechanism in place is essential for consistency between the states in order for them to avoid guessing how to interpret the Lifeline rules for this expanded program.

Therefore, prior to approving TracFone’s current petition, the FCC must ensure that appropriate reporting mechanisms are in place in order to properly monitor TracFone’s proposed Lifeline offering to homeless individuals. Through this approach, the FCC will be cognizant of whether TracFone is only receiving Lifeline support for those homeless subscribers who have complied with the annual recertification and random verification obligations, and who abide by the non-usage restrictions. One approach that the FCC may consider is to require a quarterly reporting obligation similar to that incorporated in TracFone’s Ohio compliance plan and expand it to encompass

reporting specific to the provision of Lifeline service to homeless customers.

Additionally, in order to avoid the difficulty of certifying each potential homeless subscriber, the FCC may also consider providing each authorized homeless shelter with a phone with a specified number of minutes per month to be allocated between the residents of the shelter.

Finally, the Ohio Commission reiterates that it approved TracFone's ETC application on a conditional basis. The Ohio Commission considers TracFone's ETC authority to be conditional in order to allow the Ohio Commission to better assess whether it would be in the public interest to continue to offer its approved services on a more permanent basis. Much of this analysis centers on the issues of implementation and enforcement, which are the subjects of the company's compliance plan and the associated quarterly reports that the company is required to submit to the Ohio Commission staff. The Ohio Commission notes that the company has continued to modify its business operation in Ohio while, at the same time, failing to provide the Ohio Commission staff with timely notification of such changes. Such failure has impeded the Ohio Commission's ability to properly perform its review process. Therefore, the Ohio Commission believes that it is premature for TracFone to expand the scope of its Lifeline service offerings in Ohio until such time that the Ohio Commission can perform an analysis of the company's currently authorized operations.

CONCLUSION

In conclusion, the Ohio Commission recommends that if TracFone's petition is accepted by the FCC, it should be implemented in a responsible way with clear goals for

verification, tracking of end-users, and accountability of the ETC. The Ohio Commission further recommends that the FCC consider the current size of the USF and the impact that granting this petition would have on its funding levels, especially if after expanding Lifeline eligibility, the FCC would be reluctant to narrow the program's scope in the future despite the existence of constraints in the current funding levels. Therefore, the Ohio Commission respectfully requests the FCC to carefully consider these comments.

Respectfully submitted,

Richard Cordray
Ohio Attorney General

Duane W. Luckey
Section Chief

/s/ Sarah J. Parrot

Sarah J. Parrot
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
614.466.4396 (telephone)
614.644.8764 (fax)
sarah.parrot@puc.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Comments** submitted on behalf of the Public Utilities Commission of Ohio was served by regular U.S. mail, this 19th day of November, 2009.

/s/ *Sarah J. Parrot*

Sarah J. Parrot
Assistant Attorney General

Best Copy and Printing, Inc.
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Jamie Susskind
Telecommunications Access Policy Division
Wireline Competition Bureau
445 12th Street, SW
Room 5-B418
Washington, D.C. 20554

Antoinette Stevens
Telecommunications Access Policy Division
Wireline Competition Bureau
445 12th Street, SW
Room 5-B521
Washington, D.C. 20554

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Summary: Comments Lifeline and the One-Per-Household Rule electronically filed by Ms. cora g peterson on behalf of Public Utilities Commission of Ohio