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November 9, 2017

**By ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **Lifeline Connects Coalition, National Lifeline Association (NaLA),  
Boomerang Wireless, LLC and Easy Telephone Services Company  
dba Easy Wireless Written *Ex Parte* Presentation; WC Docket Nos.  
17-287, 11-42, 09-197, 10-90**

Dear Ms. Dortch:

On November 3, 2017, TracFone Wireless, Inc. (TracFone) filed an Emergency Petition for Interim Waiver, or in the Alternative to Conduct Market Test asking the Commission to grant it an interim waiver of the Commission's minimum service standard rule to allow the company to provide 1,000 units to Lifeline subscribers pending completion of the Lifeline rulemaking proceeding.<sup>1</sup> Previously, on September 7, 2017, TracFone had filed a letter proposing a proper interpretation of the Commission's minimum service standard rule that would permit a "units" approach.<sup>2</sup> With certain qualifications, the Lifeline Connects Coalition (Coalition) (Telrite Corporation, Prepaid Wireless Group, Global Connection Inc. of America and Assist Wireless,

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<sup>1</sup> See Emergency Petition for Interim Waiver or, in the Alternative, to Conduct Market Test, WC Docket Nos. 11-42, 09-197, 10-90 (filed Nov. 3, 2017).

<sup>2</sup> See TracFone Wireless, Inc. Notice of Oral *Ex Parte*; WC Docket No. 11-42 (Sept. 7, 2017) (TracFone *Ex Parte*). Although the Commission included TracFone's units proposal in the Draft Lifeline Item released on October 26, 2017, the rulemaking will take several months and the minimum service standard increase to 750 minutes or 1 GB takes effect on December 1, 2017. See *Draft Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC-CIRC1711-05, ¶ 75 (Oct. 26, 2017) (Draft Lifeline Item).

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LLC), the National Lifeline Association (NaLA), Boomerang Wireless, LLC (Boomerang) and Easy Telephone Services Company dba Easy Wireless (Easy Wireless) support TracFone's interpretation, which is consistent with the interpretation of section 54.408 of the Commission's rules in the Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification of the Lifeline Modernization Order.<sup>3</sup> However, to the extent that the Commission grants the interim waiver proposed by TracFone, the waiver should apply to all Lifeline eligible telecommunications carriers (ETCs). Since TracFone is the largest Lifeline provider by far, allowing TracFone to conduct a market test of the units approach would skew the Lifeline marketplace and harm TracFone's competitors.

TracFone limited its proposals to the upcoming broadband minimum service standard of 1 GB and proposed a 1,000 units interpretation, which could be used by consumers for either voice minutes or megabytes of data.<sup>4</sup> The Coalition, NaLA, Boomerang and Easy Wireless herein propose that the appropriate interpretation of the term "provide" in the rule permits a units offering pursuant to both the voice and broadband minimum service standards. Therefore, Lifeline ETCs should be permitted to offer as of December 1, 2017 1,000 units with a 12-month benefit port freeze or 750 units with a 60-day benefit port freeze, where one unit equals one minute or one megabyte of data.

## Background

In the Lifeline Modernization Order, the Commission established voice and broadband minimum service standards for ETCs to receive Lifeline reimbursements for providing discounted services to eligible low-income consumers.<sup>5</sup> Those minimum service standards currently require ETCs to provide a minimum of 500 minutes or 500 MB of data each month to receive the Lifeline reimbursement.<sup>6</sup> The minimums increase as of December 1, 2017 to 750 minutes or 1 GB (1,000 MB) of data.<sup>7</sup>

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<sup>3</sup> See Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, 10-90 at 11-13 (June 23, 2016) (Joint Petitioners Petition).

<sup>4</sup> See TracFone Ex Parte at 1.

<sup>5</sup> See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶¶ 69-125 (rel. Apr. 27, 2016) (Lifeline Modernization Order or Order).

<sup>6</sup> See 47 C.F.R. §§ 54.408(b)(2)(ii)(A), (b)(3)(i).

<sup>7</sup> See 47 C.F.R. §§ 54.408(2)(ii)(B), (b)(3)(ii).

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On June 23, 2016, the Joint Lifeline ETC Petitioners filed a Petition seeking clarification of the minimum service standard rule that ETCs can meet the applicable minimum service standards by making available the applicable minutes or data, but allowing a consumer to decrement the offering using data, voice minutes or text messages at the consumer's choice.<sup>8</sup> That interpretation is consistent with the language of section 54.408 of the Commission's rules and the Lifeline Modernization Order, which had clarified that the term "provide" means "making available."<sup>9</sup> Further, the bundles interpretation was consistent with common industry practice, which was recognized and unchanged in the Order. The Commission had stated in the Order that its rule on bundles "*does not represent a change in policy* as many Lifeline providers have voluntarily offered non-supported services to consumers bundled with Lifeline-supported services," and that the Commission "agree[s] with commenters and view[s] such offerings as enhancing consumer benefits."<sup>10</sup>

Despite the language in section 54.408 and the clarification in the Order that "provide" means "make available," the Wireline Competition Bureau (Bureau) in a September 30, 2016 Public Notice "clarifie[d] that 'substitution' or 'decremented' bundled offerings do not fulfill the requirements of the Lifeline minimum service standards if they restrict a customer's access to the supported service for which the provider is claiming Lifeline reimbursement below the minimum service standard applicable to that supported service as a result of the customer's usage of some other service included in the bundled offering."<sup>11</sup> As a result of the Bureau's interpretation, Lifeline subscribers are currently forced to choose between a 500 minute plan that may or may not include any data and a 500 MB plan that may or may not include any wireless minutes.

### **The Commission Should Permit Consumers to Decide How to Best Use the Lifeline Voice and Broadband Services That ETCs Make Available**

The Public Notice failed to recognize that the full allotment of minutes or data is "provided" or "made available" to the customers and it is only through the customer's choice to use various amounts of minutes or data according to their particular communications needs that

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<sup>8</sup> See Joint Petitioners Petition at 11-13.

<sup>9</sup> See Lifeline Modernization Order, ¶ 263 n. 710.

<sup>10</sup> *Id.* ¶ 67 (emphasis added). The Order cites to the Joint Wireless Commenters Comments at pp. 5-7, which discussed "500 'unit' offerings, which can be used for either voice or text communication." See *id.* ¶ 67, n. 181.

<sup>11</sup> *Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards*, WC Docket Nos. 11-42, 09-197, Public Notice, DA 16-1118, ¶ 15 (2016) (Public Notice).

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the amounts available are decremented. The Public Notice did not address why the Commission should decide how consumers choose to use the allotments that are made available rather than allowing consumers to decide on a month-to-month basis whether their communications needs involve more voice or more data, and use the allotted units accordingly. A Lifeline subscriber may decide that she wants to use 300 of the allotted units for voice service one month when she is participating in job interviews over the phone or needs to discuss treatment options with her child's doctor or nurse. That same subscriber may decide the next month that she wants to use all of the allotted units for data because she is searching for a job or her child needs to tether the smartphone to a laptop or tablet to complete a homework assignment.

We agree with TracFone that as of December 1, 2017, ETCs should be permitted to provide a 1,000 units Lifeline service offering where one unit equals one minute or one megabyte of data. Such a 1,000 unit offering would be eligible for a 12-month benefit port freeze<sup>12</sup> and may also include a better handset. Subscribers should be free to use the entire 1,000 units for 1 GB of data or some portion of the units for data and the rest for voice service. In addition, as of December 1, 2017, ETCs should be permitted to provide a 750 units Lifeline service offering where one unit equals one minute or one megabyte of data, which would be subject to a 60-day benefit port freeze.<sup>13</sup> A consumer may choose this option because she wants to be able to switch Lifeline service providers more quickly, but does not anticipate needing the additional 250 units. Due to the manner in which minutes and megabytes are purchased from underlying carriers and tracked, not all ETCs can track minutes and megabyte use in real time to cap total units. Therefore, customers may be required to allocate their units by minutes or megabytes when they enroll and have the option of reallocating the units each month if they so choose. For example, a subscriber may enroll in a 1,000 unit plan and allocate 750 units to broadband (750 MB) and 250 units to voice minutes. The subscriber will receive that same allocation each month until she or he contacts the ETC to change the allocation for the following month.

In conclusion, the Commission should revisit its interpretation of the minimum service standards in the Public Notice to be consistent with the language of section 54.408 of the Commission's rules and the Lifeline Modernization Order, and to allow consumers rather than government regulators to decide how best to use Lifeline voice and broadband services in any given month. In addition, if the Commission grants an interim waiver to allow TracFone to utilize a units approach, it should grant the waiver for all Lifeline ETCs.

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<sup>12</sup> See 47 C.F.R. § 54.411(a).

<sup>13</sup> See 47 C.F.R. § 54.411(b).

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

Respectfully submitted,



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