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August 4, 2016

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VIA ELECTRONIC FILING

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

RE: *Lifeline and Link Up Reform and Modernization* (WC Docket No. 11-42); *Telecommunications Carriers Eligible for Universal Service Support* (WC Docket No. 09-197); *Connect America Fund* (WC Docket No. 10-90)
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch,

On August 3, 2016, Mark Rubin, Senior Executive, Government Relations, TracFone Wireless, Inc. ("TracFone"), Elizabeth Simonhoff Perez, Senior Manager, Health Care, TracFone, Shawn Chang, Wiley Rein LLP, and the undersigned met with Michele Ellison, Deputy General Counsel of the Federal Communications Commission and Chair of the FCC's Connect2Health FCC Task Force, and Karen Onyeije, Chief of Staff, Connect2Health FCC Task Force to discuss TracFone's SafeLink Wireless healthcare initiatives.

In the course of the meeting, we discussed the adverse impact that phasing out Lifeline support for voice would have on low income consumers that are currently benefitting from TracFone's partnership with healthcare providers. Under that partnership, TracFone provides free voice minutes and text messages for enrollees to communicate with their doctors and health maintenance organizations. Because subscribers to the service tend to be a transient population, voice and text messages remain the primary means by which caregivers can reach out and communicate. Therefore, consistent with TracFone's Petition for Reconsideration of the Commission's *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), we urged the FCC to reconsider its phased elimination of standalone voice service from the communications service options available to Lifeline consumers.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Sincerely,

/s/

Anna M. Gomez

Attachment

cc: Michele Ellison
Karen Edwards Onyeije

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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	)	
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	)	
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Connect America Fund	)	WC Docket No. 10-90

PETITION FOR RECONSIDERATION

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Its Attorneys

June 23, 2016

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SUMMARY

In the Lifeline Modernization Order, the Commission adopted several amendments to its Lifeline program rules to include broadband service and improve the administration of the program to reduce waste, fraud and abuse of Universal Service Fund resources. TracFone agrees with many of the Commission's changes to the Lifeline program, such as including broadband service, requiring mobile broadband Lifeline providers to make Wi-Fi-enabled devices available to Lifeline consumers, and establishing a National Verifier. However, TracFone requests the Commission to reconsider rules which will deny low-income consumers the ability to choose services that best meet their communications needs and will thwart the Commission's efforts to narrow the digital divide by expanding low-income consumers' access to broadband service.

TracFone opposes the phased elimination of standalone voice service from the communications service options available to Lifeline consumers. The Commission incorrectly assumes that broadband is a complete or adequate replacement for traditional telephone service, including access to E911, NG911, and other N11 services. The Commission underappreciates the fact that many current Lifeline customers rely on affordable telephone service provided under the Lifeline program to meet their communications needs and assumes without any basis that those customers actually want or need a certain level of broadband services.

TracFone urges the Commission to reconsider the minimum minute standards for wireless voice Lifeline service. Over the next two years the mandatory monthly minutes will double from 500 to 1,000, while monthly Lifeline support will be reduced by more than forty percent over a four year period. Contrary to the Commission's assertion, carriers' costs to provide service have not decreased to levels sufficient to support the minimum service mandates. As such, low-income households will be required to make burdensome monthly payments for

service, and if unable to do so, will be forced to de-enroll from Lifeline service that previously enabled them to meet their communications needs without requiring any payments.

The Commission should also reconsider its minimum service standards for mobile broadband, including the formula for adjusting those standards after December 1, 2019. The cost of providing the amount of data required for Lifeline service will require TracFone to charge a monthly fee for broadband Lifeline service. TracFone learned through its participation in the Commission's broadband pilot programs that low-income consumers will not purchase Lifeline-supported broadband service even if the cost is modest. TracFone also questions whether the mandatory minimum data amounts are necessary to provide low-income consumers with sufficient, functional, reliable, and secure access to the Internet. The Commission should set data usage standards at a level that will meet the needs of low-income consumers, but will not impede broadband adoption. The Commission should require that the deadline for completion of the Lifeline performance evaluation be advanced to December 31, 2018 to ensure that that Lifeline program continues to meet low-income consumers' communications needs and to afford the Commission sufficient time to make adjustments to the phase out schedules set forth in the order.

Finally, regarding the non-usage rule, TracFone requests that the Commission include receipt of text message as usage because such receipt is analogous to the answering of an inbound call – both are tracked in call detail records and indicate an intent by the consumer to use Lifeline service to receive information. TracFone also asks the Commission to maintain the 60 day non-usage period and 30 day cure period because there is no evidence that the rule has not been effective and halving the relevant time periods will significantly increase costs to consumers and Lifeline providers.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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PETITION FOR RECONSIDERATION

TracFone Wireless, Inc., by its attorneys, and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, hereby petitions the Commission for reconsideration of its recent Lifeline Modernization Order.[1]

INTRODUCTION

In the Lifeline Modernization Order, the Commission promulgated a series of regulatory reforms intended to modernize and improve the Lifeline program. TracFone is the nation's leading provider of Lifeline-supported service, with more than 4.6 million qualified low-income households receiving service through TracFone's SafeLink Wireless® Lifeline program. As such, it participated actively throughout this proceeding. Many of those reforms are consistent with TracFone's view of what Lifeline is and what it should be, and it commends the Commission for taking those bold steps. TracFone agrees that Lifeline should be expanded to support broadband service and it applauds that modernization. TracFone congratulates the Commission for taking the bold step of adopting TracFone's proposal to require that mobile

[1] 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) ("Lifeline Modernization Order").

broadband Lifeline providers make available Wi-Fi-enabled devices so that Lifeline consumers can access the Internet wherever Wi-Fi is available. TracFone also supports the establishment of a National Verifier to make Lifeline eligibility determinations. However, it recognizes that the establishment of a National Verifier will be a complicated undertaking, that it will take substantial resources and time to implement comprehensively and correctly, and that it will not provide an "overnight" solution to enrollment abuses made possible under the current processes. For that reason, TracFone reiterates several of its previously-made fraud prevention proposals, including prohibiting real-time, in-person handset distribution, prohibiting incentive-based agent compensation, and taking necessary steps to preclude the Universal Service Administrative Company's ("USAC") Independent Economic Household Worksheet from being misused to defraud the Lifeline program. Meaningful efforts to prevent program fraud cannot await implementation of the National Verifier. TracFone respectfully asks the Commission to consider enactment of these fraud prevention measures now.

In this petition, TracFone brings to the Commission's attention several important aspects of the Lifeline Modernization Order that it believes will not achieve the Commission's goals and which, unless changed on reconsideration, will undermine the Lifeline programs, and will reduce the availability of essential telecommunications services to those who rely on Lifeline support and who need that support to enjoy the benefits of network connectivity and access.

I. The Commission Should Expand Lifeline to Support Broadband, but not at the Expense of Eliminating Support for Standalone Wireless Voice Service – a Service Relied on by Millions of Low-Income Households for Access and Connectivity, Including for Emergency Situations.

In TracFone's view, perhaps the most problematic aspect of the Lifeline Modernization Order is the decision to eliminate Lifeline support for most standalone voice telecommunications service and all standalone wireless voice service by December 1, 2021. Although the elimination of such Lifeline-supported voice service will not occur for five years, that phased elimination only postpones, but does not eliminate, loss of an essential service relied upon for years by millions of low-income households. The growing importance of broadband as an essential component of 21st Century life cannot be disputed. Persons of all economic circumstances should be able to access the Internet to obtain information, to apply for jobs, and to complete homework assignments and other research projects, should they choose to do so. However, the Commission is reminded that having access to the Internet at broadband speed is more critical for some consumers than for others. There are and will always be a portion of the populace for whom the most essential telecommunications service is the ability to make a phone call or receive a phone call, without regard to whether those persons can afford a bundled Lifeline service which includes both voice and broadband service. This importance was noted by Commissioner Michael O'Rielly who, in his dissenting statement, stated as follows:

> The Commission, however, precludes support for basic mobile voice or broadband service that does not meet its vision of what a Lifeline service ought to be. Here again, the agency takes a paternalistic approach, telling recipients what they need rather than letting consumers decide whether a more affordable option would be sufficient. **Some recipients might want a broadband connection to fill out a job application. But others might just want a simple voice service to use in case of an emergency – the original purpose of the program**.[2]

On this specific issue, Commissioner O'Rielly makes a valid and important point: many existing Lifeline customers may not perceive a want or a need for broadband Internet access. However, they have long relied on and continue to rely upon available and affordable voice telephone service – to keep in contact with family members, to reach and be reached by employers, to communicate with health care providers, and to report emergencies, including life-threatening situations. TracFone works with several Health Maintenance Organizations

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[2] Lifeline Modernization Order (*Dissenting Statement of Commissioner Michael O'Rielly*), 31 FCC Rcd at 4185 (emphasis added).

("HMOs") to offer its SafeLink Wireless® Lifeline service to the HMOs' Medicaid enrollees. As part of the enhanced Lifeline service offered by TracFone to Medicaid enrollees through the HMOs, TracFone does not deduct minutes for any calls placed by those enrollees to their health plans. This feature enables Medicaid enrollees who receive TracFone's Lifeline service to communicate with their health plans even if they have no allotted minutes remaining for a particular month. Those Lifeline consumers rely on this voice service feature for important health-related purposes. The reliance of millions of Lifeline subscribers on the availability of affordable voice service, including those SafeLink Wireless® Lifeline subscribers who are also Medicaid enrollees, will not disappear by December 1, 2021. For those consumers and millions of others, Lifeline-supported standalone voice service should always remain available. This important safety net can be retained without impeding the transition of Lifeline to support broadband service.

The mandatory abolition of standalone voice Lifeline service set forth in the Lifeline Modernization Order is based on an unproven and incorrect premise: that broadband has replaced traditional telephone service.[3] Although it might be true that broadband is beginning to provide some limited voice and texting options, nothing in the record demonstrates how well those options work or to what extent such voice and texting options are available now or will be available on December 1, 2021. Nor is there any indication of how reliable and user friendly those "options" are or will be. More importantly, nothing in the Lifeline Modernization Order provides any basis for assuming or expecting that those broadband voice and texting options will allow for access to Enhanced 911 ("E911") and Next Generation 911 ("NG911") services –

[3] *Id.*, at 3980, ¶ 49 ("In many areas, as the communications market evolves, broadband is replacing traditional telephone service and providing subscribers with voice and texting options in addition to Internet access.").

services which are essential to public safety. Nor is there anything in the record to demonstrate that critical state, city and community services which rely on N11 numbers, including, for example, 211 (United Way); 311 (Municipal Governments non-emergency services); 511 (traffic or police non-emergency services); 711 (TDD and relay services); and 811 (underground public utility location services), will be available using broadband voice or texting options. Until 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 service (for which E911 NG911 and N11 access are mandatory) will remain essential services, and must remain available, and must remain eligible for full Lifeline support on a standalone basis.

In the Lifeline Modernization Order, the Commission describes its plan to reduce support for and then eliminate standalone wireless voice Lifeline service as "technologically neutral." In fact, the plan is the antithesis of technological neutrality. While mandating a phased elimination of wireless voice Lifeline service beginning December 1, 2019, the Commission has decided to preserve the availability of standalone voice Lifeline services provided by telephone carriers who are the only Lifeline provider within their census blocks. It is unexplained and unexplainable how consumers of such carriers which, in virtually all cases are incumbent wireline carriers, should continue to have available those carriers' standalone voice Lifeline services if such services best meet their needs, but that consumers of wireless Lifeline providers would lose their access to such services starting as soon as 2021.

Just this week, the U.S. House of Representatives voted on a bipartisan basis to reject legislation, introduced by Representative Austin Scott (R-GA), to prohibit a wireless carrier from participating in the Lifeline program.[4] In stating his strong opposition to the bill, Energy and Commerce Committee Ranking Member Frank Pallone Jr. (D-NJ) argued passionately that "children from low-income homes use lifeline to help do their homework; seniors use it to manage their healthcare and call their family and loved ones; victims of domestic violence use it to find the help and support they need; and victims of assaults use their Lifeline phones to call 9-1-1 in an emergency." All of these examples serve to illustrate the critical role mobile *voice* services play in the daily lives of Lifeline participants today. By pricing mobile voice services out of the reach of many low-income Americans, the Commission's decision to reduce then terminate support for standalone mobile voice services runs the risk of inadvertently accomplishing what Rep. Scott failed to do – taking away Lifeline customers' connection to a better life.

II. The Minimum Service Standards for Voice and for Broadband Data Will Hurt Low-Income Consumers, Are Not Supported by the Record, and Should Be Revised on Reconsideration.

In the <u>Lifeline Modernization Order</u>, the Commission for the first time promulgated minimum service standards for voice and broadband Lifeline services. The principle underlying the Commission's minimum standards is that Lifeline customers should have access to services comparable to those to which a "substantial majority" of Americans are subscribed.[5] TracFone agrees with the principle that providers should offer qualified Lifeline households services comparable with those available to most Americans to the extent that such levels of service are economically feasible within the support levels available. What is missing from the Commission's analysis underlying its establishment of minimum service standards is any

[4] "End Taxpayer Funded Cell Phones Act of 2016" Roll Call Vote No. 334. Congr. Rec. 162:99 (daily ed. June 21, 2016).

[5] *Id.*, at 3990, ¶ 77.

recognition or acknowledgment of the limits on the amounts of service which can be provided within the subsidy levels available. Lifeline service should be comparable to services used by most Americans, but it must also be affordable. Indeed, the Commission stressed in the Lifeline Modernization Order that "[a]ffordability must remain a central touchstone within the Lifeline program."[6] Establishing service standards which necessitate imposition of consumer charges or "co-pays" which are beyond the means of many Lifeline households or which those households have no practicable means for remitting renders those services unaffordable and therefore *de facto* unavailable to consumers.

Moreover, mandating specific quantities of service which must be provided is a back door means of regulating prices. Instead of determining what price providers may charge for service, the minimum service standards determine how much service must be provided. The result is the same: the Commission is engaging in a form of price regulation. The point of this petition is not to address whether the Commission may lawfully regulate prices for Lifeline-supported services. Rather, the point is whether the Commission **should** so regulate Lifeline service, either directly by establishing mandatory rates, or indirectly by establishing mandatory service quantities which must be provided.

At the inception of the Lifeline program in the mid-1980s, there was no competition in the provision of Lifeline services. Only incumbent wireline local exchange carriers were required to offer Lifeline discounts and those discounts were only applicable to those carriers' local exchange services, primarily to offset the Subscriber Line Charges imposed on consumers by the Commission's access charge rules.[7] With the advent of wireless Lifeline pioneered by

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[6] *Id.* at 3984, ¶ 57; *see also* 47 U.S.C. § 254(b)(1) (Congress has mandated that "[q]uality services should be available at just, reasonable, and affordable rates.").

[7] 47 C.F.R. Part 69.

TracFone in 2008, the Lifeline market has become increasingly competitive. Instead of requiring monthly payments as the wireline local exchange carriers have for over two decades, TracFone provided free equipment (paid for by its own resources and not supported by the Universal Service Fund ("USF")) and quantities of free service (including long distance and roaming) for Lifeline customers. Today, many consumers have available a multiplicity of Lifeline service options – wireless and wireline. That emergence of competition has produced significant Lifeline service enhancements: wireless providers made Lifeline-supported service available for all distance calling – calls to anywhere from anywhere, not just calling from residential phones within local exchanges; wireless usage benefits increased from 68 minutes per month to 250 minutes to 350 minutes (and will, by December 1, 2016, increase again to 500 minutes); unlimited text messaging – the communications medium of choice for millions of consumers – is now available through certain wireless Lifeline plans, including TracFone's SafeLink Wireless® service.

Consumers who are dissatisfied with their current Lifeline service provider or who become aware of better Lifeline plans may easily transfer their Lifeline support to another provider's Lifeline service. Those consumers who want a Lifeline-supported discount on their local exchange service may get it; those who prefer a wireless Lifeline plan with unlimited calling and who are willing to pay monthly fees for such unlimited calling may select such plans; and those who do not want or need unlimited calling or who cannot afford to pay any amount, may choose from among multiple plans which provide specified quantities of usage at no charge.[8] Chairman Wheeler often has described his mantra for the Commission's telecommunications policy as "competition, competition, competition."[9] Competition, competition, competition has come to the Lifeline services marketplace making imposition of mandatory "one size fits all" service standards unnecessary and inefficient. Moreover, that approach will force unnecessary and unwanted costs on Lifeline participation and imposition of those costs will undermine the Commission's stated goal of enhancing Lifeline participation.

a. Establishing a Monthly Voice Minimum Service Standard of 1,000 Minutes Is Premature and Should Be Reconsidered.

Effective December 1, 2016 (assuming prior publication of Office of Management and Budget approval as required by the Paperwork Reduction Act), all wireless Lifeline service plans must provide at least 500 minutes per month. The minimum minute standard will increase to 750 minutes on December 1, 2017, and will increase again to 1,000 minutes on December 1, 2018.

TracFone already has notified the Commission that it is committed to meeting the 500 minute threshold by December 1, 2016.[10] Thus, it is not seeking reconsideration of that initial minimum voice minutes standard and, in fact, supports the 500 minute threshold. However, the subsequent mandated increases to 750 minutes and again to 1,000 minutes are problematic,

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[8] TracFone has even proposed a plan which would enable consumers to switch monthly from unlimited service with a co-pay requirement to a 500 no-charge minute option with the switch occurring automatically depending on the consumer's making the co-payment in any month. *See* Letter from Mitchell F. Brecher on behalf of TracFone to Ms. Marlene H. Dortch, Secretary, filed March 23, 2016, in WC Docket No. 11-42, at 2.

[9] *See*, *e.g.*, Remarks of FCC Chairman to Wheeler, INCOMPAS Policy Summit, April 11, 2016, at 5; Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act, 30 FCC Rcd 6574 (2015), Statement of Chairman Wheeler, at 1.

[10] *See* TracFone March 23, 2016 ex parte letter, as referenced at Lifeline Modernization Order, 31 FCC Rcd 3999, ¶ 102 n.299.

especially in light of the Commission's announced reduction in monthly Lifeline support for voice-only services from the current level of $9.25 to $7.25 on December 1, 2019, and to $5.25 on December 1, 2020. In short, the Commission's standards will double the monthly minutes requirement (from 500 to 1,000) over a two year period and will reduce the monthly support level by more than forty percent (from $9.25 to $5.25) over a four year period.

The scheduled increase in the minimum minutes requirement and scheduled reduction in monthly USF support is premised upon the Commission's belief that the costs of providing wireless service, including the wholesale prices charged by facilities-based carriers to wireless reseller Lifeline providers, are declining. However, nothing in the record provides any evidentiary basis to support that belief. In concluding that wireless wholesale prices have decreased to levels sufficient to support the mandated phased support reductions and benefits increases, the Commission cites to some anecdotal evidence of **retail** rate reductions and high wireless voice service adoption rates overall and specifically, by low-income consumers.[11] Absent from the Commission's analysis are any data which demonstrate that wireless **wholesale** prices have decreased to levels which would make the mandated minutes increases and support reductions economically viable for any Lifeline provider without imposition of burdensome co-payment requirements on low-income households. TracFone is not only the nation's largest provider of Lifeline service; it is also the nation's largest Mobile Virtual Network Operator. It has entered into bulk purchase agreements with each of the major national wireless carriers and purchases more wholesale wireless airtime than any other company in the United States. As the largest consumer of wholesale service, TracFone has more purchasing power than any other wireless Lifeline provider. Based upon its experience negotiating wholesale rates with network

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[11] Lifeline Modernization Order, at 3982-83, ¶ 55.

operators, TracFone has no reason to expect that its wholesale costs will decrease by forty percent or even anywhere close to that level between now and 2020.

TracFone agrees with the Commission that Lifeline benefits should be increased over time. In fact, TracFone's benefits have done so, having increased sevenfold since 2008 as a result of competitive forces, not Commission-mandated standards. However, the imposition of mandatory minute increases and corresponding reductions in support will create a situation in which providers cannot economically sustain their Lifeline service without imposing mandatory payments on low-income consumers. Those low-income consumers who cannot afford to make such monthly payments or who have no practical means of doing so will be forced to de-enroll. It is difficult to imagine any public interest benefit which would result from forcing millions of Lifeline customers to de-enroll from a service which they deemed sufficient to meet their needs and which did not require them to make out-of-pocket payments they could not afford.

For the reasons set forth in this petition, TracFone respectfully asks the Commission to reconsider the mandatory increases in voice minutes and corresponding reductions in USF support for standalone voice Lifeline services. However, if the Commission chooses not to reconsider those changes, then TracFone strongly urges the Commission to recognize that the impact of those changes will make voice Lifeline service unaffordable to significant numbers of low-income households and to conduct further proceedings as necessary to identify solutions to that problem. Pricing Lifeline service at levels beyond the means of those households will do no more to keep those households connected than would elimination of the program.

b. The Minimum Broadband Data Requirements Will Deny Affordable Internet Access to Low-Income Consumers and Should Be Reconsidered.

The Lifeline Modernization Order establishes the following minimum service standards for mobile broadband data usage: (1) 500 megabytes ("MB") per month starting December 1, 2016; (2) 1 gigabyte ("GB") per month starting December 1, 2017; (3) 2 GB per month starting December 1, 2018; and (4) an amount calculated pursuant to a formula set forth in the Commission's rules starting December 1, 2019.[12] Although the minimum broadband data usage requirements will continue to increase over time, the amount of Lifeline support for broadband will remain at $9.25. The cost of providing the quantity of mobile broadband data mandated for Lifeline service will require TracFone to charge Lifeline customers a monthly fee for broadband service. As described below, TracFone and other providers learned based upon actual experience that most low-income consumers will forgo Lifeline-supported broadband service if they are required to pay even modest amounts for the service. Such a result would be directly contrary to the Commission's stated purpose for establishing broadband Lifeline service: to ensure that every American has access to sufficient broadband service.[13]

During 2013 and 2014, TracFone participated in the Commission's Broadband Adoption Lifeline Pilot Program ("Pilot Program"). The Commission selected fourteen projects to gather data to be used to determine effective approaches to increase and retain broadband adoption by low-income consumers. TracFone's Pilot Program project examined the effects of monthly fees ($10, $20 or $35 per month) and costs of hardware (providing a free or discounted smartphone) on low-income consumers' willingness to purchase service plans that included broadband service. Each of the service plans offered in TracFone's Pilot Program project included

[12] Lifeline Modernization Order, at 3986, ¶ 65 (amended rule 47 C.F.R. § 54.408(b)(2)(iii)).

[13] *See id.*, at 3969, ¶ 22.

unlimited voice calling, unlimited text messages, and 2 GB of data. TracFone's Pilot Program results indicated that the price of a plan including broadband is the primary factor that impacts demand for broadband service among qualified low-income households. Overall, a very small percentage (1.3 percent) of Lifeline-eligible consumers who received a broadband service plan offer from TracFone actually commenced service by paying for at least one month of service. Although consumers were more likely to pay for the plan with the lowest cost to them (free device and $10 monthly charge), only 2 percent of consumers who received an offer to purchase the lowest cost broadband service plan commenced service by paying for at least one month of service.[14]

TracFone estimates that it would cost approximately $40 per month to provide a Lifeline consumer with a smartphone, unlimited voice and texts, and 1 GB of data. Thus, consumers who are eligible for a $9.25 Lifeline subsidy would still be required to pay over $30 a month to receive a bundled voice and broadband service. Given that only 2 percent of Lifeline customers who received an offer to pay $10 per month actually accepted the offer and paid for even one month of service which included broadband (and only 0.2 percent purchased the plan priced at $35 per month), requiring Lifeline customers to pay even a modest amount for broadband service, let alone $30 per month, would discourage such low-income consumers from purchasing broadband service, and, more importantly, would not narrow the digital divide which is at the heart of the Commission's goal of expanding broadband adoption by low-income households.

[14] *See* TracFone's Broadband Adoption Lifeline Pilot Program Report, filed in Docket No. 11-42, May 18, 2015. For Pilot Program plans with a higher monthly cost, the percentage of consumers who received an offer for service and actually commenced service by paying for at least one month of service was even lower. Only 0.2 percent of consumers who received an offer to pay $35 a month for service actually commenced service by paying for at least one month of service. *Id.*

Even if Lifeline providers were able initially to offer broadband service at rates affordable to Lifeline-eligible consumers, adjustments to the minimum data usage allowance standards that would commence December 1, 2019 under the Commission's plan set forth in the Lifeline Modernization Order, will quickly price broadband service out of reach to many low-income households. Beginning December 1, 2019, the minimum service standard for the mobile broadband data usage allowance would be updated annually to equal "70 percent of the calculated average mobile data usage per household."[15] As described in the amended rules, the average mobile data usage per household would be determined by multiplying the average number of mobile smartphone subscriptions per household by the average data used per mobile smartphone subscriber. The product is then multiplied by .7 to represent that amount of data used by a "substantial majority" of subscribers.[16]

Using the formula set forth in the amended rules, the Commission calculated the minimum service standard for mobile data usage to be 2 GB per month based on the following data from the U.S. Census Bureau and the Commission's Eighteenth Mobile Competition Report, released in 2015: the average number of mobile subscriptions per household is 3.03; the average number of smartphone subscriptions per household is 2.33 (77 percent of the mobile subscriptions are smartphone subscriptions); and the average smartphone user uses 1.361 GB per month.[17] Even if the average number of mobile subscriptions per household were to remain constant over the next few years (an improbable assumption), the percentage of mobile subscriptions that are smartphone subscriptions is expected to increase to 86.5 percent by 2019,

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[15] Lifeline Modernization Order, 31 FCC Rcd at 3995, ¶ 94.

[16] *Id.* at 3995-96, ¶ 94 (amended rule 47 C.F.R. § 54.408(c)(2)(ii)).

[17] *Id.* at 3995-96, ¶ 94-95 (citing U.S. Census Bureau, American Factfinder, 2015 (citation omitted); Eighteenth Mobile Competition Report, Order, 30 FCC Rcd 14515 (WTB 2015)).

resulting in an average of 2.62 smartphones per household.[18] Moreover, the average data usage per smartphone is expected to increase to 4.4 GB per month by 2020.[19] Applying the Commission's formula would result in a minimum Lifeline service standard for mobile data usage of 8 GB per month (2.62 smartphones per household x 4.4 GB per phone x .7 = 8.07 GB) by 2020.[20]

Requiring Lifeline providers to offer mobile broadband service including 8 GB of data per month would impede, rather than facilitate, broadband adoption by low-income consumers. The cost of providing data is substantially higher than providing voice and text communications services, and TracFone does not expect the cost to significantly decrease over the next few years. Indeed, TracFone, as a reseller, has long term agreements with its underlying carriers that lock in wholesale rates for data. The retail cost for a broadband service plan offering at least 8 GB of data with hotspot capability currently ranges from $70 to $120 per month for the four largest United States carriers, not including each carrier's taxes, fees and surcharges or the cost of the

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[18] *See* Smartphone user penetration as share of mobile phone users in the United States from 2014 to 2019, http://www.statista.com/statistics/201184/percentage-of-mobile-phone-users-who-use-a-smartphone-in-the-us/.

[19] *See* Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2015–2020 White Paper, February 1, 2016, http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.html (Table 2). Cisco's estimates are conservative when compared to forecasts released by Ericsson. The Ericsson Mobility Report for June 2016 states that by 2021 average data traffic per smartphone in North America will be 22 GB per month. *See* Ericsson Mobility Report, June 2016, http://www.ericsson.com/res/docs/2016/mobility-report/ericsson-mobility-report-2016.pdf. Assuming 2.62 smartphones per household and applying the Commission's formula to Ericsson's forecasted data usage would result in a minimum Lifeline service standard for mobile data usage of over 40 GB per month by 2021.

[20] Basing the mandatory level of broadband service on average household usage (among multiple connected devices) is especially problematic and inappropriate given the one-per-household rule for Lifeline. Under the Commission's broadband data standard, unless reconsidered, Lifeline providers would be required to provide to a single service (one device) quantities of broadband data based on a percentage of average household usage among multiple devices.

equipment (such as smartphone or hotspot). Therefore Lifeline consumers would need to pay at least $60 a month for broadband service based upon those prices offset by a $9.25 monthly subsidy.[21] Establishing a minimum data usage amount for Lifeline broadband service that would require low-income households to incur even $35 a month in out-of-pocket costs would perpetuate the current situation in which low-income consumers are forced to rely on Wi-Fi and other community resources, such as public libraries, schools, restaurants and coffee shops to gain access to the Internet rather than to pay for an unaffordable mobile broadband service plan.

TracFone respectfully urges the Commission to reconsider whether the minimum data usage amounts established in the Lifeline Modernization Order, as well as the formula for adjusting those amounts over time, would enable low-income consumers to have affordable access to mobile broadband service and whether such a requirement would serve the purpose of the Lifeline program. TracFone agrees with the Commission that "broadband is an essential tool for completing homework, searching and applying for jobs, and interacting with healthcare providers."[22] TracFone also fully supports the Commission's position that Lifeline broadband services provide "sufficient capacity, security, and reliability to be dependable in times of

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[21] *See* Verizon - Data Only Plan, http://www.verizonwireless.com/landingpages/data-only-plan/ (last visited June 16, 2016) ($50 per month for an 8 GB plan plus $20 access charge per month for a hotspot); T-Mobile - Simple Choice Plan, http://www.t-mobile.com/cell-phone-plans.html (last visited June 16, 2016) ($80 per month for 10 GB plan (T-Mobile does not offer an 8 GB plan)); Sprint – Choose your high-speed data https://www.sprint.com/shop/plan-wall/#!/?plan=individual (last visited on June 16, 2016) ($80 per month for a 12 GB plan (Sprint does not offer an 8 GB plan)); AT&T – Mobile Share Value, https://www.att.com/shop/wireless/data-plans.html (last visited on June 16, 2016) ($95 per month for 5GB plan and 3GB overage plus $20 access charge per month for a hotspot; $100 per month for 15 GB plan plus $20 access charge per month for a hotspot (AT&T does not offer an 8 GB plan)).

[22] Lifeline Modernization Order, at 3969, ¶ 22.

need."[23] However, given the high cost of data, as well as the expected exponential growth in smartphone data usage, TracFone is concerned that low-income consumers will not be able to afford an expensive broadband service plan even with a Lifeline-supported subsidy of $9.25.

TracFone requests that the Commission reconsider whether it is advisable and consistent with the purpose of the Lifeline program to set minimum data usage standards that provide data amounts that are multiples of the amount necessary for low-income consumers to have meaningful access to the Internet, specifically, if priced at levels which would render the service unaffordable even for many non-Lifeline-eligible households. This is so for several reasons.

Finally, in considering an appropriate level of mobile broadband service for Lifeline, the Commission should be mindful of the causes for the rapid increase in data usage by smartphones. The primary cause for the increase in smartphone data usage is video traffic, and in particular, the use of video-on-demand services to view television programs and movies.[24] Lifeline subsidies should be targeted at the amount of data necessary for low-income consumers to meaningfully participate in the digital economy, such as having sufficient, functional, reliable, and secure access to the Internet to complete homework, search for jobs, communicate with healthcare providers, employers and teachers, and stay connected with friends and family

[23] *Id.* at 4099, ¶ 374 (quoting Lifeline and Link Up Reform and Modernization *et al.* (*Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order*), 30 FCC Rcd 7818, 7835, ¶ 29 (2015) ("2015 Lifeline FNPRM")).

[24] *See* Ericsson Mobility Report, June 2016, at 16-17 (noting that video traffic accounts for the largest share (43 percent) of mobile data traffic on smartphones and that by 2021 mobile video traffic will account for over two-thirds of all mobile data traffic); Ericsson Mobility Report, November 2015, at 15 (noting that "streaming Video-on-Demand (VoD) services is also increasing, with 20 percent of viewers now watching longer on-demand content, such as TV series and movies, on a smartphone"), https://www.ericsson.com/res/docs/2015/mobility-report/ericsson-mobility-report-nov-2015.pdf.

members.[25] It should not be dictated by estimates of average monthly mobile data usage largely driven by the expanding options for mobile video content.

c. The Commission Should Undertake Its Review of the Affordability of Lifeline Service No Later Than 2018.

In addition to reconsidering the minimum data usage amounts and the formula for calculating the data amounts, the Commission should reconsider the timing of the Lifeline program evaluation report. In the Lifeline Modernization Order, the Commission directs the Wireline Telecommunications Bureau to assess the affordability of Lifeline service on an annual basis and to include the results in the annual Universal Service Monitoring Report.[26] The Commission does not require a more thorough evaluation of the "Lifeline program's design, function, and administration" to be completed until December 31, 2020 – four years after the new broadband Lifeline program rules will be in effect, and less than one year before the scheduled elimination of standalone voice Lifeline service.[27] TracFone agrees that examining the affordability of Lifeline service on an annual basis is important. However, the affordability of Lifeline service, standing alone, does not address whether the Lifeline program actually meets the needs of Lifeline-eligible households and is operating efficiently and effectively.

As described in detail above, it is questionable whether the minimum data usage amounts adopted by the Commission are necessary to provide Lifeline-eligible consumers with sufficient data to meet their needs as students, job-seekers, employees, as well as their more critical need to communicate with emergency service and government service providers and with family and

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[25] *See* Data Calculator, AT&T.com, http://www.att.com/att/datacalculator/ (last visited Jun 23, 2016); *see also* Monthly Data Usage Estimate, USCellular.com, https://www.uscellular.com/data/data-estimator.html (last visited Jun 23, 2016).

[26] *See* Lifeline Modernization Order, at 4112, ¶ 408.

[27] *See id.*, at 4112, ¶ 409.

friends. Requiring Lifeline providers to provide more data amounts than are necessary, at a cost that would make the service unaffordable to many low-income consumers, will not result in higher rates of broadband adoption by low-income consumers, and indeed, will have the undesired effect of perpetuating lower broadband penetration rates for low-income consumers. Rather than waiting four years to complete a comprehensive review of the Lifeline program, TracFone urges the Commission to require a program evaluation report to be completed no later than December 31, 2018. An earlier evaluation of the Lifeline program will allow the Commission to use current data regarding data usage, costs of providing voice and broadband service, Lifeline participation rates, and other information learned from almost two years of operation under the new rules to re-evaluate the structure of the program and ensure that it is meeting the needs of low-income consumers, and to make adjustments to its program rules based on the information contained in that report. Advancing the date for the evaluation report will afford the Commission sufficient time to consider adjustments to its phase out schedule announced in the Lifeline Modernization Order if current circumstances identified in that evaluation indicate that such adjustments are warranted.

III. The Receipt of Text Messages Should Be Included as Usage of Lifeline Service.

Under Section 54.407(c)(2) of the Commission's rules, Lifeline providers that do not assess or collect monthly fees from consumers must de-enroll from Lifeline those customers who do not use their Lifeline service for 60 consecutive days. In the Lifeline Modernization Order, the Commission determined that sending a text by a Lifeline subscriber qualifies as usage for purposes of the Commission's non-usage rule. This action was taken in response to a petition filed by TracFone which proposed that text messaging be considered as usage for purposes of the de-enrollment for 60 day non-usage rule.[28] TracFone is gratified that the Commission determined that many consumers, including Lifeline consumers, use the texting features of their wireless handsets to communicate and that texting is indeed a form of usage. However, the Commission limited its inclusion of texting to encompass outbound (sent) texts and excluded inbound or received texts as usage. For reasons described below, that limitation does not reflect how receipt of inbound texts also constitutes usage and that limitation should be reconsidered.

As stated by the Commission, its decision to accept outbound texting as usage was "based on the reality that many consumers today view texting, voice, and broadband as interchangeable means of communication and often use text messages as the sole or primary means of communication."[29] However, the Commission overlooked this reality when it chose not to confer the same status on inbound text messages and should reconsider its decision.

The Commission acknowledged that TracFone had proposed that both the sending and receipt of texts qualify as usage, but concluded that it would only allow the sending of texts to "qualify as sufficient indication of usage."[30] The Commission provided no explanation as to why sending of texts should be treated differently than receipt of texts, other than to state that its conclusion was consistent with the 2015 Lifeline FNPRM. In the 2015 Lifeline FNPRM, the Commission granted TracFone's petition for the Commission to initiate a rulemaking proceeding to amend the non-usage rule to allow Lifeline subscribers to establish usage of Lifeline service by sending text messages, but denied TracFone's request that the rulemaking proceeding also address receipt of text messages, stating that "[b]ecause the subscriber cannot control whether

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[28] TracFone Wireless, Inc. Petition for Rulemaking and Interim Relief to Allow Lifeline Subscribers to Establish Usage of Lifeline Service by Sending Text Messages, WC Docket No. 11-42, filed October 1, 2014.

[29] Lifeline Modernization Order, at 4114, ¶ 414.

[30] *Id.*

others send texts, the receipt of such texts should not be used as a basis for concluding that the subscriber wishes to retain service."[31]

The Commission's failure to treat receipt of a text as usage overlooks the fact that Section 54.407(c)(2)(iii) of the Commission's rules already provides that answering an inbound call (from someone other than an Eligible Telecommunications Carrier ("ETC")) qualifies as usage even though a Lifeline subscriber has no control over whether someone calls his or her telephone. Moreover, a subscriber is not required to take any action to answer an incoming call when the call is routed to voicemail or to a telephone answering machine. Whether the call is answered by a person or is routed to voicemail or an answering machine, the call is considered to be received and is counted as usage for purposes of the Lifeline non-usage rule. In such cases, there would be no way for the Lifeline provider to know whether the call recipient retrieved the message from a voice mail service or answering machine. Similarly, a text message is received by a subscriber should be counted as usage whether or not the subscriber reads the message as soon as it is received, reviews it at a later time, or sends a responsive text message. Under each of these scenarios, the Lifeline provider relies on call detail records to confirm whether a call or text was received by a subscriber. Moreover, in each such circumstance, the text recipient is using his or her Lifeline service to receive information communicated to the recipient by someone else. In the case of text messages, a TracFone subscriber must have his or her phone turned on and the text message must have been sent within the last 72 hours for the text to be counted as received. Therefore, for both inbound calls and texts, the provider knows that the call or text was received and, in both situations, receipt constitutes use of the service and an intent by the consumer to use the service to receive information sent by someone else. There is no

[31] 2015 Lifeline FNPRM, at 7869, ¶ 143.

reasonable basis for allowing inbound calls, but not inbound texts, to be considered as usage for purposes of the non-usage de-enrollment rule.

Finally, the Commission's assumption that receipt of texts is not within the control of the subscriber is not accurate in the case of many subscribers who choose to receive text alerts from HMOs"), healthcare providers, schools, public safety agencies, and other entities. The United States Department of Health and Human Services ("HHS") has found that text messaging can improve health and health care by "providing health behavior reminders, prompts to schedule or confirm an appointment, notification of a laboratory result or health status report, requests for data, encouragement to engage in positive behaviors, or information and resources to improve self-efficacy."[32] Many subscribers affirmatively choose to take advantage of the benefits of text alerts to receive health-related reminders or information, such as through HHS's text4baby initiative.[33] As noted above, TracFone partners with several HMOs to offer its SafeLink Wireless® Lifeline service to the HMOs' Medicaid enrollees. An important feature of the enhanced Lifeline service offered by TracFone to Medicaid enrollees through the HMOs is a series of health care-related texting services. These subscribers rely on their Lifeline service to receive valuable health care information communicated to them via text message, and those Lifeline subscribers who receive those important text messages should not be placed at risk of losing their Lifeline service for non-usage.

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[32] Using Health Text Messages to Improve Consumer Health Knowledge, Behaviors, and Outcomes, an Environmental Scan, U.S. Department of Health and Human Services, May 2014, at 5, http://www.hrsa.gov/healthit/txt4tots/environmentalscan.pdf.

[33] The text4baby program provides pregnant women and new mothers free health text messages in English or Spanish, including information timed to the stage of pregnancy or age of the baby. http://www.text4baby.org/.

IV. The Non-Usage Period Should Remain at 60 Days.

TracFone also requests that the Commission reconsider its decision to reduce the non-usage period in Section 54.407(c)(2) of its rules from 60 days to 30 days and reduce the cure period in Section 54.405(e)(3) from 30 days to 15 days. Under Section 54.407(c)(2), prior to being amended in the Lifeline Modernization Order, Lifeline providers that do not charge monthly fees to their subscribers are required to notify any subscriber who had not used the Lifeline service for 60 consecutive days that they would be de-enrolled if they did not use the service within the 30-day notice period. Nothing in the record provides any basis for concluding that the de-enrollment for non-usage period should be reduced from 60 days to 30 days. The Commission's only stated basis for reducing the non-usage and cure periods is that it is "appropriate" because the Commission "broaden[ed] the list of services that can be used to demonstrate 'usage' for purposes of section 54.407(c)(2) of our rules … ."[34] Implicit in this assertion is the notion that the non-usage period is being cut in half solely as a "trade off" for expanding the definition of usage to include outbound texting. However, adding the sending of texts to the list of activities that constitute usage does not address a situation in which a Lifeline customer is out of the country or incapacitated for an extended period of time, and therefore temporarily not able to use his or her Lifeline service. Such customers are no more likely to send a text, than they are to initiate a call or have their phones turned on to receive a call. The fact that sending a text can now qualify as usage provides no justification for changing the non-usage rule which properly balances the interests of low-income households and the risk of potential waste of USF resources.

[34] Lifeline Modernization Order, at 4115, ¶ 415.

Reducing the non-usage period and cure periods will also be burdensome to low-income consumers and Lifeline providers. Approximately one quarter of TracFone's Lifeline subscribers who are de-enrolled under the non-usage rule, re-apply for Lifeline service the following month. Moreover, on average, 70 percent of TracFone's Lifeline subscribers de-enrolled for non-usage who seek to re-enroll in the Lifeline program the following month do so during the first 15 days of the month. These statistics indicate that a significant percentage of Lifeline consumers who are de-enrolled for non-usage want to continue to receive Lifeline service for calls that they consider to be critical or important, even if they do not use the service on a regular basis or even if they have ceased using the service temporarily due to unusual circumstances such as travel or illness. If the non-usage period is reduced to 30 days, TracFone estimates, based on its Lifeline customers' usage patterns, that the number of Lifeline subscribers who will be de-enrolled under the non-usage rule, but who will subsequently seek re-enrollment will triple. In TracFone's experience, customers wait until their Lifeline service is cancelled before they react by seeking to re-enroll. Shortening the non-usage period will only lead to an increased number of customers who will re-apply for Lifeline service almost immediately after being de-enrolled. This will impose added hardship for low-income consumers who must go through the Lifeline application process again, including providing proof of eligibility (during such time, they will temporarily be without service), and will be administratively inefficient and costly for Lifeline providers that must re-process new applications for Lifeline-eligible customers who were receiving service during the previous month as well as for USAC – the program administrator. Given the re-enrollment costs to both low-income consumers and Lifeline providers if the non-usage and cure periods are reduced, the Commission should reconsider its decision to amend the non-usage rule.

It is important that the Commission remember that the 60 day non-usage rule was not created in a vacuum. The rule, codified into the Commission's rules in 2012, was first adopted by certain state commissions. During several of the earlier state ETC designation proceedings, state commissions raised with TracFone (and with other Lifeline ETC applicants) the issue of non-usage. Those state commissions were properly concerned that some low-income households would enroll in Lifeline and the ETCs providing service would continue to receive USF support even when those enrolled customers no longer used the service. The 60 day rule was adopted by those state commissions as a reasonable balance between assuring that qualified low-income consumers using their Lifeline service continue to receive that support, on the one hand, while ensuring that providers not continue to receive reimbursement for keeping non-users on their on their roles indefinitely, on the other hand. That reasonable balance has worked well and it should not be changed in the absence of any factual basis for concluding that it is no longer appropriate.

CONCLUSION

For the reasons set forth in the petition for reconsideration, TracFone respectfully urges the Commission to reconsider several aspects of its <u>Lifeline Modernization Order</u> consistent with the views expressed herein.

Respectfully submitted,

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