

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
TracFone Wireless, Inc.)	
)	
Request for Waiver of Section 54.418 of the Commission's Rules)	WC Docket No. 03-109
)	
DTV Consumer Education Initiative)	MB Docket No. 07-148
)	
Implementation of the DTV Delay Act)	MB Docket No. 09-17
)	

ORDER

Adopted: April 10, 2009

Released: April 10, 2009

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. TracFone Wireless, Inc. (TracFone), an eligible telecommunications provider (ETC) in various states, filed the above-captioned request for a conditional waiver of the notification requirements in section 54.418 of the Commission's rules.¹ Pursuant to that section, ETCs must notify their Lifeline or Link-Up customers about the digital television (DTV) transition through use of bill notices or monthly stand-alone mailers and publicity campaigns.² For the reasons stated below, we find that TracFone has demonstrated that good cause warrants granting TracFone a conditional waiver of section 54.418 of the Commission's rules.³

II. BACKGROUND

A. The DTV Consumer Education Initiative

2. In 2008 the Commission adopted section 54.418 of its rules requiring all ETCs that receive federal universal service support to provide specified DTV transition information on a monthly basis to

¹ TracFone Petition for Waiver of Section 54.418, MB Docket Nos. 09-17, 07-148, 07-91, 08-225; WT Docket Nos. 06-150, 06-169; PS Docket No. 06-229; WT Docket No. 98-86 (filed Feb. 24, 2009) (Petition); 47 C.F.R. § 54.418.

² 47 C.F.R. § 54.418. The Lifeline and Link-Up programs provide support to low-income consumers through the federal universal service fund. 47 C.F.R. §§ 54.401, 54.411. The Lifeline program provides low-income consumers with discounts of up to \$10.00 off the monthly cost of telephone service. 47 C.F.R. § 54.401(a)(2). The Link-Up program provides low-income consumers with discounts of up to \$30.00 off the initial costs of installing telephone service. 47 C.F.R. § 54.411(a)(1). TracFone is only eligible to receive Lifeline support through the federal universal service fund. *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098, para. 6 (2005) (*TracFone Forbearance Order*).

³ *Id.*

their Lifeline or Link-Up customers and in their Lifeline or Link-Up publicity campaigns.⁴ In the DTV Delay Act, which was enacted into law on February 11, 2009, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009.⁵ To implement the DTV Delay Act, the Commission recently adopted the *DTV Delay Act Order*, which revised the minimum information that ETCs must convey in their DTV notifications pursuant to section 54.418(b) of the Commission's rules.⁶ The Commission also extended the conclusion date of the DTV notification requirements to June 30, 2009.⁷ Section 54.418(b)(2) requires ETCs to convey certain minimum information about the DTV transition. As amended in the *DTV Delay Act Order*, section 54.418(b)(2) requires ETCs to convey at least the following information in their notices:

The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but your local television stations may switch sooner. After the switch, analog only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.⁸

Information about the DTV transition is available from your local television stations, www.DTV.gov, or 1-888-CALL-FCC (TTY 1-888-TELL-FCC), and from www.dtv2009.gov or 1-888-DTV-2009 (TTY 1-877-530-2634) for information about subsidized coupons for digital-to-analog converter boxes.⁹

Pursuant to section 54.418(c) of the Commission's rules, "[i]f an ETC's Lifeline or Link-Up customer does not receive paper versions of either a bill or a notice of billing, then that customer must be provided with equivalent monthly notices in whatever medium they receive information about their monthly bill or as a monthly stand-alone mailer (e.g., postcard, brochure)."¹⁰

3. The Commission adopted section 54.418 to adequately prepare the American public for the full-power digital transition.¹¹ The Commission recognized that lower-income households are more likely to be over-the-air households that will be affected by the DTV transition.¹² The Commission decided,

⁴ These provisions were adopted in the *DTV Consumer Education Report and Order*. *DTV Consumer Education Initiative*, MB Docket No. 07-148, Report and Order, 23 FCC Rcd 4134, App. B (2008) (*DTV Consumer Education Report and Order*); *DTV Consumer Education Initiative*, MB Docket No. 07-148, Order on Reconsideration and Further Notice of Proposed Rulemaking, 23 FCC Rcd 7272, 7278-9, paras. 16-17 (2008) (modifying the notification requirements to allow ETCs to provide stand-alone mailers (e.g., postcards or brochures) in lieu of bill notices or inserts to Lifeline and Link-Up customers); *Implementation of the DTV Delay Act*, MB Docket Nos. 09-17, 07-148, 07-91, 08-225; WT Docket Nos. 06-150, 06-169; PS Docket No. 06-229; WT Docket No. 98-86, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 09-11, para. 12 (Feb. 20, 2009) (*DTV Delay Act Order*) (extending the duration of the notifications to June 30, 2009).

⁵ DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009).

⁶ *DTV Delay Act Order* at paras. 13-15; 47 C.F.R. § 54.418(b).

⁷ *DTV Delay Act Order* at para. 12.

⁸ *Id.* at App.; 47 C.F.R. § 54.418(b)(2)(i).

⁹ *DTV Delay Act Order* at App.; 47 C.F.R. § 54.418(b)(2)(ii).

¹⁰ 47 C.F.R. § 54.418(c).

¹¹ *DTV Consumer Education Report and Order*, 23 FCC Rcd at 4135-35, paras. 1-2.

¹² *Id.* at 4162, para. 57.

therefore, to utilize the existing communication paths between low-income customers and ETCs under the Lifeline and Link-Up programs to inform such customers of the DTV transition.¹³ The Commission concluded that application of the DTV consumer education requirements to ETCs that receive federal universal service support and are required to advertise to low-income consumers is reasonably ancillary to the Commission's duty to ensure the success of the DTV transition.¹⁴

B. TracFone's Waiver Request

4. TracFone is a prepaid wireless service provider that is designated as an ETC in several states for the limited purpose of receiving only Lifeline support from the federal universal service fund.¹⁵ TracFone sends its Lifeline customers an E-911-compliant wireless handset upon enrollment but, unlike other ETCs, does not send monthly invoices to its customers because its services are prepaid.¹⁶ TracFone initially considered meeting its DTV notification requirements pursuant to section 54.418(c) by sending text messages to its Lifeline customers.¹⁷ TracFone rejected this approach, however, because limitations on the capacity of text messages prevented TracFone from providing the minimum information required by section 54.418(b)(2).¹⁸ TracFone instead decided to send monthly stand-alone DTV transition notices via U.S. mail to each of its Lifeline customers.¹⁹

5. On February 24, 2009, TracFone requested that the Commission waive section 54.418 and permit TracFone to use an alternative method of providing DTV transition notices.²⁰ Specifically, TracFone proposes to include DTV transition notices with every handset sent to its Lifeline customers.²¹ TracFone states that these notices would include the information required by section 54.418(b)(2) of the Commission's rules.²² In lieu of sending monthly stand-alone notices, TracFone proposes to send SMS text messages to its Lifeline customers twice monthly, at no charge to those customers.²³ Due to size limitations of text messages, TracFone proposes that these messages would not include the minimum information required by section 54.418(b)(3), but would instead state "Be ready for the DTV transition

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Petition at 2-3; *TracFone Forbearance Order*, 20 FCC Red at 15098, para. 6.

¹⁶ Petition at 3. TracFone automatically adds a monthly allotment of prepaid airtime to its Lifeline customers' accounts. *Id.*

¹⁷ *Id.* at 3-4; 47 C.F.R. § 54.418(c).

¹⁸ Petition at 4; 47 C.F.R. § 54.418(b)(2).

¹⁹ Petition at 4.

²⁰ *Id.* at 1-2.

²¹ *Id.* at 5.

²² *Id.*; 47 C.F.R. § 54.418(b)(2). TracFone commits that the notifications will be included with handsets sent to its Lifeline customers from the date its petition is granted to June 30, 2009. Petition at 5.

²³ Petition at 5; TracFone Supplement to Petition for Waiver of Section 54.418, MB Docket Nos. 09-17, 07-148, 07-91, 08-225; WT Docket Nos. 06-150, 06-169; PS Docket No. 06-229; WT Docket No. 98-86 at 2 (filed Mar. 16, 2009) (Petition Supplement). TracFone commits to send its Lifeline customers two text messages per month during April, May and June, 2009 and one during March 2009. Petition Supplement at 2. Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket Nos. 09-17, 07-148, 07-91, 08-225; WT Docket Nos. 06-150, 06-169; PS Docket No. 06-229; WT Docket No. 98-86 (Apr. 9, 2009) (April 2009 Petition Supplement) (explaining that "SMS text messages will be provided to [TracFone's] Lifeline customers at no charge to those customers.").

6/12/09. Call 1-888-CALLFCC for add'l information.”²⁴

6. TracFone argues that the Commission should grant its request because the expense of mailing DTV notices is economically burdensome, the mailing of stand-alone DTV notices is not an effective method for providing information to TracFone’s Lifeline customers, and its proposed alternative method for providing DTV transition notices will better inform Lifeline customers about the DTV transition.²⁵ TracFone alleges that it has spent approximately a quarter of a million dollars mailing DTV notices and estimates by June 30, 2009, it could spend up to one million dollars mailing DTV notifications to its Lifeline customers.²⁶ TracFone argues that the money it would be required to expend on mailing DTV notices creates an economic burden on the company and “would divert resources from informing low income households of the availability of a wireless Lifeline alternative.”²⁷ TracFone also argues that because its mailed notices are mailed on a stand-alone basis rather than with customer bills, many of its Lifeline customers may discard the mailings without opening or reading them.²⁸ TracFone asserts that its alternative notification proposal will reach consumers more effectively than mailing notifications because its Lifeline customers will view the messages directly on their wireless handsets and will likely read the contents of the text messages before deleting them.²⁹

III. DISCUSSION

7. Pursuant to section 1.3 of the Commission's rules, the Commission may waive any provision of its rules if it determines that good cause has been shown.³⁰ We conclude that good cause exists to grant TracFone a conditional waiver of the DTV notification requirements in section 54.418 of the Commission’s rules.³¹

8. TracFone has demonstrated that good cause exists to grant TracFone a waiver of the existing DTV notification requirements, conditioned upon TracFone providing its Lifeline customers with DTV transition notices with mailed handsets and through SMS text messages as described below. We find that TracFone’s circumstances are unique because, unlike other ETCs, it automatically adds prepaid airtime minutes to its Lifeline customers’ handsets.³² As such, it does not have an opportunity to provide the

²⁴ Petition Supplement at 2.

²⁵ Petition at 2-6.

²⁶ *Id.* at 2.

²⁷ *Id.* at 2, 7.

²⁸ *Id.* at 6.

²⁹ *Id.*

³⁰ 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

³¹ The Bureau has previously granted a waiver of section 54.418 of the Commission’s rules. *Micronesian Telecommunications Corporation and PTI Pacifica, Inc. Request for Waiver of Section 54.419 of the Commission’s Rules*, CC Docket No. 96-45; MB Docket No. 07-148, Order, 23 FCC Rcd 7091 (2008) (granting a waiver because the petitioners serve an area where no full power over-the-air television station is licensed).

³² Petition at 2-3. TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider (*i.e.*, a pure wireless reseller) that provides prepaid wireless telecommunications service. It is currently the only pure reseller eligible to receive universal service Lifeline support. Recently, the Commission designated another pure reseller,

(continued....)

minimum information required by section 54.418(b)(2) in a traditional billing statement. Furthermore, it is unable to provide the minimum information via text message to its Lifeline customers' handsets, the manner in which it usually communicates with its customers, because of the capacity limitations of text messaging.

9. TracFone has demonstrated that an alternative method of providing DTV transition notices will adequately notify its Lifeline customers about the DTV transition. TracFone will notify its Lifeline customers about the DTV transition in the manner in which it currently communicates with them: by including notifications with handsets mailed to Lifeline customers and via SMS text messages sent directly to the Lifeline customers' phones, at no charge to those customers.³³ TracFone's methods of communicating with its customers are similar to other carriers' use of "bill stuffers," which is one of the methods of communication the Commission directed ETCs to use in providing Lifeline customers notice of the DTV transition.³⁴ TracFone also proposes to send its text message notification to its Lifeline customers twice a month.³⁵ Pursuant to section 54.418, ETCs are required to send notifications once a month.³⁶ We find that TracFone's commitment to send text messages to its Lifeline customers twice a month will better inform its Lifeline customers of the DTV transition.

10. While TracFone cannot put the minimum information required by section 54.418 in its text messages, we agree that a condensed text message will adequately achieve the goals of notifying low-income customers of the DTV transition by including the date of the transition and contact information for the Commission. To ensure TracFone's customers are adequately notified about the DTV transition, we require TracFone to modify the text message it proposed to send. Instead of the content TracFone proposed to text, we condition this waiver on TracFone texting "Is your TV ready for digital on 6/12? Call 1-888-CALLFCC for add'l information." To ensure that TracFone's customers are not confused by the acronym "DTV," we require TracFone's message instead to include the terms "digital" and "TV" separately. The content of the required message is similar to the content of the message TracFone proposed to send and the number of characters in the required message is within TracFone's texting capabilities. We find that permitting TracFone to follow the alternative notification plan described above is consistent with the public interest, and good cause exists to grant TracFone's waiver request, conditioned upon it providing DTV notifications to its Lifeline customers in the alternative methods described in this order.

IV. CONCLUSION

11. For the reasons stated above, we conclude that granting TracFone a waiver of the notice requirements set forth in section 54.418 of the Commission's rules is justified under section 1.3 of the Commission's rules.³⁷ This waiver is conditioned upon TracFone adhering to the alternative DTV notification methods discussed above.

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Virgin Mobile USA, L.P (Virgin Mobile), as an ETC eligible only to receive universal service Lifeline support in Virgin Mobile's licensed service areas in New York, Virginia, North Carolina, and Tennessee. *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, Order, FCC 09-18 (rel. Mar. 5, 2008). Virgin Mobile's ETC designations are not effective and will not take effect until the Wireline Competition Bureau approves a compliance plan that Virgin Mobile must submit. *Id.* at para. 44.

³³ Petition at 2-6; April 2009 Petition Supplement at 1.

³⁴ *DTV Consumer Education Report and Order*, 23 FCC Rcd 4160, para. 53.

³⁵ Petition Supplement at 2.

³⁶ 47 C.F.R. § 54.418.

³⁷ 47 C.F.R. §§ 54.418, 1.3.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the request for conditional waiver filed by TracFone Wireless, Inc. of section 54.418 of the Commission's rules, 47 C.F.R. § 54.418, IS GRANTED.

13. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. §1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

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