

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

In the Matter of)	
)	
Protecting Against National Security Threats to the)	WC Docket No. 18-89
Communications Supply Chain Through FCC)	
Programs)	
)	

COMMENTS OF TRACFONE WIRELESS, INC.

I. INTRODUCTION AND SUMMARY

TracFone Wireless, Inc. (“TracFone”) respectfully submits these comments in response to the *Notice of Proposed Rulemaking*¹ (“NPRM”) proposing to prohibit the use of money from the Universal Service Fund (“USF”) to purchase equipment or services from companies that pose “a national security risk to communications networks or the communications supply chain.”² TracFone shares the Commission’s concern with securing the United States’ communications networks from foreign intrusion and manipulation. Our communications networks play a critical role in protecting public safety and national security and TracFone is committed to helping ensure the integrity of the communications supply chain. However, TracFone is concerned that the NPRM’s proposed prohibition is too broad and, to the extent it applies to consumer end-user devices, it may end up frustrating the central goals of the Lifeline Program.

TracFone’s interest in this proceeding is limited to the impact the proposed prohibition would have on end-user devices used in conjunction with, but not purchased through, Lifeline subsidies. Thus, these comments do not address the wisdom or propriety of the NPRM’s

¹ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Notice of Proposed Rulemaking, WC Docket No. 18-89, FCC 18-42 (rel. Apr. 18, 2018) (“NPRM”).

² *Id.* ¶ 13.

proposal as it applies to network management equipment and infrastructure more broadly. As explained in greater detail below, TracFone believes that the Commission should clarify that the proposed prohibition does not extend to consumer end-user devices used in conjunction with the Lifeline program. Rather, if the Commission proceeds down this path to try and address national security issues, the prohibition should be strictly limited to network management equipment and infrastructure the “compromise or failure of which could disrupt the confidentiality, availability, or integrity of a network.”³

II. ANY PROPOSED PROHIBITION SHOULD NOT APPLY TO END-USER DEVICES PROVIDED TO ACCESS LIFELINE SERVICES.

The NPRM proposes to adopt a rule prohibiting USF support from being used “to purchase or obtain any equipment or services produced or provided by a company posing a national security threat to the integrity of communications networks or the communications supply chain.”⁴ Under this bright-line approach, the Commission would “prohibit use of USF funds on any purchases whatsoever from companies that have been identified as raising national security risks.”⁵ Noting that “money is fungible,” the Commission is also considering applying the prohibition to “prohibit the use of any USF funds on any project where equipment or services produced or provided by a company posing a national security threat...[are] being purchased or obtained.”⁶

The scope of the proposed prohibition is vast – reaching a wide-range of equipment – from switches, routers, and towers to consumer end-user devices in all programs receiving USF funding. TracFone is concerned that the proposed prohibition goes too far. By including end-

³ *Id.* ¶ 15.

⁴ *Id.* ¶ 13.

⁵ *Id.* ¶ 15.

⁶ *Id.* ¶ 16.

user devices like smartphones, the prohibition would have far-reaching consequences that would undermine important universal service principles. Indeed, to the extent the proposed prohibition applies to any program receiving USF funding, Lifeline beneficiaries would be barred from using low-cost devices that pose minimal risks to the integrity of the communications supply chain.

To avoid such an outcome, if the Commission adopts rules restricting the use of USF funds for purchasing communications equipment, it should differentiate between network equipment and end-user devices. Specifically, the Commission should clarify that the funding prohibition is limited to network equipment and services that *directly relate* to the management of a network or “any system the compromise or failure of which could disrupt the confidentiality, availability, or integrity of a network.”⁷ Consumer end-user devices should not be included in whatever rules the Commission may ultimately choose to adopt for several reasons.

First, applying the proposed prohibition to end-user devices would harm competition and ultimately increase equipment costs for consumers across the country – a result that threatens to undermine the core universal service values that underlie the Lifeline program. The central policy mandate at the heart of the Lifeline program is the simple principle that communications services should be affordable to low-income consumers across the country, regardless of where they live.⁸ The Commission should be mindful of this policy objective as it considers whether and how it ought to restrict the flow of USF funding to safeguard the communications supply chain. As Commissioner Clyburn has advised, the Commission should “strike the proper marketplace balance” by considering the potential cost increases associated with banning USF

⁷ *Id.*

⁸ *See generally* 47 U.S.C. § 254(b)(3) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”)

support for certain kinds of end-user devices.⁹ A robust and competitive mobile device marketplace has been a key growth factor for the Lifeline program, allowing Lifeline beneficiaries to reap the benefits of innovative mobile services at low-costs. It has enabled Lifeline carriers like TracFone to offer compatible handsets to Lifeline-eligible customers on a no-cost basis, all without receiving any USF subsidies for the procurement of these devices. Indeed, through the SafeLink brand, TracFone’s Lifeline customers have the option of receiving a free feature phone, a free smartphone with Wi-Fi and data capabilities, or upgrade to a Lifeline-compatible premium smartphone for a nominal one-time fee. Huawei and ZTE end-user devices, in particular, have offered a cost-effective option for low-income households looking to participate in the Lifeline program. The Commission should preserve the vibrant device marketplace for Lifeline participants by limiting the prohibition to network management equipment and infrastructure.

Second, extending the proposed prohibition to end-user devices is unnecessary. As an initial matter, in the context of the Lifeline program, the vast majority of beneficiaries rely on non-facilities based providers for subsidized services, and thus, the Commission’s existing rules already prohibit the use of USF funds for paying for end-user equipment. Indeed, as the NPRM notes, the Commission has confirmed time and again that “the Lifeline program supports services, not end-user equipment.”¹⁰ Applying the proposed prohibition to end-user devices in the Lifeline context is thus, at best, redundant. At worst, it may exacerbate the costs of end-user equipment by prohibiting the availability of certain low-cost devices used in conjunction with the Lifeline program simply because TracFone receives USF funding through the Lifeline

⁹ NPRM, Statement of Commissioner Clyburn, at 1.

¹⁰ *Id.* ¶ 10, n. 28.

program.¹¹ If the prohibition applies to any program that receives USF funding, for example, Lifeline participants would be barred from using prohibited foreign devices for Lifeline services even though USF funds were not directly used to subsidize the purchase such devices.

Further, end-user devices pose a different—and lesser—kind of risk to communications network security than network equipment (*i.e.* routers and switches) and related infrastructure. End-user devices like smartphones simply cannot cause the systemic failure of America’s communications networks that the NPRM anticipates and seeks to address.¹² Indeed, as CTIA and others have explained, the wireless industry works tirelessly to protect mobile devices from bad actors and security threats, including active network management and collaborating with domestic and international standards bodies, federal agencies, and private stakeholder groups.¹³ With these mechanisms already in place, adopting a flat “country of origin” prohibition on the use of USF funds to purchase end-user devices would be premature and unnecessary. And where, as here, the benefits of permitting carriers to retain and offer consumers the full panoply of affordable end-user device offerings as part of the Lifeline program greatly outweighs the minimal risk to supply chain security that such devices may pose, the proposed prohibition is particularly troublesome.

Third, the NPRM’s approach is overly broad; the Commission can accomplish its objectives by adopting a more narrowly tailored regime for safeguarding USF funds. A carefully tailored rule that applies only to the equipment used by facilities-based providers for network

¹¹ See *id.* ¶ 16 (suggesting that because money is fungible, the prohibition ought to apply to prohibit the use of USF funding on any program where banned devices are being purchased or obtained).

¹² See, e.g., *id.* ¶ 3 (noting the need to identify vulnerabilities in communications infrastructure); Statement of Chairman Pai at 1 (emphasizing concerns about “routers, switches, and other network equipment”). Likewise, end-user devices pose less acute risks that can be mitigated than the risks posed by network management equipment when it comes to access to user data, surveillance, and related issues.

¹³ See CTIA, Protecting America’s Wireless Networks, White Paper, *available at* <https://www.ctia.org/news/protecting-americas-wireless-networks-3>

management would achieve the Commission’s goal of safeguarding our communications networks from systemic failures caused by foreign intrusion and manipulation.¹⁴ At the same time, such an approach would help close the digital divide by preserving the ability of low-income beneficiaries to participate in the Lifeline program and making communications services available and affordable.¹⁵

III. TO THE EXTENT THE COMMISSION DOES ADOPT A BRIGHT-LINE PROHIBITION, EXISTING END-USER DEVICE MODELS AND OFFERS SHOULD BE GRANDFATHERED.

As explained above, TracFone urges the Commission to exclude end-user devices from its proposed funding prohibition. If the Commission nevertheless chooses to implement a bright-line prohibition that includes end-user devices, then, at a minimum, the Commission should ensure that the prohibition only applies to equipment or services directly purchased with USF dollars or that existing device models and offerings are grandfathered. A bright-line prohibition on the use of USF support for the direct procurement of devices and services should have minimal impact on the Lifeline program since the FCC rules already prohibit the use of Lifeline dollars to subsidize equipment used in conjunction with Lifeline services. Grandfathering existing end-user device models and offerings used in conjunction with Lifeline programs will be essential to preserving current beneficiaries’ continued access to affordable communications services.

¹⁴ See, e.g., NPRM ¶ 3 (noting the need to identify vulnerabilities in communications infrastructure); Statement of Chairman Pai at 1 (emphasizing concerns about “routers, switches, and other network equipment”).

¹⁵ See, e.g., Remarks of Chairman Ajit Pai before the Federal Communications Commission, Washington, DC (Jan. 24, 2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-343184A1.pdf (“One of the most significant things that I’ve seen during my time here is that there is a digital divide in this country—between those who can use from cutting-edge communications services and those who do not. I believe one of our core priorities going forward should be to close that divide—to do what’s necessary to help the private sector build networks, send signals, and distribute information to American consumers, regardless of race, gender, religion, sexual orientation, or anything else. We must work to bring the benefits of the digital age to all Americans.”).

IV. CONCLUSION.

TracFone shares the Commission's concern with protecting our communications networks from attack by bad actors. But while the Commission's goals are laudable, TracFone fears that the broadly proposed prohibition may have unintended consequences that could thwart some of the Lifeline program's paramount objectives. To achieve its security goals and preserve affordable devices and communications services for Lifeline beneficiaries, the Commission should narrow the scope of any proposed prohibition to include only network management equipment and infrastructure.

Respectfully submitted,

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