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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Ex Parte* Presentation on the Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket Nos. 11-42, 09-197, and 10-90

Dear Ms. Dortch:

TracFone Wireless, Inc. (“TracFone”), through its attorneys, hereby files this *ex parte* letter in regard to the Joint Petition to Pause Implementation of the December 2019 Lifeline Minimum Service Standards¹ (“Joint Petition”) filed in the above-referenced dockets by CTIA – the Wireless Association and a group of public interest, consumer, and civil rights organizations.² As the Joint Petitioners have explained, if the Federal Communications Commission (“FCC” or “Commission”) allows its rules mandating a substantial increase in the monthly data allowance for broadband-compliant Lifeline offerings and a reduction in support for voice-compliant offerings to go into effect as scheduled on December 1, 2019, these changes will “restrict eligible low-income consumers’ access to, and undermine the affordability of, Lifeline broadband and voice service offerings to the detriment of those that the program is designed to help[.]”³ The effect of these changes will be severe, and will set into motion a death spiral for the Lifeline program that will not only undermine the Commission’s primary purpose in establishing the minimum service standards—to increase broadband access—but will threaten the program’s very existence.

However, TracFone recognizes that the Commission is committed to its policy objective of expanding broadband offerings available to Lifeline subscribers. In the interest of achieving that goal, while preserving the ongoing viability of the Lifeline program and ensuring that Lifeline services are accessible and affordable to low-income consumers around the nation, TracFone urges the Commission to *partially* grant the Joint Petition and take two steps: (1) enforce a monthly broadband data allowance of 3 GB beginning December 1 in lieu of the

¹ Joint Petition to Pause Implementation of the December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket Nos. 11-42 et al. (filed June 27, 2019) (“Joint Petition”).

² These organizations include the National Consumer Law Center, on behalf of its low-income clients, National Hispanic Media Coalition, OCA – Asian Pacific American Advocates, and United Church of Christ, OC, Inc. *See id.* at 1 n.1.

³ *Id.* at 2.

8.75 GB dictated by the formula under Section 54.408(b)(2)(ii)(D) – thus requiring an increase in the data standards consistent with past escalations; and (2) expedite the State of the Lifeline Marketplace Report required by the Commission’s *2016 Lifeline Order* by one year, thus mandating its completion by June 2020, and freezing in place the December 2019 standards until the Report can be evaluated. Given the importance of voice services to the Lifeline program and the extent to which the existing \$9.25 subsidy for voice-compliant services enables access to broadband services, the Commission also should consider maintaining the existing subsidy for voice-compliant Lifeline services and pausing the subsidy decrease that is scheduled to go into effect on December 1, consistent with the relief sought in the Joint Petition.

I. THE DECEMBER 1 STANDARDS PRESENT A GRAVE THREAT TO THE LIFELINE PROGRAM.

As the Joint Petition makes clear, allowing the December 1 wireless broadband minimum service standard and reduction in Lifeline support for voice-compliant services to go into effect will have disastrous consequences for the Lifeline program and the consumers that depend on it. The “flash jump” of monthly broadband data allowance dictated by the formula the Commission adopted in Section 54.408(b)(2)(ii)(D)—which, per the Wireline Competition Bureau’s recent *Public Notice* will require eligible telecommunications carriers (“ETCs”) to more than quadruple their wireless broadband offerings from 2 GB to 8.75 GB to comply with broadband minimum service standards⁴—will “significantly narrow consumer choice, limiting the variety of service plans available for eligible low-income consumers to choose and requiring eligible low-income consumers to purchase plans that might often include much larger increments of data usage than they need or want.”⁵ As TracFone explained in its comments in support of the Joint Petition, retail market data indicates that meeting an 8.75 GB monthly data allowance is “likely to impose a \$30 per month price increase on Lifeline subscribers, an increase they can in no way afford.”⁶ Indeed, TracFone’s internal data indicates that only three percent of its existing customers can afford to purchase any additional airtime, let alone bear the significant costs of a more than four-fold increase in monthly data.⁷ Mandating that ETCs offer 8.75 GB of monthly wireless data to achieve compliance with Lifeline broadband standards will therefore set into motion a death spiral for the Lifeline program that will make services prohibitively expensive for Lifeline customers, significantly limit consumer choice, and decrease competition in the market for Lifeline services.

The broadband cliff that the Commission created in its *2016 Lifeline Order* when it adopted the formula therefore ignores the Communications Act’s requirement for the universal service

⁴ Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount, Public Notice, WC Docket No. 11-42 (rel. July 25, 2019).

⁵ Joint Petition at 5.

⁶ Comments of TracFone Wireless, Inc., WC Docket Nos. 11-42 et al., at 4 (filed July 31, 2019) (“TracFone Joint Petition Comments”).

⁷ *Id.*

program that “[q]uality services should be available at just, reasonable, and affordable rates.”⁸ As one petition for reconsideration challenging the *2016 Lifeline Order* observed, “in its formula for determining broadband minimum service standards, affordability quite literally does not enter the equation.”⁹ The fact that the equation has yielded a thoroughly untenable 8.75 GB for the next escalation demonstrates conclusively the fatal flaws in the formula and the dangers of failing to consider affordability in establishing Lifeline standards. Moreover, in putting broadband services, specifically, out of reach for the vast majority of Lifeline subscribers, application of the formula ironically will undermine the Commission’s primary purpose in adopting the minimum service standards: to “focus[] the Lifeline program on broadband.”¹⁰

Even if the Commission were not bound to an affordability mandate and the *2016 Lifeline Order*’s equation had produced a tenable data allowance for 2019, the formula should still be revisited, as it is an ill fit that is divorced from the problems it purports to solve. For instance, setting the *minimum* data allowance standard based on *average* usage necessarily cuts out service offerings that would meet the needs of subscribers that fall below that average. The Commission has offered no suggestion that its decision to multiply the average usage by a factor of 0.7 will result in a minimum standard that captures the entire range of Lifeline subscriber needs for data quantities. To the contrary, the Commission’s express intent is to set the minimum data offerings at a level that would be sufficient for a “substantial majority” of consumers—an endeavor that is entirely misplaced in the context of data quantities.¹¹ Indeed, a service offering that provides a lower-than-average data quantity, if that data quantity fully meets the subscriber’s needs, is not a “‘second-tier’ service,” as the Commission has suggested¹²—it is an entirely sufficient service that meets the goals of the Lifeline program. Lifeline customers that do not need large quantities of data should not be forced to purchase a gold-plated service.

Further, in adopting the formula, the Commission failed to determine whether it properly reflects the needs and demands of the specific market that the Lifeline program is designed to serve: low-income consumers. The *2016 Lifeline Order* asserts that because “low-income consumers are particularly likely to only have access to mobile broadband . . . it is vital that the offered service provides sufficient speed and capacity to allow the user to utilize all that the Internet has to offer,”¹³ but fails to acknowledge (as CTIA explained in its Petition for

⁸ 47 U.S.C. § 254(b)(1).

⁹ Joint Lifeline ETC Petitioners’ Petition for Partial Reconsideration and Clarification, WC Docket Nos. 11-42 et al., at 5 (filed June 23, 2016).

¹⁰ *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, ¶ 5 (2016) (“*2016 Lifeline Order*”).

¹¹ *Id.* ¶ 94 & n. 274; accord 47 U.S.C. § 254(c)(1)(B).

¹² *2016 Lifeline Order* ¶ 75.

¹³ *Id.* ¶ 91.

Reconsideration) that “higher mobile data usage from unlimited service plans and Free Data offerings will skew the comparative results of average household use, without accounting for the costs of such services and offerings.”¹⁴ The Commission has not undertaken to discern how much of average monthly data usage is attributable to unlimited plans, and the extent to which such consumers’ data usage habits would change if their monthly data plans were limited to finite quantities or charged according to usage. Nor has the Commission explored whether the data needs and preferences of Lifeline subscribers differ from the national average in other ways because of unique characteristics about the demographic. Although intended to provide Lifeline subscribers with “reasonably comparable” services to those used by non-Lifeline subscribers,¹⁵ application of the formula will prevent subscribers from obtaining services that actually align with their needs.

The planned reduction in support for voice-compliant services also endangers the Lifeline program, and is similarly at odds with the Commission’s overall objectives. Indeed, the Commission’s decision to decrease and eventually eliminate Lifeline support for voice-compliant services will substantially reduce low-income consumers’ access to all manner of services, including broadband. If the December 1 phase-down to \$7.25 is permitted to go into effect, providers likely will be unable to continue providing either no-cost voice offerings or bundled offerings that pair voice-compliant plans with some amount of data or other service like text messaging. Accordingly, the phase-down period will reduce access not only to affordable voice services, but also, ironically, broadband data services. This reduced access to bundled voice and data offerings is particularly problematic given that the 8.75 GB broadband data standard will altogether prevent access to affordable broadband-compliant services.

Moreover, notwithstanding the Commission’s objectives to focus the Lifeline program on broadband access, a significant portion of Lifeline consumers continue to prefer and depend on voice services. In fact, nearly 42 percent of Lifeline subscribers choose voice-compliant plans over broadband-compliant plans.¹⁶ Lifeline voice services not only help customers stay connected, but also confer a public safety benefit that is still unmatched by broadband and that, for some Lifeline subscribers, could mean the difference between life and death. As TracFone has previously explained, “[u]ntil such time as the Commission is able to determine based on a factual record that consumers using broadband services as their sole means of voice and text communications will have ubiquitous and reliable access to E911, NG911 and other emergency and critical N11 services, ‘traditional’ voice services . . . will remain essential services, and must remain available, and must remain eligible for full Lifeline support on a standalone basis.”¹⁷

¹⁴ Petition for Reconsideration of CTIA, WC Docket Nos. 11-42 et al., at 5 (filed June 23, 2016).

¹⁵ *2016 Lifeline Order* ¶ 22; accord 47 U.S.C. § 254(b)(3).

¹⁶ See TracFone Joint Petition Comments at 2.

¹⁷ Petition for Reconsideration of TracFone Wireless, Inc., WC Docket No. 11-42 et al., at 5 (filed June 23, 2016).

II. TO BEST SERVE ITS POLICY OBJECTIVES AND PRESERVE THE VIABILITY OF THE LIFELINE PROGRAM, THE COMMISSION SHOULD PARTIALLY GRANT THE JOINT PETITION FOR WAIVER AND ENFORCE A MINIMUM SERVICE STANDARD OF 3 GB PER MONTH.

Although the minimum service standards and voice support reduction pose potentially fatal threats to the Lifeline program, TracFone recognizes and appreciates the Commission's desire to serve the policy objectives of the *2016 Lifeline Order* and increase Lifeline subscriber access to broadband services. To mitigate the imminent threats to the Lifeline program posed by the December 1 minimum service standards while also ensuring that the Commission's Lifeline policies best serve both the central Lifeline tenets of availability and affordability as well as the Commission's broadband-focused objectives, the Commission should partially grant the Joint Petition and take two concrete steps:

- (1) enforce a 1 GB increase in monthly data minimum service standards to a total threshold of 3 GB, consistent with past escalation, in lieu of the 8.75 GB allowance dictated by the regulatory formula; and
- (2) expedite the Bureau's completion of the Marketplace Report to inform future standards, freezing in place the upcoming standards until the Report can be considered.

First, the Commission should partially waive Section 54.408(b)(2)(ii)(D) and enforce a 3 GB monthly data allowance in lieu of the 8.75 GB dictated by the Commission's formula. As explained above, a more-than-four-fold increase to 8.75 GB is untenable and will decrease the availability of broadband services for Lifeline subscribers. To maximize consumer access to broadband Lifeline offerings and preserve affordable consumer options in the Lifeline marketplace, while also meeting the Commission's objective to make broadband Lifeline services more comparable to those offered to the general public, the Commission should partially grant the Joint Petition for waiver by enforcing a modest increase in the monthly data allowance in lieu of the scheduled 8.75 GB threshold.

In setting the December 1, 2019 threshold to enforce in place of the standard required under Section 54.408(b)(2)(ii)(D), the Commission should consider how best to balance the affordability concerns raised by numerous commenters against the Commission's goal to increase broadband allowance and therefore enhance Lifeline consumer access to broadband capabilities. Consistent with the most recent minimum service standard increase, which escalated the minimum monthly data allowance from 1 GB to 2 GB,¹⁸ TracFone submits that another escalation of 1 GB – to a total of 3 GB per month – would best meet the Commission's objectives while avoiding the dire consequences 8.75GB will undoubtedly engender.

¹⁸ 47 C.F.R. § 54.408(b)(2)(ii)(B), (C).

Given the existing regulatory basis for a minimum service standard increase in the amount of 1 GB, a commensurate increase for the upcoming year would be reasonable and would provide the best chance of continuing to move the Lifeline market in a direction that is consistent with the Commission's policy goals. Moreover, for Lifeline subscribers who can afford to pay more, they will continue to have the options of purchasing data or airtime cards to satisfy their levels of usage.

Second, the Commission should expedite completion of the State of the Lifeline Marketplace Report and use the findings to inform future Lifeline standards. To ensure that future minimum service standards are based on record evidence and reflect the realities of the Lifeline marketplace, and to avoid a mechanistic increase in data levels recurring in 2020, the Commission should require the Wireline Competition Bureau to complete its State of the Lifeline Marketplace Report by June 30, 2020 – one year earlier than the *2016 Lifeline Order* provides. As the Commission has recognized, “given the inherent uncertainty in the future Lifeline marketplace,” the Marketplace Report is necessary to help the Commission determine “whether the transition set out in this Order should be completed or whether the Commission should act to continue delaying Lifeline’s transition to chiefly supporting broadband services,”¹⁹ and the findings contained in the Report may lead the Commission to “make changes to the program,” including “adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives.”²⁰ However, slated for release nearly five years after the imposition of broadband minimum service standards and almost two years after initiating the phase-out of support for voice-compliant services, the Report will come, quite literally, years too late.

Accordingly, the Commission should expedite completion of the Report by a full calendar year, and use the information and findings contained in the Report to develop future minimum service standards, support levels, and other Lifeline policies. In expediting the Report, the Commission should expressly require the Bureau to study the seven-month period requiring ETCs to meet the 3 GB per month minimum service standards in compiling the Report, so that the Commission can best understand how increases in data allowances beyond the current 2 GB requirement affect the market for Lifeline services. The Commission should decline to alter either the 3 GB threshold it is enforcing for broadband data or the existing level of voice support until such time as the Commission has had the opportunity to evaluate the Report and develop new policies for future standards, and collect public comment on those proposals.

Should the Commission decline to expedite completion of the Marketplace Report, the Commission should freeze in place the December 1, 2019 standards—both the 3 GB monthly data requirement and the voice support level—through 2021 so as to allow the Marketplace

¹⁹ *2016 Lifeline Order* ¶ 66.

²⁰ *Id.*

Report to be completed as scheduled by June 2021 and guide the Commission's determination of future minimum service standards and voice support levels at that time. A two year freeze would be necessary to provide ETCs with a level of stability in the administration of the program and to provide consumers with the certainty that their benefits will not be reduced (as the case may be for voice-compliant services) or altogether taken away (as may occur if the monthly broadband standard is simply reset pursuant to the formula in 2020).

Finally, the Commission also should retain the current \$9.25 subsidy for voice-compliant services for 2019 pending the outcome of the Marketplace Report, consistent with the relief sought in the Joint Petition.²¹ As explained above, the reduction in support for voice-compliant services not only will jeopardize services on which significant portions of Lifeline subscribers depend, but will have the unintended effect of decreasing the availability of broadband in contravention of the Commission's interests. To ensure the ongoing stability of the Lifeline program and best serve the policy objectives of availability, affordability, and broadband access, the Commission should retain the existing subsidy for voice-compliant services until it has had the opportunity to properly evaluate the market for those services using the Bureau's State of the Lifeline Marketplace Report.

Please direct any questions to the undersigned.

Respectfully Submitted,

/s/ Joshua S. Turner

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²¹ See Joint Petition at 2.