

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

CC Docket No. 96-45

Federal-State Joint Board on Universal Service

Petition for Forbearance of i-Wireless, LLC

Petition for Forbearance of Headstart Telecom,
Inc.

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON PETITIONS FOR FORBEARANCE**

On April 1, 2009, i-Wireless, LLC (“i-Wireless”), a wireless reseller, filed a petition for forbearance in this docket pursuant to 47 U.S.C. § 160, seeking forbearance from the provision of 47 U.S.C. § 214(e)(1)(A) that requires eligible telecommunications carriers (“ETCs”) to provide service at least partly over their own facilities.¹ The company seeks forbearance solely in order to receive federal support for Lifeline service.² On May 15, 2009, Head Start Telecom, Inc. (“Head Start”) filed a similar petition, with the same purpose.³ The Federal Communications Commission (“FCC” or “Commission”) has put the petitions out for public comment, on the same timeline.⁴

¹ See i-Wireless Petition at 1. Unless otherwise specified, all citations here are to filings in CC Docket No. 96-45.

² Id.

³ See Head Start Petition at 1.

⁴ Public Notices DA 09-1268 (i-Wireless), 09-1269 (Head Start).

The National Association of State Utility Consumer Advocates (“NASUCA”)⁵ files these combined comments on the Petitions. Although NASUCA fully supports increasing the options available to Lifeline-eligible consumers,⁶ it does not appear that the Commission can find that forbearance is in the public interest without more specificity as to how i-Wireless and Head Start plan to apply the federal support that they will receive upon designation as Lifeline ETCs.

The forbearance statute – 47 U.S.C. § 160 – requires the Commission to forbear from any statute or regulation if (1) the provision is not necessary to ensure that charges and practices for a service are just and reasonable and not unreasonably discriminatory; (2) the provision is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. The i-Wireless and Head Start petitions follow, and are largely based on, the grant of forbearance from the facilities-based services requirement of 47 U.S.C. § 214(e)1)(A) to TracFone Wireless, Inc. (“TracFone”) in 2005⁷ and to Virgin Mobile USA, L.P. (“Virgin Mobile”) earlier this year.⁸

⁵ 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. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers.

⁶ For example, NASUCA is a member of the joint FCC/NASUCA/National Association of Regulatory Utility Commissioners (“NARUC”) Task Force on Lifeline Awareness. At its mid-year 2009 meeting in Boston, Massachusetts, NASUCA passes a resolution supporting Lifeline Awareness Week. *See* <http://www.nasuca.org/2009%20Lifeline%20Awareness%20Week%20resolution%202009-04%20Final.DOC>.

⁷ *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095 (2005).

⁸ *Petition of Virgin Mobile USA, L.P. for Forbearance*, CC Docket No. 96-45, Order (released March 5, 2009).

NASUCA filed comments on the TracFone petition that, inter alia, focused on how TracFone was going to apply the Lifeline discount.⁹ TracFone clarified that it would “apply” the discount through offering of two services specifically to Lifeline customers:

The TracFone Pay-As-You-Go Wireless Lifeline Plan and the NET10 Pay-As-You-Go Wireless Lifeline Plan, both of which are described in TracFone's ETC Petitions, provide up to \$10.00 worth of service for free each month. TracFone decided to base its Lifeline offerings on \$10.00 of free service because the Lifeline program contemplates discounted monthly rates, and the maximum amount of federal Lifeline support available in the majority of states is \$10.00 per month. Under TracFone's Lifeline program, all qualified low income consumers participating will receive the full amount of the USF support received by TracFone in the form of free wireless airtime.

TracFone's customers who qualify for Lifeline service will have the ability to determine whether the TracFone brand service or the NET10 brand service best meets their needs. As explained in the ETC Petitions, Lifeline customers with lower volume calling requirements will likely select the TracFone Pay-As-You-Go plan because it also includes a larger handset subsidy than does the NET10 plan, thereby reducing the Lifeline customer's out-of-pocket cost for the handset. Lifeline customers with higher volume calling requirements would likely prefer the NET10 Pay-As-You-Go plan. Handsets sold to NET10 Lifeline customers will be priced higher than those sold to TracFone Pay-As-You-Go Lifeline customers. However, the NET10 plan will include a lower per minute rate. **TracFone is offering Lifeline customers the same choices that it offers all customers.** However, unlike customers who do not qualify for Lifeline, customers who qualify for Lifeline will receive up to \$10.00 worth of wireless service at no charge each month.¹⁰

The Net10 plan appears to have disappeared.¹¹ And there appear to be substantial variations in the number of free minutes TracFone is offering in various states.¹²

⁹ *TracFone Wireless, Inc. Petitions for Designation as an ETC*, CC Docket No. 96-45, NASUCA/PULP Comments (January 14, 2008) at 6-7.

¹⁰ *Id.*, TracFone Reply Comments at (emphasis added).

¹¹ See <http://www.tracfone.com/includes/content/questions/Lifeline.jsp?a=1241977418299>.

¹² See <http://www.allbusiness.com/society-social/families-children-family/12271130-1.html>.

On the other hand, Virgin Mobile offers a uniform 120 free minutes and a free (refurbished) handset.¹³ This appears substantially superior to TracFone’s plan, although still including less usage than the Commission has determined would be a reasonable amount to meet consumers’ needs.¹⁴

Both i-Wireless and Head Start deplore the current low levels of Lifeline subscription¹⁵ and assert the benefits of adding their services as ETC services, including the benefits to competition.¹⁶ Yet without knowing the rates that would ultimately be paid by Lifeline customers of i-Wireless and Head Start, it is impossible to know whether the addition of another Lifeline ETC (or two) would benefit consumers.

i-Wireless indicates that it “offers consumers simple and affordable prepaid calling plans [and] a variety of prepaid service plans.”¹⁷ It also says that “customers may choose a prepaid plan in which they are charged only for the minutes they use and can spend as little as \$10 per month on wireless service.”¹⁸ i-wireless’ website, however, apart from indicating that it is a T-mobile affiliate and that it also offers a number of non-prepaid plans, does not reveal any plan for \$10 a month.¹⁹ The closest plan to that described in the i-wireless petition is a prepaid plan for \$12 that gives service for only 7 days.²⁰

¹³ See Virgin Mobile ex parte (October 24, 2009).

¹⁴ It should be recalled that, in the Hurricane Katrina Order, the FCC estimated that consumers receiving 300 wireless minutes a month in exchange for the maximum federal low-income funding was a reasonable benefit. *Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 16883 (2005) (“*Hurricane Katrina Order*”) at ¶ 12.

¹⁵ I-Wireless Petition at 12; Head Start Petition at 4.

¹⁶ I-Wireless Petition at 9; Head Start Petition at 9.

¹⁷ I-Wireless Petition at 2.

¹⁸ *Id.* at 3.

¹⁹ <http://www.iwireless.com/plans.asp>.

²⁰ http://www.iwireless.com/plans_detail.asp?plan=50.

Head Start, for its part, says that “[b]y providing affordable wireless plans ... Head Start will expand access to wireless services.”²¹ Head Start does not appear to have a website where information about its calling plans can be discerned.

Under these circumstances, it is vitally important, before it makes the findings necessary for forbearance, that the Commission have more detail about the calling plans that i-Wireless and Head Start plan to offer their Lifeline customers. NASUCA agrees with i-Wireless that “[p]repaid wireless services that are affordable and easy-to-use are attractive to lower-income customers ... providing them with access to emergency services, and a reliable means of communication while traveling and for contacting prospective employers.”²² Unfortunately, based on its petition (and other available information), it is impossible to know whether i-Wireless will provide such a service and should receive federal low-income funding. It is even more difficult to know for Head Start. The petitions cannot be granted as filed.²³

²¹ Head Start Petition at 3.

²² i-Wireless Petition at 3.

²³ If the companies want to supplement their petitions, the supplemented versions should be sent out for fresh public comment. See *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, FCC 09-56 (rel. June 29, 2009), ¶¶ 29, 40.

Respectfully submitted,

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