

**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 OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

---

Dated: December 1, 2011

**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 OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

---

**INTRODUCTION**

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."<sup>1</sup> The issues raised in TracFone's petition are matters of concern to the New Jersey Board of Public Utilities (Board) and are germane to matters presently pending before this Board. Accordingly, the Board presents these comments and request for clarification to the FCC for consideration.

**Comment**

Through this writing, the Board seeks clarification of the rules governing Eligible Telecommunications Carriers (ETCs) as set forth in Section 214 (e)(1)(A) of the

---

<sup>1</sup> 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).

Communications Act of 1934, as amended, which requires that an ETC provide Universal Service Fund (USF) supported services by either using its own facilities or a combination of its own facilities and resale of another carrier's services. The filing referenced above contains several open issues before the Federal Communications Commission (FCC) relevant to ETCs and the associated USF support. The Board, in fulfilling its primary responsibility of designation of ETCs pursuant to Section 214(e)(2), considers this role as one of significant import and therefore seeks to ensure that it carries out its charter and implements FCC rules in a manner consistent with FCC's interpretation and declaration.

The Board has received several petitions from wireless resellers seeking ETC designation and, in reviewing the requests, requires guidance from the FCC on how to proceed when a wireless reseller that has not received forbearance from the FCC seeks to meet the facilities requirement by only tangentially utilizing its own switch, and not for the purpose of completing a local call. In the case of a wireless reseller, a reasonable interpretation of the regulations is that forbearance from the FCC is warranted, regardless of the carrier's status as a competitive local exchange carrier in another jurisdiction with access to its own facilities or the facilities of others.

Furthermore, in some instances, the wireless reseller has indicated that it will route only directory assistance calls (to an external third-party provider) and customer service inquiries through its own switch. Since this same functionality could be provided seamlessly without the need to route the calls through the company's switch (at presumably a lower cost), the Board seeks additional clarification as to whether this use of the facilities meets the FCC's rules.

Lastly, we ask the FCC to clarify whether the use of a Softswitch and Voice Over Internet Protocol (VOIP) architecture constitutes a company's own facilities. As with our fellow states such as Ohio, which is currently seeking guidance with

petitions pending before the Commission,<sup>2</sup> questions continue to arise concerning the varying providers of Lifeline services. Thus, as we endeavor to follow the FCC's definition of what wireless carriers satisfy the facilities-based requirements of the rules, we, too, seek guidance.

Based upon the petitions filed with the Board, we understand that the existing regulations require that wireless resellers who are seeking to participate in the Lifeline programs need to file for forbearance of the facilities-based requirements that prohibit carriers from such designation when the carrier is neither a facilities-based provider nor provides services through a combination of its own facilities and resale of another carrier's services.

---

<sup>2</sup> Comments of the Staff of the Public Utilities Commission of Ohio, WC Docket No. 09-197, and WC Docket No. 03-109 (filed December 23, 2010).

Clarification of the intent of the requirement that a designated ETC use some of its own facilities to provide USF-supported services within the carrier's service area in a state is essential for the Board to proceed with the pending petitions.

Accordingly, we respectfully request clarification of the rules.

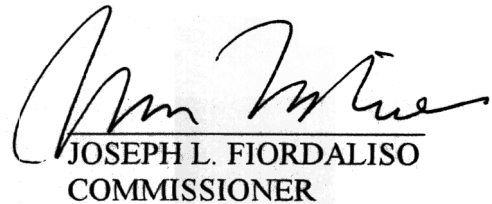
Respectfully,



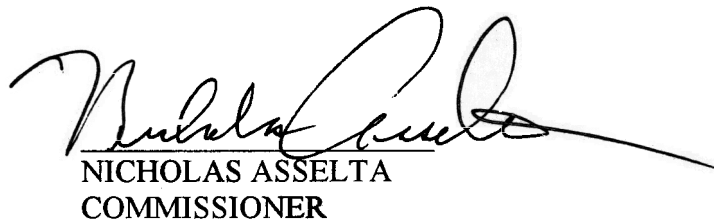
LEE A. SOLOMON  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER



JOSEPH L. FIORDALISO  
COMMISSIONER



NICHOLAS ASSELTA  
COMMISSIONER