

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**RENEWED MOTION FOR DECLARATORY RULING OR FOR WAIVER FOR THE
PURPOSE OF CONDUCTING A MARKET TEST OF CONSUMER DEMAND FOR
LIFELINE SERVICE OFFERINGS**

By this motion, TracFone Wireless, Inc. (“TracFone”) renews a request made in a November 2017 petition asking alternatively for a waiver of Section 54.408(b) of the Commission’s rules or for a declaratory ruling that the rule as promulgated would enable TracFone to comply with the minimum service standards for Lifeline service by providing its Lifeline customers with a specified quantity of “units” per month.¹ Those units could be used at the consumers’ discretion either for voice service, mobile broadband Internet access service, or for a combination of both. As described in this renewed motion, TracFone has updated and increased its units proposal based on the forthcoming changes to the Commission’s minimum service standards for Lifeline service scheduled to become effective December 1, 2018. Moreover, as explained herein, the information gained from a market test of TracFone’s units plan will be invaluable to the Wireline Competition Bureau’s preparation of a State of the Lifeline Marketplace Report by June 2021 as has been directed by the Commission.

¹ Emergency Petition for Interim Waiver or, In the Alternative, to Conduct Market Test, filed November 3, 2017.

I. TracFone’s Modified Units Proposal Based on the December 1, 2018 Minimum Service Standards Will Provide Important Consumer Benefits

In its 2017 emergency petition, TracFone proposed to meet the minimum service standards effective December 1, 2017 by providing Lifeline consumers with 1,000 units per month. Each unit would have been usable either for one minute of voice service or one MB of broadband service. On December 1, 2017, the minimum service standards were increased to 750 minutes of voice or 1 GB of mobile broadband. TracFone explained that its units proposal would comply with Section 54.408 which requires Eligible Telecommunications Carriers (“ETCs”) to “provide” either voice service or mobile broadband service which meets the applicable minimum service standard. Noting that a generally accepted definition of “provide” is “to make available,” TracFone explained that its plan would make available to consumers voice service and mobile broadband service which meets the minimum service standard, and would allow consumers to determine based on their own needs and preferences whether to use those made available units for voice, for mobile broadband, or for a combination of both.

The Commission did not act on TracFone’s emergency petition prior to the December 1, 2017 effective date of the increased minimum standards. However, the Commission was sufficiently enamored of the proposal to invite comments on the units proposal in its 2017 Lifeline Reform Order issued December 1, 2017.² With the exception of AARP whose concerns are addressed below, comments on the units plan were generally favorable.³

² Bridging the Digital Divide for Low-Income Consumers, et al (Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order. Notice of Proposed Rulemaking, and Notice of Inquiry), 32 FCC Rcd 10475 (2017) at ¶ 80.

³ See, e.g., Comments of the Missouri Public Service Commission at 8 (“TracFone’s proposal may simplify program requirements for ETCs by giving them greater flexibility in offering a plan to meet Lifeline’s minimum standards. Consumers may benefit through greater choices and options in Lifeline service plans.”).

On December 1, 2018, the Lifeline minimum standards will again be increased to 1,000 minutes for voice and 2 GB for mobile broadband service. This increase has caused TracFone to modify its units proposal. If permitted by the Commission, TracFone will provide to every SafeLink Wireless® Lifeline customer 2,000 units per month which can be used either for voice or for mobile broadband. Each unit will be usable for one minute of voice service or for one MB of mobile broadband service. Significantly, those Lifeline consumers who use their units solely for voice will receive 2,000 minutes per month – double the minimum service standard for voice. Those Lifeline consumers who split their usage evenly between voice and broadband will receive 1,000 minutes of voice (the minimum service standard as of December 1, 2018) **and** 1 GB of mobile broadband. Those Lifeline consumers who elect to use their units allotment solely for mobile broadband will receive 2 GB per month.

Other commenters viewed TracFone's proposal favorably. For example, Q Link Wireless LLC agrees that consumers would benefit, that nothing in the Commission's rules would prohibit such a plan, and that the plan would result in service being made available which meets the codified minimum service standards.⁴ Several state commissions did not specifically address TracFone's units proposal but did comment on the importance of continued Lifeline support for voice service.⁵ The fact that state commissions overwhelmingly endorse the continued availability of Lifeline support for voice is especially significant. Those state commissions are close to the telecommunications service users in their states. They hear from

⁴ Letter from John T. Nakahata, Counsel to Q Link, filed in WC Docket No. 11-42, September 26, 2017.

⁵ See, e.g. Reply Comments of the Pennsylvania Public Utilities Commission in WC Docket No. 17-287 at 26-30; comments of the California Public Utility Commission at 8, the Florida Public Service Commission at 4, the Nebraska Corporation Commission at 6-7, and the Oklahoma Corporation Commission at 9. See also Comments of the National Association of Regulatory Utility Commissioners at 24. As indicated at n. 3, the Missouri Public Service Commission affirmatively supported the units proposal.

their constituents, including their low-income constituents, about the importance of affordable service, specifically, affordable voice telephone service. TracFone's units proposal would address the concerns of those state commissions regarding available voice service while also adhering to the Commission's requirement to make available broadband service which meets the minimum service standards.

Few commenters objected to TracFone's units proposal, either in the context of its interim waiver request or in response to the Commission's 2017 Lifeline Reform Order. One party which did oppose the proposal was AARP. However, AARP's opposition is based upon a misunderstanding of the proposal. In its comments, AARP opposed the units proposal because "consumers' access to voice services should not be impinged by broadband usage."⁶ That concern disregards the current "either/or" minimum service standard as interpreted by the Wireline Competition Bureau without benefit of public comment in 2016.⁷ Under that September 2016, Bureau interpretation, a Lifeline consumer's access to voice service is not only impinged by broadband service, it may be – and often is – entirely eliminated as a result of the consumer's access to broadband service. If a Lifeline ETC meets the minimum service standard for broadband, there is no requirement that the ETC provide the consumer with **any** access to voice service. TracFone is one ETC whose Lifeline service meets the minimum service standard for broadband and also provides some voice service.⁸ TracFone, and perhaps several other

⁶ Comments of AARP filed in WC Docket No. 17-287, February 21, 2018, at 18.

⁷ Public Notice – Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards, DA 16-1118, released September 30, 2018, at ¶ 15.

⁸ TracFone's SafeLink Wireless[®] Lifeline consumers receive mobile broadband which meets the minimum service standard (currently 1 GB per month which will increase to 2 GB per month on December 1, 2018). In addition, and without any obligation to do so, TracFone provides those consumers with 350 minutes per month of voice service.

ETCs, who meet the broadband minimum service standard, provide Lifeline subscribers with some voice service as a courtesy. However, there is no requirement that they do so, and with the additional costs of providing service resulting from the doubling of the broadband minimum standard from 1 GB to 2 GB some providers may no longer be able to afford to provide more service than required to meet the Commission's minimum service standards. If that were to occur, then Lifeline consumers whose service meets the current minimum service standard for broadband will receive no voice service through the Lifeline program.

TracFone does not believe that all Lifeline consumers who select Lifeline plans which meet the broadband minimum standard should have no voice service available. The units proposal will allow those consumers to manage their monthly Lifeline benefit based upon their own needs. Those consumers who make heavy use of mobile broadband and are willing to forego any Lifeline-supported voice service will be free to do so. Other consumers who need voice service will be able to use portions of their 2,000 units monthly allotment for voice service. It is difficult to imagine any valid public interest reason to deny Lifeline consumers that ability to manage their monthly Lifeline benefit based on their own needs and preferences. Consumers – not the Commission – are in the best position determine which combination of voice and broadband service best meets their current needs. The units plan would empower Lifeline consumers to determine how to use their Lifeline service to best meet their telecommunications needs.

II. Allowing TracFone to Implement the Modified Units Plan Proposal as a Market Test Will Provide Invaluable Information To the Commission in Advance of the Scheduled 2021 Phase-Out of Lifeline Support for Voice Service

If the Commission has questions about how the units proposal would work in practice then it should allow TracFone to conduct a market test during the year commencing December 1, 2018. By allowing TracFone to afford its Lifeline consumers the ability to allocate their monthly

Lifeline service allowance between voice and broadband, TracFone and the Commission will be able to evaluate consumer response to the plan. This market test will yield invaluable information regarding consumers' preferences and needs. Do consumers still utilize voice service even when mobile broadband Internet access is available? Does consumer usage of voice service *vis-à-vis* broadband vary based on age, location, or other demographic factors? To what extent should the Lifeline program continue to support voice telephone service? These and other questions (the answers to which are unknown at this time) can be answered through the empirical evidence compiled during the market test. More than a half century ago, U.S. District Court Judge Harold Leventhal observed that for some issues, "a month of experience will be worth a year of hearings."⁹ This is such a situation. If allowed to implement its units proposal on an interim market test basis, TracFone will provide every SafeLink Wireless[®] consumer with 2,000 units per month which can be used for mobile broadband or for voice service. Consumers will enjoy the flexibility to use those units based on their needs, and TracFone will be able to monitor that usage and report to the Commission at the end of the test how Lifeline consumers responded to their options to use voice or broadband service. If allowed to implement the proposed units plan on an interim or market test basis, TracFone is willing to prepare and submit to the Commission (or to the Wireline Competition Bureau) a report as part of its units plan market test.

In the 2016 Lifeline Modernization Order,¹⁰ the Commission announced its intent to modernize the Lifeline program to support broadband. As part of that modernization, the Commission ordered that Lifeline support for voice service be phased out by December 1,

⁹ American Airlines v. CAB, 359 F.2d 624 (D.C. Cir. 1966).

¹⁰ Lifeline and Link Up Reform and Modernization, et al (*Third Report and Order, Further Report and Order, and Order on Reconsideration*), 31 FCC Rcd 3962 (2016).

2021.¹¹ However, the Commission attached an important qualification to that scheduled voice phase-out. The Commission directed the Wireline Competition Bureau by June 21, 2021 to submit a “State of the Lifeline Marketplace Report.” That report is to review the Lifeline marketplace for the purpose of recommending whether to complete the voice phase-out as scheduled or whether the Commission should delay that phase-out.¹² The Commission further indicated that it would make such changes to the Lifeline program as necessary based on the Bureau’s report within six months of receiving the support.

It is one thing for the Commission to direct the Wireline Competition Bureau to prepare a report. It is quite another thing for the Bureau to have the information needed to prepare a report based on actual experience which is meaningful and which provides insights into consumer behavior. The units plan market test proposed by TracFone will provide the Bureau (and others) with important information regarding Lifeline consumer preferences and perceived needs. Indeed this market test will be worth years of hearings, rulemakings, and other regulatory proceedings which provide little insight into actual consumer needs and preferences or into actual consumer behavior.

Conclusion

For the reasons set forth in this renewed motion, TracFone respectfully urges the Commission to act promptly on its request to implement a revised units plan as described herein in time for that plan to be introduced simultaneously with the forthcoming increase in the Lifeline minimum service standards scheduled to occur on December 1, 2018. Whether done by a declaratory ruling, waiver, or a Commission-approved market test, the units plan will benefit Lifeline consumers and will provide invaluable information to the Wireline Competition Bureau,

¹¹ *Id.*, at ¶ 66.

¹² *Id.*

the Commission, the industry, and other stakeholders in advance of the December 2021 scheduled phase-out of Lifeline support for voice service.¹³

Respectfully submitted,

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¹³ On July 23, 2018, NTCA – The Rural Broadband Association, filed a petition for temporary waiver wherein it renewed an earlier request for waiver of the broadband speed minimum service standards applicable to fixed wireline broadband Internet access service. That request involves a different provision of the minimum service standards codified at 47 C.F.R. § 54.408, and TracFone takes no position on NTCA’s petition.