

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

In the Matter of

Telecommunications Carriers Eligible to WC Docket No. 09-197
Receive Universal Service Support

Petition for Forbearance of Zefcom, LLC
d/b/a Telispire PCS

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

On January 13, 2011, Zefcom, LLC d/b/a Telispire PCS (“Telispire”), a “Mobile Virtual Network Enabler,” 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 Telispire seeks forbearance not for itself, but “on behalf of the Mobile Virtual Network Operators (‘MVNOs’) it enables and provides services to as well as any other MVNO who seeks Lifeline support....”² The Federal Communications Commission (“FCC” or “Commission”) put the petition out for public comment.³ The

¹ See Telispire Petition (“Petition”) at i.

² Id.

³ Public Notice DA 11-93 (rel. February 16, 2011).

National Association of State Utility Consumer Advocates (“NASUCA”)⁴ files these comments opposing the Petition. The Petition should be denied.

The Commission’s rules require that any forbearance petition identify “[e]ach carrier, or group of carriers, for which forbearance is sought.”⁵ Telispire’s Petition does nothing of the sort. It does not even specify the MVNOs that are currently Telispire’s wireless reseller customers, much less those that would seek to provide Lifeline service if forbearance is granted. And it does not (and probably could not) seek to identify all those other MVNOs (not customers of Telispire) that might try to provide service if forbearance is granted. Although 47 U.S.C. § 160(a) allows forbearance to be granted to a “class of telecommunications carriers or telecommunications services,” Telispire has not clearly identified the class of carriers for which it is seeking forbearance.

More importantly, as Telispire recognizes, the Commission’s previous grants of forbearance to MVNOs in order to allow them to provide Lifeline service were conditioned on a detailed, but changeable, set of conditions.⁶ Although conditions have been imposed on multiple wireless resellers,⁷ all of those MVNOs have been “identified.” Additionally, the FCC has required such wireless resellers subject to a conditional grant of forbearance to file a compliance plan and has solicited public

⁴ 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. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

⁵ 47 C.F.R. § 1.54(a)(2).

⁶ Telispire Petition (“Petition”) at 3-4, 8-11.

⁷ *Id.* at n.9 (identifying seven wireless resellers in addition to TracFone).

comment on the compliance plans.⁸ Absent the filing of petitions by individual wireless resellers, the Commission will have no means of ensuring that any conditions are being met, much less which competitive ETCs are availing themselves of the forbearance order.⁹

Further, in the *i-wireless Order* identified in Telespire’s Petition,¹⁰ the Commission stated that it “disagree[d] with parties that argue that we should condition our forbearance on i-wireless complying with additional obligations, such as offering a particular usage package or complying with state-level 911 and E911 obligations.”¹¹ The Commission cited NASUCA’s comments on the i-wireless petition, characterizing them as “arguing that forbearance is inappropriate unless i-wireless explains how it will apply the Lifeline discount to its plans....”¹² NASUCA had stated, in its comments on the i-wireless petition, that

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.’ 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.¹³

⁸ E.g., *In the Matter of Telecommunications Carriers Eligible for Universal Service Support, Conexions Petition for Forbearance*, WC Docket No. 09-197, Order (rel. Oct. 1, 2010) at ¶ 17 (*Conexions Forbearance Order*) (forbearance conditioned on Conexions’ submission of compliance plan in 30 days); *Wireline Competition Bureau Seeks Comment on Plan of Conexions, LLC to Comply with the Conditions of Its Limited Forbearance*, WC Docket No. 09-197. DA 10-2144 (rel. Nov. 4, 2010).

⁹ See Petition at 8. And although in a footnote the Petition states that “additional safeguards may be entirely appropriate and agreeable to” Telespire (id., n.29), it is difficult to see how Telespire could make that commitment for the other “entities benefiting from the requested forbearance....” Id.

¹⁰ FCC 10-177, 25 FCC Rcd 8784 (2010) (“*i-wireless Order*”).

¹¹ Id. at ¶ 18.

¹² Id., n.38.

¹³ NASUCA Comments at 5.

Similarly, it is impossible to know whether any one of the unnamed current MVNOs or the unknown potential wireless resellers who will take advantage of the forbearance if it is granted will offer a service that is in the public interest.

Further, although the FCC has not adopted NASUCA's position, the FCC has still imposed conditions and obligations that have been "tailored to the concerns arising from the carrier's lack of facilities and proposed service offerings."¹⁴ Telispire would eliminate this important, particularized element of review of whether a grant of forbearance is merited and whether specific conditions, tailored to the individual carrier's proposed service offering, are necessary. Any of the current or prospective MVNOs that utilize Telispire's resold wireless platform or other resold platforms can offer telecommunications services, including services to low-income consumers. As the FCC has explained in denying petitions for forbearance for the purpose of offering Link-Up, a more particularized pleading is required.¹⁵ Grant of forbearance from the facilities requirement for the purpose of offering Lifeline should continue to proceed on a carrier-by-carrier basis, to assure that the services offered with universal service support are in the public interest.

Finally, although Telispire cites the Commission's *TracFone Order*'s view that the Lifeline program was underutilized,¹⁶ and NASUCA agrees that the Commission – and state commissions – need to do a better job of ensuring that low-income consumers

¹⁴ *Conexions Forbearance Order*, ¶ 5.

¹⁵ See, e.g., *id.*, ¶ 21.

¹⁶ Petition at 12.

have access to telephone service,¹⁷ the “underutilization” is diminishing.¹⁸ And although Telespire also asserts that “[i]f an MVNO is granted ETC status, its Lifeline service will not significantly burden the USF,”¹⁹ the Commission itself recently noted that “[t]he amount of [Lifeline] support has also grown significantly” and stated that “[p]repaid wireless ETCs now account for one-third of all Lifeline reimbursements.”²⁰ Thus the blanket and open-ended grant of forbearance requested in this Petition will not aid the Commission’s goal to “significantly bolster protections against waste, fraud and abuse; control the size of the program; [and] strengthen program administration and accountability....”²¹ The establishment of what Telespire calls “a *de facto* forbearance ruling for pure resellers seeking to provide Lifeline-only service”²² – based on grants to seven MVNOs – should not be allowed to become a *de jure* ruling for who-knows-how-many such unknown carriers.

¹⁷ 47 U.S.C. § 254(b)(3).

¹⁸ See *In the Matter of Lifeline and Link Up Reform and Modernization*, et al., WC Docket No. 11-42, Notice of Proposed Rulemaking, FCC 11-32 (rel. March 4, 2011) (“*Lifeline Reform NPRM*”), ¶¶ 25-26.

¹⁹ Petition at 7.

²⁰ *Lifeline Reform NPRM*, ¶ 27.

²¹ *Id.*, ¶ 1.

²² Petition at 5.

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