

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

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In the Matter of)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109
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_____)	

**COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
ON TRACFONE REQUEST FOR CLARIFICATION OF UNIVERSAL SERVICE
LIFELINE PROGRAM “ONE-PER-HOUSEHOLD” RULE AS APPLIED TO GROUP
LIVING FACILITIES**

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1. Introduction and Summary

The American Public Communications Council (“APCC”) hereby submits these comments in the above-captioned proceeding in response to the *Public Notice*¹ requesting comments on TracFone Wireless, Inc.’s (“TracFone”) letter request seeking Federal Communications Commission (“FCC” or “Commission”) clarification of the “one-per-household” rule for universal service low-income support under the Lifeline program.² In response to the *Public Notice*, APCC urges the Commission to carefully consider (a) the

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. Oct. 21, 2009. (“*Public Notice*”))

² Letter from Mitchell F. Brecher, Counsel for TracFone, to Marleane H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (filed July 17, 2009) (“*TracFone Request*”); *Lifeline and Link-up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306, para. 4 (2004) (specifying that support for Lifeline subscribers is for “a single telephone line in their principal residence”); *Federal-State Joint Board on Universal Service*, CC Docket No. 96045, Report and Order, 12 FCC Rcd 8776, 8957, para. 341 (1997)

important public policy issues surrounding TracFone’s requested clarification, and (b) whether the availability of Federal Universal Service Fund (“USF”) support for public pay telephones is a complementary solution that picks up where the *TracFone Request* leaves off in providing essential communication services for the homeless, residents of group living facilities, and low-income citizens in general.

2. Use of USF Resources to Extend Universal Service to Homeless Citizens Living Both on the Streets and in Shelters and to Persons Residing in Group Living Facilities is Consistent with the Goals of the USF and is in the Public Interest – However, the Commission Should Carefully Consider the Most Effective and Efficient Way to Utilize USF Support in Serving this Population Segment

APCC supports the principal that all low income citizens, including our nation’s homeless population and those citizens residing in group living facilities, should be afforded access to essential communications services through use of USF support mechanisms. However, APCC questions whether providing such access via a TracFone prepaid wireless handset should be viewed as a complete or exclusive means for extending universal service to the homeless or those in group living facilities. Instead, APCC would respectfully suggest that the TracFone solution has its limitations for this population segment and, accordingly, the Commission should carefully consider complementary policies aimed at assuring the retention of a reasonably widespread public phone base across the U.S. to serve our most vulnerable and economically challenged citizens.

The homeless and those low income residents of group living facilities are clearly in the category of persons for which USF support was intended. To provide these individuals with access to essential communications services is at the core of the very goals for which the USF was created. With that said, however, the Commission has a vital stewardship role to play in determining the most effective and efficient use of limited USF resources to meet the significant

communications needs that exist for this growing segment of our population. In this regard, APCC would submit that along with addressing the *TracFone Request*, the Commission should also give due consideration to gaps in TracFone’s solution and to the concomitant use of USF support as a means to maintain widespread availability of public pay telephone services for meeting the needs of the homeless and low income citizens generally.³ Apart from this consideration, to which these comments will return, the Commission should direct its attention to some of the practical concerns raised by the *TracFone Request* for expanding USF support beyond the one-per-household rule.⁴

A hurdle with any program of the nature put forward by TracFone is the very real question of how such a program can be effectively monitored to assure that no fraud, abuse or waste of precious USF resources is taking place. Under the present mechanics of the TracFone program, subscribers to the service can easily (1) lose their phone; (2) damage or break their phone; (3) have their phone stolen; (4) not be able to recharge their phone; or (5) not understand how to use their phone once they receive it. For obvious reasons, these circumstances are of special concern in the context of serving the homeless, the elderly and the infirm. More specifically, from a “preservation of USF resources” standpoint, consideration should be given to the circumstance where, although the TracFone service may no longer actually be in use due to one of the above conditions, or simply based upon a personal decision to stop utilizing the service after having signed up for it, the subscriber is still treated as an active customer and, as

³ Congress mandated the widespread deployment of public pay telephones in Section 276 of the Telecommunications Act of 1996; Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 USC 151 et seq. (the “1996 Act”). Attention to this mandate is more vital than ever today.

⁴ APCC does not believe that there is a valid question presented with respect to apartment buildings or group living facilities, where residents have their own room numbers. These circumstances are in the nature of and should be treated as distinct household addresses that can and should be able to follow the existing one-per-household rule as it exists today.

such, TracFone continues to draw USF support for the remainder of that customer's one-year initial term of service—even though no service is actually being rendered. This potential “unjust enrichment” of TracFone at the expense of the USF, with no tangible consumer benefits, is an example of the opportunity for waste and abuse of USF resources that warrants close attention and oversight by the Commission. Moreover, it would appear that the ability to effectively audit this sort of potential abuse in the context of the homeless, the elderly and the infirm represents quite a resource challenge for the FCC and the states alike.

The Commission also should evaluate the limitations of the TracFone solution for serving the ongoing needs of our most economically challenged citizens, based upon the small increment of free minutes being provided. Is universal service really being delivered to this population segment once these minutes are used up? While access to 911 emergency services may still be available (albeit with location designation limitations), the ability to make toll free (8YY) calls (to social service organizations, governmental assistance agencies, and the like) is no longer present after the initial minute allotment is exhausted. At this point, those truly needy citizens not able to buy additional minutes are left without a true universal service safety net to meet their essential communications needs.⁵

Another very real concern with the pending *TracFone Request* stems from the real-world difficulty in getting many individuals in these population segments to actually subscribe to the TracFone services in the first place. While many homeless, elderly and infirm citizens are certainly capable of taking the necessary steps to sign up for TracFone services, there are also

⁵ The Commission should note that this “hole” is effectively filled by the availability of public pay telephones, which provide coin-free unlimited access to toll free (8YY) numbers and provide local calling for as little as 25 cents and no more than 50 cents per call.

many who cannot or will not take these steps.⁶ Yet, these citizens still have a legitimate need for access to essential communications services.

As a practical matter, these citizens continue to rely on public payphones to satisfy this need for essential communications access. Today, however, as the number of public payphones continues to drop precipitously notwithstanding the “widespread deployment” mandates in Section 276 of the 1996 Act, public payphones are required to contribute to the USF while receiving no USF support whatsoever. Specifically, based upon the best data available to APCC, the number of payphones deployed in the U.S. has dropped from 2.1 million units at the start of this decade to approximately 600,000 units across America today. And, notably, this substantial loss in domestic public payphone availability has occurred during the very same time period in which the number of American’s falling below the poverty line has dramatically increased.⁷

With the exit of most of the major carriers from the public payphone business over recent years and the various other significant economic pressures facing the remaining payphone service providers (PSPs) (such as rising gas prices and labor costs), there is now the very real likelihood that our nation’s embedded public payphone base could be well on its way to complete extinction.⁸ Moreover, when a public pay telephone is removed, the significant costs

⁶ Illiteracy, mental impairment, difficulty in learning to use newer technology, and similar very real personal limitations will in many cases prevent persons from subscribing to TracFone services, despite extensive outreach efforts.

⁷ The number of U.S. families in poverty rose from 6.4 million in 2000 to 8.147 million in 2008. [Source: U.S. Census Bureau Table 13, Number of Families Below the Poverty Level and Poverty Rate 1959-2008]. In 2008 there were 39.8 million Americans living in poverty, the highest number in 11 years. [Source: U.S. Census Bureau, Report: Income, Poverty and Health Insurance Coverage in the U.S. (2008); Issued September 2009; P60-236(RV)]

⁸ As a stark example of the significant loss in our embedded public payphone base, APCC has just recently reviewed information from one of its largest PSP members with respect to the dramatic contraction of the public payphone base in Missouri (the “show me” state). There, the 2006 acquisition by an independent PSP of phones previously operated by AT&T before its recent exit from the payphone business brought with it an embedded base of approximately 4200 pay stations. Today, three years later, the remaining number of phones in that base totals approximately 700 phones, a reduction of over 80% in the number of public phones in service. This is only slightly more of a drop than the national average public phone loss which is in the 70% range. And, even more troubling, large numbers of public payphones continue to be removed from service each and every day across America.

of re-installation mean that the public payphone is, practically speaking, gone from service forever.

As the Commission evaluates the *TracFone Request* as a means to extend USF support to the homeless, practical considerations should play an important role in the Commission's thought process. For example, is it realistic to think that a homeless person who is truly living on the streets will be able to maintain a handset, battery and charger—and be able to keep the phone charged and in working condition on an extended basis? The point here is that in seeking to provide a universal service safety net for this critical population segment, the visceral appeal of a free wireless handset upon further examination quickly gives way to very practical real-world limitations and gaps in service.

To address the holes in the TracFone service and equipment offering, and to provide a more fulsome form of universal service to those many homeless and low income citizens for whom TracFone services do not present a solution, the Commission should acknowledge the importance and urgency of adopting policies designed to halt the accelerating loss of our nation's public payphone safety net—with due consideration given to the complementary use of USF support to assure that a reasonable number of these universal service public access points remain available across the nation.⁹

⁹ As evidenced by the more than one billion calls made from public payphones each year, there is still a real public need for payphones in the U.S., even with the burgeoning growth in wireless services. Yet, the number of public phones deployed in America continues to shrink dramatically.

3. USF Support for Widespread Public Telephone Service is a Complementary and Cost Effective Means of Serving the Homeless and Group Living Facility Residents Throughout our Nation—and Should be Duly Considered in Conjunction with the TracFone Request

As an initial matter, it should be recognized that prepaid wireless services such as those offered by TracFone are intended for individual use rather than for that of a household.

Practically speaking, when a TracFone subscriber is away from the rest of the household, the phone is simply not available for use by those household members that may remain behind in the residence or be in a different location. Whether for personal or emergency communication needs, the TracFone solution does not in this circumstance provide the means for other household members to place calls—unlike the traditional fixed Lifeline phone that can serve all household members from one central location.¹⁰ By contrast, public payphones (for so long as they continue to be present on a reasonably widespread basis) can and do provide multiple fixed communication outlets for a large number of households.¹¹ Unlike the TracFone approach, extending USF funding to public pay stations makes service available to all members of a household and, for that matter, to many more households than does a one-phone-per-household solution represented by either traditional or wireless Lifeline offerings.

¹⁰ USF Lifeline service was not originally intended for application in a world that limits minutes of use. Instead, this program was developed to assist low income individuals by subsidizing their home phone service—which would then be available to them, for local calls, on a 24/7/365 basis. If USF resources are now going to be used to fully pay for (not subsidize) a limited block of minutes that are tied to a service that has a relatively high cost for additional minutes, (particularly for those needing to make social service calls which often take significant amounts of time), the need to supplement such a system with something in the nature of the public payphone network is imperative. According to CTIA, the average cell phone subscriber uses 766 minutes a month. [Source: CTIA - Growing Wireless Minutes of Use (1991-2008); www.ctia.org/media/index.cfm/AID/11500]. The 68 minutes per month increment offered by TracFone is thus providing comparable service to the “marketplace standard” only if the subscriber can then afford to pay another \$140/month for the service (20 cents a minute times the 700 additional minutes associated with the average wireless user account), or alternatively can find a public payphone to make the rest of the calls they need to make that month. Without the public payphone “backstop”, have we really achieved the goals envisioned by the USF program?

¹¹ Each TracFone prepaid handset serves a single household (and practically speaking only one member of that household). By contrast, and based upon the current estimated count of public payphones in the U.S., each public pay telephone across the nation serves on average approximately 430 U.S. citizens.

Similarly, the *TracFone Request* ignores the essential fact that the targeted individuals sought to be served typically have access to essential phone services today via public payphones located in shelters and group living facilities and in public locations proximate to such facilities.¹² For the many reasons set forth in these comments, APCC submits that a higher priority application of USF support should be aimed at assuring that these existing public payphones remain in place for use by all members of such groups, as compared with fostering the deployment of TracFone prepaid wireless handsets with limited usage allotments to individual residents.¹³

The TracFone proposal only represents a partial solution at best. Providing 68 minutes of wireless usage is not a substitute for having a widely deployed public payphone base that is available for use every minute of every day by those in need of service. In this regard, it is especially important for the Commission to recall that public payphones continue to provide ubiquitous access to 911 Emergency services (with specific location designation) on a 24/7/365 basis, free of charge, for the homeless, low income and all other citizens.

APCC would also suggest that the TracFone solution may not necessarily be in the financial best interests of the low income subscribers that it is ostensibly designed to assist.

¹² The vast majority of homeless shelters, half-way houses, trailer parks, and similar facilities have public payphones located on premise for the use of persons residing in those facilities. Often, these facilities make the public payphone services available free of charge or at reduced rates.

¹³ It should also be acknowledged that wired public payphones offer basic, but significant operational advantages over wireless service in a number of geographic areas of the country where poor transmission quality and “dead zone” issues persist, that simply do not come into play in a hard wired public payphone environment. In addition to issues of “coverage” and “voice quality” limitations, the Commission has previously recognized that public payphones have proven to be an extremely reliable and functional communications medium in times of public emergency (power blackouts, hurricanes and the September 11th attacks, for example) when wireless services have been severely degraded or knocked out of operation completely. [Source: FCC Wireline Competition Bureau Report 2003-2004; Competition, Broadband, and Universal Service in a Dynamic Marketplace, pp. 9-10.]

When a TracFone subscriber uses up their 68 minute allotment, they are made to pay for additional minutes at the comparatively exorbitant rate of \$0.20 or more per minute—or forgo further use of the phone until the following month. Public payphones, by comparison, typically offer local calling for 3-10 cents/minute, and, in many cases, offer unlimited local calling for 50 cents or less per call. Long Distance calling from public payphones is similarly cost effective for low income subscribers as compared to TracFone rates.¹⁴ Finally, and perhaps most importantly, with respect to vital 8YY toll free calling to government agencies and non-profit community service organizations by low income consumers, this access is provided free of charge to callers from public payphones—with no MOU limitations. Based upon APCC’s review of the 8YY toll free calling taking place at public payphones today, many of the most often called toll free numbers are associated with access to essential governmental and social services, such as unemployment compensation offices, food stamps and other public assistance agencies, family and child support agencies, tax refund hotlines, and the like. Given the often substantial hold times associated with these numbers, toll free calling for such services from a TracFone will quickly exhaust the 68 minute allotment and thus fall far short of an optimal or effective solution for this extremely important call category. Placing low income individuals, with vital needs to reach essential social services via toll free numbers, in the position of spending 20 cents/minute for additional toll free access or simply losing that access altogether is not in the best interests of those sought to be served. By contrast, fixed public payphone service that provides coin-free and unlimited duration toll free calling (along with access to 211, 311, 511 and other socially important N11 numbers), for end users to reach critical governmental and social service agencies, represents an effective solution for all concerned—and thus constitutes a

¹⁴ Many public payphones offer call-anywhere in the U.S. price plans for 10 cents/minute or less.

complementary if not superior use of USF dollars to make certain that this aspect of universal service for our most vulnerable and economically challenged citizens is not lost.

4. Conclusion

APCC would liken the public payphone mechanism for providing universal service to the homeless and those in group living facilities to that which has already been utilized under the USF Schools & Libraries program, and is now under consideration for significant expansion in the context of providing stimulus funding for extending broadband access to the un-served and under-served portions of our nation's population. As part of the USF program, public computing facilities have been made available for widespread use at our nation's schools and public libraries. As part of the current broadband stimulus program, the federal government is intending to fund the creation of numerous public computing centers around the country.¹⁵ Both of these programs recognize the significant benefits and economic efficiencies of making broadband internet access available to large segments of the population via a "public" deployment rather than on an "in-residence" basis. The very same principles should be kept in mind as the Commission considers the *TracFone Request*. Is it the best and highest use of USF Lifeline dollars to attempt to place a prepaid wireless phone with a sparse MOU allotment into the hands of each homeless person and group living facility resident? Does the TracFone approach fully achieve the universal service goals for this population segment as intended by the Congress or the Commission?

APCC submits that maintaining a reasonable level of widespread deployment for our nation's public payphone base is an important part of a comprehensive solution to assuring

¹⁵ See e.g. Notice of Funds Availability (NOFA) and solicitation of applications, Rural Utilities Service (RUS) Department of Agriculture, National Telecommunications and Information Administration (NTIA), Department of Commerce, Fed. Reg., Vol. 74, No. 130, July 9, 2009, 33104 et seq.

universal service for the homeless and our most economically challenged citizens. While growing a subscriber base is certainly in the best business interests of providers such as TracFone, it does not represent a complete or perfect solution to the dilemma of providing universal telephone service for the homeless and low income residents of group living facilities. As an adjunct, application of USF funding to help support retention of the nation's public payphone base is worthy of due consideration as an important means to fill the holes left by the TracFone program. APCC urges the Commission to make a meaningful review of the practical limitations and risk factors associated with the pending *TracFone Request*, and to carefully consider alternative uses of USF support to better serve the needs of the homeless and low income residents of group living facilities.

Dated: November 20, 2009

Respectfully Submitted,



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