

**Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration**

**In the Matter of American Recovery and)
Reinvestment Act of 2009 Broadband) Docket No. 090309298-9299-01
Initiatives)**

**COMMENTS OF TRACFONE WIRELESS, INC.
ON NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION'S BROADBAND
TECHNOLOGY OPPORTUNITIES PROGRAM**

TRACFONE WIRELESS, INC.

Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAURIG, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
(202) 331-3100

Its Attorneys

April 13, 2009

EXECUTIVE SUMMARY

TracFone Wireless, Inc. (“TracFone”), a leading provider of prepaid wireless service, has substantial experience meeting the needs of low income individuals through its low cost wireless plans and by providing Lifeline telephone service in several states. TracFone urges NTIA to structure the BTOP to facilitate the immediate availability of free or low cost broadband service to low income individuals. The prompt provision of affordable broadband service and devices to low income individuals efficiently meets the goal of the American Recovery and Reinvestment Act of 2009 to “facilitate greater use of broadband service by low income, unemployed, aged, and otherwise vulnerable populations.”

TracFone recommends that states have a limited consultative role in administering the BTOP that any states that are awarded grants be required to advance the public policy goals underlying the BTOP. TracFone also suggests broadband service providers be included among the entities eligible to receive funding because they can use grants to immediately provide free or low cost broadband services to low income households. NTIA should give priority to entities that have successfully delivered services to low-income individuals. In addition, NTIA should consider how end users’ costs will be impacted if NTIA granted funding in excess of 80 percent of the cost of projects proposed by grant applicants.

A grant recipient’s performance should be reviewed to ensure that funds are only used for projects approved by NTIA and to determine whether a recipient is meeting performance levels promised in its grant application. TracFone suggests that the success of a grant recipient’s program be tracked by looking at the number of households that have broadband service under a recipient’s program. Finally, TracFone urges NTIA to include in the definition of “underserved areas” areas served by broadband in which low income households cannot afford broadband, therefore making it unavailable to those households.

COMMENTS

1. Purpose of the Grant Program (NTIA Issue 1)

The provision of free or low cost broadband services and devices by entities that are able to provide such services and devices would be the most effective use of any funds provided under the BTOP. The Recovery Act clearly emphasizes an intent to “facilitate greater use of broadband service by low income, unemployed, aged, and otherwise vulnerable populations.”² Thus, BTOP grants should be utilized for the purpose of bringing affordable broadband service as quickly as possible to members of these groups as well as to constructing broadband infrastructure in areas with little or no broadband facilities in place. These groups, and in particular low income individuals in urban areas, do not have access to broadband services due to the cost of the services, rather than due to the unavailability of broadband infrastructure.

The provision of affordable broadband service and devices would be the most efficient way to serve these individuals and would stimulate the build out of the infrastructure. While infrastructure build out should be funded, this is a long term process that, unlike immediate access to free or low cost broadband service, will not result in immediate benefits to consumers and local economies. Moreover, by facilitating immediate broadband access for low income and other households, such as households with unemployed individuals, those households would be able to take advantage of the substantial resources available on the Internet. For example, individuals could access educational and training materials, attend online classes, and pursue employment opportunities. It is difficult to imagine anything which would have more of a stimulative impact on the economy than making available educational opportunities and employment opportunities.

² Recovery Act, § 6001(b)(3)(B).

Prior to the enactment of the Recovery Act, TracFone recognized that broadband services remain economically beyond the reach of many low income households. According to a recent study published by the Pew Internet & American Life Project, only twenty-five percent of households with annual incomes below \$20,000 have broadband service, as compared with fifty-five percent of all households. Among households with annual incomes between \$50,000 and \$75,000, sixty-seven percent have broadband access; households with annual incomes above \$100,000 have a broadband penetration rate of eighty-five percent.³ Those statistics document the disturbing fact that there is a Digital Divide in the United States. To address this Digital Divide, TracFone submitted a proposal to the Federal Communications Commission (“FCC”) suggesting that the FCC establish on a trial basis a Broadband Lifeline/Link Up program.⁴ Under TracFone’s proposal, telecommunications service providers who have been designated as ETCs pursuant to Section 214(e) of the Communications Act of 1934, as amended,⁵ would be allowed to provide Broadband Lifeline/Link Up service to eligible low income households and to have the costs of providing such service and the devices used to access the service (up to certain limits) covered by the federal Universal Service Fund.

Under TracFone’s broadband Link Up pilot program proposal, providers would receive a subsidy in an amount up to \$250 per device to offset some or all of the cost of providing suitable Internet access devices to the customers. Under TracFone’s broadband Lifeline proposal, each participating household would also receive \$30.00 in monthly Lifeline benefit to offset the cost of broadband Internet access service of a participating provider. The FCC has sought comment on a more limited version of a broadband Lifeline/Link Up trial program whereby Link Up

³ Home Broadband Adoption 2008, Pew Internet & American Life Project, July 2008 at 3.

⁴ Petition to Establish a Trial Broadband Lifeline/Link Up Program, filed in In the Matter of Lifeline and Link Up, et al., WC Docket No. 03-109 and CC Docket No. 96-45, October 9, 2009.

⁵ 47 U.S.C. § 214(e).

support would equal 50 percent of Internet access installation costs, including an access device, up to \$100, and Lifeline support would be limited to \$10 a month for Internet access service.⁶ However, TracFone does not believe its proposal, as modified by the FCC, will provide sufficient support to enable broadband service providers to offer broadband access at rates that are truly affordable to low income households. The Recovery Act has clearly acknowledged the fact that low income households can greatly benefit from having access to broadband service and has appropriately funded the BTOP to facilitate such access. TracFone urges NTIA to utilize the significant funds it has available to provide grants to ensure that low income households receive broadband service in an efficient manner by giving priority to broadband service providers that can immediately provide free or low cost service to low income households.

2. The Role of the States (NTIA Issue 2)

For nearly three decades, the federal government has preempted state regulation of enhanced services (now called information services), including broadband Internet access.⁷ Given the fact that such services are largely beyond the scope of state jurisdiction, states should only have a limited consultative role in administering the BTOP.⁸ The BTOP is a national program to support a federally preempted service. TracFone also recommends that grants awarded to states under the BTOP be subject to a requirement that they advance the public policy

⁶ High-Cost Universal Service Support, et al., Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, FCC 08-262 (November 5, 2008).

⁷ Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry) (Final Decision), 77 FCC2d 384, *modified on recon.*, 84 FCC2d 50 (1980), *modified on further recon.*, 88 FCC2d 512 (1981), *aff'd. sub nom. Computer and Communications Industries Association v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. den.* 461 U.S. 938 (1983).

⁸ See 47 U.S.C. § 230(b)(2) (it is the policy of the United States to “preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”).

goals underlying the BTOP, including affordable broadband services to all consumers, including low income consumers.

3. Eligible Grant Recipients (NTIA Issue 3)

Companies, such as telecommunications carriers, that are able to provide broadband services, should be included among the entities eligible to receive funding. Broadband service providers, regardless of whether they own facilities, can use grants to immediately provide broadband services to low income households. The grants will enable the broadband service providers to offer their services, as well as necessary devices to use such services, at no or at a low cost to end users. Moreover, telecommunications carriers, which already have a relationship with low income individuals, will be able to easily identify potential households that can benefit from no or low cost services and provide information regarding the availability of reduced or no cost broadband services to those households.

4. Establishing Selection Criteria for Grants (NTIA Issue 4)

NTIA should give priority to entities that have successfully delivered services to low income individuals, such as ETCs that offer Lifeline service, and that are capable of delivering broadband service at no charge or at a low cost. If TracFone were awarded a grant under the BTOP, it would use the grant to provide free or low cost broadband devices and services to low income households. Therefore, individuals would directly benefit from any grant.

5. Grant Mechanics (NTIA Issue 5)

TracFone urges NTIA to provide grants directly to the companies that will be providing broadband service. Broadband service providers should be required to provide periodic reports regarding use of the funds. In particular, grant recipients should advise NTIA on how funds are being used and the success of the recipient's program. For example, a broadband service

provider should be required to disclose the number of customers that are served as a direct result of the provider's receipt of a grant.

6. Grants for Innovative Programs (NTIA Issue 7)

Providing free or low cost broadband service will encourage the sustainable adoption of broadband services by giving low income individuals immediate access to broadband service. One Economy Corporation, a global nonprofit organization that uses innovative approaches to deliver the power of technology and information to low-income people, shares TracFone's view that low income individuals will significantly benefit from having broadband service in their homes. As noted in One Economy's recent testimony before Congress, broadband gives low income people the tools to improve health, access education, and access government programs and services. One Economy further stated:

Affordability is the fourth driver to consider in the examination of broadband programs. Free or low cost provision of broadband services should be made available to communities in need without reducing quality of service or content offerings. In addition, innovative payment plans or pricing models can serve to encourage broadband adoption and maintain long-term use among low and moderate income families.⁹

7. Financial Contributions by Grant Applicants (NTIA Issue 9)

The Recovery Act requires that the federal share of funding for any proposal be limited to 80 percent of the total cost of the proposal unless the applicant can demonstrate financial need sufficient to warrant waiver of the 80 percent requirement. TracFone suggests that NTIA also consider the benefits to the end users of broadband service when determining whether to increase the federal share to greater than 80 percent. For example, a grant applicant may be financially able to provide broadband service to households at a price 80 percent off its normal charge for such service. However, the price of the broadband service to households may be further reduced

⁹ Testimony of Dr. Nicol Turner-Lee, Senior Vice President of One Economy Corporation, before the Subcommittee on Communications, Technology and the Internet, April 2, 2009.

or possibly eliminated if an applicant's proposal was fully funded. Similarly, the price of an Internet access device, such as a home computer, even with a partial subsidy funded by a BTOP grant, may still leave such essential devices beyond the economic means of many low income households. In such circumstances, the 80 percent funding limit may prove inadequate to deliver truly affordable broadband access to portions of the low income community. Therefore, NTIA should allow grant applicants to indicate how the goals of the BTOP would be more fully met by funding in excess of 80 percent.

8. Timely Completion of Proposals (NTIA Issue 10)

TracFone encourages NTIA to initiate the grant process as soon as possible. Grants should be awarded no later than the end of 2009 and recipients should commit to starting their programs expeditiously. Broadband service providers who receive grants will have no difficulty in immediately offering service to customers and in committing the funds received to approved programs.

9. Reporting and Deobligation (NTIA Issue 11)

TracFone suggests that NTIA establish an internal organization to monitor grants. A grant recipient would be considered to have engaged in wasteful spending if funds are used for projects other than those approved by NTIA or if the recipient does not reach performance levels set forth in the grant application. TracFone recommends that grant applicants be required to submit a detailed proposal implementation plan (including timelines and milestones) as part of the application process. Recipients of grants would then be required to submit reports to NTIA that indicate the recipient's progress as compared to the projected goals set forth in their implementation plans. If NTIA determines that a grant recipient is not sufficiently meeting the milestones or goals that it promised in its grant application, NTIA should contact the recipient to

determine the status of the recipient's program and attempt to develop revised goals prior to taking any action against the recipient.

10. Coordination with USDA's Broadband Grant Program (NTIA Issue 12)

The USDA's grant program focuses on rural areas. Given that low income households exist in rural areas, TracFone recommends that the USDA program also provide grants to support to provision of free or low cost broadband service to low income households located in rural areas.

11. Definitions (NTIA Issue 13)

TracFone urges NTIA to define underserved areas as areas where broadband infrastructure from at least one provider either does not exist or, if broadband infrastructure is available, there are households whose income levels render broadband services unaffordable, and therefore, unavailable. TracFone supports the definition of broadband adopted by the FCC. The FCC defined "Basic Broadband Tier 1" to refer to service with download speeds equal to or greater than 768 kbps but less than 1.5 mbps, and upload speeds greater than 200 kbps.¹⁰

12. Measuring the Success of the BTOP (NTIA Issue 14)

TracFone suggests that NTIA assess the success of a grant recipient's program by reviewing the number of households that have broadband service as result of a grant recipient's program.

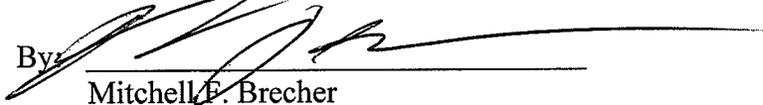
¹⁰ High-Cost Universal Service Support, et al., FCC 08-262, WC Docket No. 05-337, Appendix A, ¶ 45 (2008).

CONCLUSION

Accordingly, TracFone urges the Commission to consider the foregoing comments when establishing the BTOP to ensure that low income underserved households gain immediate access to broadband services.

Respectfully submitted,

TRACFONE WIRELESS, INC.

By: 

Mitchell E. Brecher
Debra McGuire Mercer
GREENBERG TRAUIG, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
(202) 331-3100

Its Attorneys

April 13, 2009