

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	WC Docket No. 17-287
Bridging the Digital Divide for Low-Income Consumers)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	

REPLY TO OPPOSITION OF SMITH BAGLEY, INC. TO PETITION OF TELRITE CORPORATION D/B/A LIFE WIRELESS, I-WIRELESS, LLC AND AMERIMEX COMMUNICATIONS CORP. D/B/A SAFETYNET WIRELESS FOR PARTIAL RECONSIDERATION OF ORDER ON RECONSIDERATION AND RECONSIDERATION OF MEMORANDUM OPINION AND ORDER

Pursuant to section 1.429(g) of the Federal Communications Commission's (Commission's) rules,¹ Telrite Corporation d/b/a Life Wireless (Telrite), i-wireless, LLC (i-wireless), and AmeriMex Communications Corp. d/b/a SafetyNet Wireless (SafetyNet) (collectively, the Petitioners) submit this reply to Smith Bagley, Inc.'s (Smith Bagley's) opposition to Petitioners' request that the Commission reconsider in part the Order on Reconsideration and reconsider the Memorandum Opinion and Order (MO&O) contained within its Lifeline Digital Divide Order.²

¹ 47 C.F.R. § 1.429(g).

² *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017) (referenced herein as the Order on Reconsideration, MO&O, Fourth Report and Order, or NPRM in accordance with the paragraph or section cited); *See Bridging the*

In response to the Petition, two parties—Q Link Wireless and TracFone—filed comments in support of Petitioners’ call to reinstate the 60-day and 12-month benefit port freezes.³ These commenters recognize the scourge of flipping both for ETCs and for program costs, and the demonstrated success of the port freezes in promoting a well-functioning, economically sound, and innovative Lifeline program. Only one party—Smith Bagley—filed in opposition to the Petition, challenging both the port freezes and Lifeline support for Premium Wi-Fi.⁴ As

Digital Divide for Low-Income Consumers et al., WC Docket Nos. 17-287 et al., Petition of Telrite Corporation d/b/a Life Wireless, i-wireless, LLC and Amerimex Communications Corp. d/b/a Safetynet Wireless for Partial Reconsideration of Order on Reconsideration and Reconsideration of Memorandum Opinion and Order (Feb. 15, 2018) (Petition for Reconsideration or the Petition).

³ See *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket Nos. 17-287 et al., Comments of Q Link Wireless, LLC (Mar. 19, 2018) (Q Link Comments) (filing in support of both the 60-day and 12-month benefit port freezes); *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket Nos. 17-287 et al., Comments on Petition for Reconsideration (Mar. 19, 2018) (TracFone Comments) (filing in support of the 60-day benefit port freeze). Neither party addressed Petitioners’ arguments related to technology neutrality and Premium Wi-Fi service.

⁴ See *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket Nos. 17-287 et al., Smith Bagley, Inc. Opposition to Petitions for Reconsideration (filed Mar. 9, 2018) (SBI Opposition). Smith Bagley also challenged the Petition for Reconsideration filed by the Oceti Sakowin Tribal Utility Authority (OSTUA), but that petition has since been withdrawn. See *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Voluntary Withdrawal of Petition for Reconsideration (filed Mar. 22, 2018). Because that petition has been withdrawn, this reply does not address the issues raised either in the petition or Smith Bagley’s opposition to the OSTUA petition, which have been rendered moot. Importantly, however, two appeals of the Fourth Report and Order remain pending with the D.C. Circuit. See Pet. for Review, *Nat’l Lifeline Ass’n v. FCC*, No. 18-1026, Doc. No. 1715023 (D.C. Cir. filed Jan. 25, 2018); Pet. for Review, *Crow Creek Sioux Tribe v. FCC*, No. 18-1080, Doc. No. 1723207 (D.C. Cir. filed Mar. 16, 2018). Moreover, the Commission itself has raised fundamental questions about the Tribal program in its NPRM relating to the issues it purports to decide in the Fourth Report and Order. Together, the fact that multiple parties have challenged the Commission’s Fourth Report and Order in court and the fact that many of the issues related to Tribal lands remain subject to the Commission’s ongoing NPRM (including the definition of “facilities”) counsel in favor of staying or reversing the Fourth Report and Order until the Commission has completed the NPRM proceeding.

explained in more detail below, the Commission should disregard Smith Bagley's opposition to the port freezes because its opposition is unsupported in the record, ignores the existing exception for unserved areas, and misconstrues the purpose and success of the benefit port freezes. The Commission similarly should disregard Smith Bagley's opposition to Lifeline support for Premium Wi-Fi because it ignores the law and precedents in favor of technology neutrality and fundamentally misunderstands the product and its value for low-income consumers.

I. SMITH BAGLEY'S OPPOSITION TO THE 60-DAY AND 12-MONTH BENEFIT PORT FREEZES INVENTS PROBLEMS OUT OF WHOLE CLOTH, MISREADS THE PURPOSE OF THE RULE, AND IGNORES THE BENEFITS OF THE RULE

In its opposition, Smith Bagley argues that the Commission properly eliminated the benefit port freeze because "the purported abuse the rules intended to address occurred only infrequently before the freeze was implemented"⁵ and "the port freeze has often served to cut off the exit for consumers who wish to abandon a new service after discovering it is not remotely what they need or desire."⁶ Smith Bagley's opposition to the port freeze is unsupported in the record, ignores the existing port freeze exception in the rules if a service provider fails to provide service, and fails to appreciate the demonstrated success of the port freezes in achieving the Commission's goals in tamping down on abusive practices and incenting product and service-level innovation.

⁵ See SBI Opposition at 8.

⁶ See *id.* at 10.

Smith Bagley first claims without any record support that “the port freeze has negatively impacted consumers in its service area” because customers apparently will travel to an urban area, switch Lifeline service to another carrier based on a promotion, and then return only to find that the service does not work where they live.⁷ Smith Bagley claims—again without offering any record support—that these subscribers then visit Smith Bagley stores complaining that the service does not work, and Smith Bagley must tell the consumer they are “blocked from returning to Smith Bagley because of the port freeze.”⁸ Indeed, there is no evidence presented or referenced in the Order on Reconsideration that *any* consumers have complained about the port freezes or have had difficulties changing providers in situations where they lack service.⁹ Because Smith Bagley provided no specific instances or evidence of such occurrences, its claims should not be given any weight.

Moreover, the idea that a subscriber who deliberately changed service providers from Smith Bagley to another provider would continue to believe that they were a Smith Bagley customer strains credulity. Section 54.410 of the Commission’s Lifeline rules requires ETCs to make clear to consumers that they have only one service provider and requires consumers to certify that they understand that they may only have one service provider.¹⁰ Section 54.405 of

⁷ *See id.* at 9.

⁸ *See id.*

⁹ *See* Order on Reconsideration ¶¶ 33-40.

¹⁰ *See* 47 C.F.R. § 54.410(d). For example, ETCs must explain that “[o]nly one Lifeline service is available per household” (Section 54.410(d)(1)(ii)) and “[a] household is not permitted to receive Lifeline benefits from multiple providers” (Section 54.410(d)(1)(iv)), and each enrollee must certify that his or her “household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber’s household is not already receiving a Lifeline service” (Section 54.410(d)(3)(v)).

the Commission’s Lifeline rules further requires ETCs to include, on all marketing materials—including “print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms”—the ETC’s name, a description of the service, and the one-per-household rule.¹¹ During the benefit transfer process, the Universal Service Administrative Company (USAC) requires ETCs to tell the subscriber that they will no longer receive service from their current provider, and to obtain “affirmative consent” and acknowledgement that “once the transfer is complete, the subscriber will lose their Lifeline Program benefit with” their current provider and that the new ETC “has explained to them that they may not have multiple Lifeline Program benefits with the same or different providers.”¹²

Even after the benefit transfer process, there are additional touchpoints to remind the subscriber about the identity of his or her provider. For instance, ETCs often include branding on their products (including their handsets), and subscribers can dial 611 on their Lifeline handset to reach customer service from their current service provider during customer service hours.¹³ Moreover, subscribers can call USAC at any time if they have a question about their Lifeline provider or the port freeze and any applicable exceptions. It is inconceivable that a transferee would continue to believe that they were receiving service from their prior provider under the Lifeline rules and adopted benefit transfer process.

¹¹ See 47 C.F.R. § 54.405(c)-(d).

¹² See Universal Service Administrative Company, Benefit Transfers, *available at* <https://www.usac.org/li/tools/nlad/benefit-transfers.aspx> (last visited Mar. 26, 2018).

¹³ For this reason alone, Smith Bagley’s contention that ETCs have “not provided the carrier’s new customers with adequate contact information for lodging complaints” rings hollow at best. See SBI Opposition at 10.

Even if a subscriber were in the position that Smith Bagley claims (which would be extraordinary), the port freezes included an exception for situations where a “subscriber’s current provider . . . fails to provide service,” which Petitioners submit would cover situations in which the subscriber’s service does not work in the vicinity of where he or she lives.¹⁴ Because this exemption was available to Smith Bagley and its unidentified and unquantified customers, Smith Bagley was not “forced to explain” anything to its customers—in fact, those customers were not “stuck with service that they cannot use” and could have ported back to Smith Bagley.

Second, Smith Bagley’s opposition fails to appreciate the benefits of the 12-month benefit port freeze and its success in achieving the Commission’s goals. In its opposition, Smith Bagley argues that the port freeze was not “necessary to ‘minimize costs and protect program integrity’” because instances of actual waste, fraud, and abuse in the program were rare when compared to perceived waste, fraud, and abuse in the media.¹⁵

As an initial matter, Smith Bagley fails to distinguish between the purpose of the 60-day benefit port freeze and the purpose of the 12-month benefit port freeze. Specifically, while the purpose of the 60-day benefit port freeze was to rein in costs and perceptions of waste, fraud, and abuse (the focus of Smith Bagley’s opposition), the purpose of the 12-month benefit port freeze was to promote investment in better services and products for consumers.¹⁶ On both metrics, the port freezes have been a success.

¹⁴ See 47 C.F.R. § 54.411(c)(2). To the extent that the Commission does not believe this exception to the port freeze would cover this situation, it can create a new exception. Adding further exceptions is a more reasonable and tailored solution than eliminating the port freeze altogether and throwing out the baby with the bathwater.

¹⁵ See SBI Opposition at 10.

¹⁶ See Petition for Reconsideration at 3-9.

With respect to the 60-day port freeze, Petitioners agree with TracFone that the 60-day benefit port freeze “prevents the constant (often weekly or even daily) ‘flipping’ or changing of ETCs by consumers – often to procure additional free devices.”¹⁷ The 60-day benefit port freeze also results in administrative cost-savings for the program, since every new enrollment requires database dips (e.g., eligibility databases, third-party identity verification databases, and the SSI Master Death Index database) that cost USAC (and ultimately consumers of communications services) money.¹⁸ With respect to the 12-month benefit port freeze, it too has been a success in achieving its goals of driving broadband adoption, allowing ETCs to meet rising minimum service standards and offer enhanced handsets that help to close the digital divide and are a necessary component of the service.¹⁹ Indeed, the 12-month benefit port freeze better aligns low-income consumers with the service plan durations of non-low-income consumers.

In the end, the Commission should reject Smith Bagley’s opposition because it finds no support in the record and misreads the port freeze rule and its purpose. Instead, the Commission should reinstate the 60-day and 12-month benefit port freezes.

¹⁷ See TracFone Comments at 2.

¹⁸ See Q-Link Comments at 3-4 (arguing that without the benefit port freeze, “the costs incurred to provide unreimbursed service to flippers are borne by all Lifeline consumers, as they directly limit a provider’s ability to provide more service for the same amount of USF support,” and “flipping also increases the costs of administering the Lifeline program for USAC”).

¹⁹ See *id.* at 8-9.

II. SMITH BAGLEY’S OPPOSITION TO LIFELINE SUPPORT FOR PREMIUM WI-FI SERVICE FUNDAMENTALLY MISUNDERSTANDS THE PRODUCT AND ITS VALUE FOR LOW-INCOME CONSUMERS

Smith Bagley also challenges Premium Wi-Fi Service on the grounds that the service is “almost non-existent” in its own service territory and that “low-income consumers . . . should not be told they are getting a ‘premium service’ that is available free” at public Wi-Fi hotspots.²⁰ Smith Bagley’s opposition should be rejected because it fails to address the relevant legal arguments, focuses too narrowly on its own service territory while disregarding areas where Premium Wi-Fi is more widely available, and fundamentally misunderstands the Premium Wi-Fi product and the importance of technology neutrality in advancing the goals of the Lifeline program.

Smith Bagley fails to address Petitioners’ legal arguments, which clearly establish that Premium Wi-Fi service meets the definition of broadband Internet access service.²¹ Instead, Smith Bagley focuses on the availability of Premium Wi-Fi in its own service territory to make the claim that Premium Wi-Fi should not be permitted as an option for *any* low-income consumers. To be sure, Premium Wi-Fi may not be the best solution for every geographic region, which Telrite has long acknowledged. However, in some areas, Premium Wi-Fi can offer more speed and better data plans (including unlimited data) than traditional cellular service, for example, in areas where one of iPass’s cable broadband underlying providers offers service through a network of thousands of residential hotspots. The Commission should not limit the

²⁰ See SBI Opposition at 11-13.

²¹ See Petition for Reconsideration at 14-17 (demonstrating that Premium Wi-Fi service meets the legal definition of mobile broadband Internet access service).

choices for consumers who do value Premium Wi-Fi service based on the experience of a single provider whose customers do not have access to the service.

Moreover, prohibiting Premium Wi-Fi service from reimbursement would run counter to the long-standing policy of technology neutrality, which both Chairman Pai and Commissioner O’Rielly support and which is particularly important for fast-developing technologies such as mobile broadband.²² Smith Bagley fails to appreciate the importance of technology neutrality and the effects of potentially foreclosing access to a new and innovative technology for low-income consumers.

In addition, Smith Bagley makes the same error as the Commission and TracFone have in conflating Premium Wi-Fi service with free, public Wi-Fi hotspots.²³ Telrite has distinguished the two services on numerous occasions, but for the sake of clarity: Premium Wi-Fi is *not* merely free, public Wi-Fi, nor is it merely a business traveler’s service available at airports and hotels. For example, Telrite’s Premium Wi-Fi service offering provides secure last-mile VPN access to iPass’s private, nationwide network of tens of millions of access points, which include both private residential and commercial access points, including wireline broadband networks of some of the largest wireline broadband providers in the country.²⁴ Where Telrite’s Premium Wi-Fi service permits access to free, public Wi-Fi hotspots, it does so using a secure last-mile VPN, providing extra security and a seamless interplay with its paid residential and commercial hotspots. Moreover, Telrite pays its underlying provider for the service, and the partnership between iPass and Telrite is designed specifically to serve the mobile connectivity needs of low-

²² See *id.* at 20-23 & n.54-55 (citing agency statements in support of technology neutrality).

²³ See *id.* at 19-20.

²⁴ See *id.* at 20.

income American consumers. The fact that Smith Bagley, like the Commission and TracFone before it, continues to misconstrue the nature of the service demonstrates its willful ignorance of Premium Wi-Fi and therefore should not factor into the Commission's decision making.

III. CONCLUSION

Smith Bagley's opposition to Petitioners' call to reinstate the 60-day and 12-month port freezes and to treat Premium Wi-Fi Service as mobile broadband eligible for Lifeline support should be rejected because (1) its opposition to the benefit port freeze is unsupported in the record, ignores the existing exemption for unserved areas, and fails to appreciate the benefits and demonstrated success of the port freezes; and (2) its opposition to Lifeline support for Premium Wi-Fi fundamentally misunderstands the product, its value for low-income consumers, and the importance of technology neutrality in advancing the goals of the Lifeline program.

Respectfully submitted,



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March 29, 2018

CERTIFICATE OF SERVICE

I, John J. Heitmann, certify that on this 29th day of March 2018, I caused a copy of the foregoing Reply to Opposition of Smith Bagley, Inc. to Petition of Telrite Corporation d/b/a Life Wireless, i-wireless, LLC, and AmeriMex Communications Corp. d/b/a SafetyNet Wireless for Partial Reconsideration of Order on Reconsideration and Reconsideration of Memorandum Opinion and Order to be served by first class mail, postage prepaid, upon the following:

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