

November 12, 2014

**VIA ELECTRONIC FILING**

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

**Re: WC Docket No. 11-42 – Lifeline and Link Up Reform and Modernization  
NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

Enclosed with this letter is a November 2014 article describing an investigation by the CBS television affiliate in Denver, Colorado. The article describes how investigators were able to obtain Lifeline-supported wireless handsets without proof of Lifeline program eligibility. It describes situations in which multiple distributors set up tents and handed out phones to persons who use someone else's food stamp card, often with no questions asked as to the Lifeline applicant's eligibility for program enrollment. It even describes a situation in which a Lifeline provider's agent told a prospective applicant that the applicant could use a friend's food stamp card.

This is precisely the kind of conduct which caused TracFone Wireless, Inc. ("TracFone") to file with the Commission several proposals for reforming the Lifeline rules so as to prevent such fraudulent conduct. In May 2012, TracFone petitioned the Commission to require Eligible Telecommunications Carriers providing Lifeline service not only to "review" documentation of program-based eligibility presented to them by Lifeline applicants as currently required, but also to retain copies of such documentation and to make that documentation available for audit by the Commission, by state commissions, and by the Universal Service Administrative Company (USAC). (Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based Eligibility Documentation, filed May 30, 2012). That proposal has been pending for nearly 30 months. (On October 30, 2014, TracFone filed a Motion Requesting Acceptance and Consideration of Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based Eligibility Documentation in which it reiterated the importance of its long-pending proposal to require retention of Lifeline eligibility documentation.)

One year later in May 2013, while that petition remained pending, TracFone petitioned the Commission to promulgate a rule prohibiting in-person distribution of handsets to prospective Lifeline customers. In that 2013 petition, TracFone explained that the proposed in-person handset distribution prohibition rule would achieve two purposes: first, it would prevent waste, fraud and abuse of Universal Service Fund resources; second, it would improve the perception of the Lifeline program in the face of program critics who have called for its

elimination, often in light of press reports of unscrupulous providers and irresponsible agents. That petition also has remained pending for more than one and one-half years. Had either of these proposals been adopted and implemented, the type of Lifeline fraud described in the CBS Denver report would have been far less likely to occur and much more likely to be prevented.

Promulgation of a mandatory document retention rule as TracFone proposed two and one-half years ago would reduce the need for a rule prohibiting in-person handset distribution as proposed by TracFone in May 2013. If ETCs were required to produce copies of the documents they relied upon in determining applicants to be Lifeline-eligible, the ETCs would have an incentive to prevent their agents from handing out phones to passersby on street corners and out of tents with “eligibility determinations” based on false information or no information. To date, the Commission has taken no action on that long-pending proposal; there is little supervision of the Lifeline handset distribution and enrollment process; and, according to reports like that of the Denver CBS affiliate, program fraud continues and is being widely reported.

Interestingly, the CBS report states that “[t]he FCC said that since 2012, it has fined its vendors more than \$95 million for the kind of shenanigans uncovered in the CBS4 investigation.” That is not true. Beginning in September 2013, the Commission issued a series of notices of apparent liability for forfeiture for alleged Lifeline violations. Those notices did not involve allegations of program fraud of the kind described in the CBS Denver report. Most of those forfeiture notices, including one issued to TracFone, were for alleged intra-company duplicate enrollments uncovered through the In-depth Validation (IDV) process conducted by USAC. Those notices were issued with no Commission investigation. The Commission proposed to fine TracFone nearly \$4.6 million for intra-company duplicates which comprised less than four one hundredths of one percent of the customers subject to those IDVs – and which resulted in no improper payment to TracFone since USAC recaptures all amounts improperly paid which are discovered through the IDV process. Contrary to the statement quoted in the CBS Denver report, the Commission has to date failed to take any of the recommended proactive steps to prevent program fraud such as that described in that report.

As described in the CBS Denver investigation, Lifeline program fraud continues. The Commission continues to fail to act on proposed reforms which could eliminate the very types of fraud described in that investigation. Action on meaningful Lifeline fraud prevention proposals is long overdue. If the Commission is seriously committed to detecting and preventing Lifeline fraud, it should act forthwith on those long pending reform proposals. Accordingly, TracFone reiterates its proposal that the Commission revise its rules so as to require ETCs to retain and make available for audit Lifeline eligibility documentation presented to them by applicants for Lifeline service. Alternatively, TracFone again asks the Commission to prohibit in-person distribution of handsets provided with Lifeline service. As shown by the examples in the CBS Denver report, those practices remain a significant source of Lifeline fraud.

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Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Brecher", with a long horizontal flourish extending to the right.

Mitchell F. Brecher

Enclosure

Cc: Ms. Julie Veach  
Mr. Jonathan Lechter

# Enclosure

## Local

# Government's Free Phone Program Riddled With Abuse, Fraud

November 6, 2014 11:15 PM

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By **Brian Maass**

CBS4 Investigates

Link to story: <http://denver.cbslocal.com/video?autoStart=true&topVideoCatNo=default&clipId=10823160>

**DENVER (CBS4)** - A federally regulated program providing free cellphone service and phones to the poor and needy in Denver appears to be riddled with waste, fraud and abuse, according to an undercover CBS4 Investigation.

The \$2 billion a year Lifeline program has handed out more than 13 million free cellphone plans across the country in the first six months of this year. In Colorado, the program handed out more than 117,000 free cellphone plans in the first half of this year, or about 20,000 cellphones every month.

The free phones and their wireless plans are paid for by a monthly tax on your cellphone, called the Universal Service Tax. Although the Lifeline wireless program has been around since 2005 and started under president George W. Bush, it has exploded under President Obama's administration and the phones are often referred to as "Obamaphones."

The program has strict guidelines. To qualify, you have to be on food stamps, Medicaid, housing assistance or some other government program to prove that you are low-income. The idea is that people who could not

otherwise afford mobile phones would have them to help look for jobs, call 911 in an emergency or stay in touch with family members.

But on multiple trips to Colfax Avenue and Broadway in Denver, where multiple distributors set up their tents to hand out free cellphones, a CBS4 producer and reporter found the phone agents willing to circumvent strict government rules designed to ensure that only the truly needy get the free phones. The vendors receive massive government subsidies to hand out the phones and the accompanying monthly plans.

“Want to sign up for a free phone?” an agent representing Total Call mobile asked a CBS4 producer. The representative then asked if the undercover producer had a food stamp card, a Medicaid card or any other evidence that he qualified for a phone.

“No,” replied the CBS4 employee. But one of the cellphone agents then ordered his colleague to “push it through,” by using someone else’s food stamp card to provide eligibility for the CBS4 employee.

“Did you just use that guy’s food stamp card for me?” questioned the CBS4 employee.

“Yeah,” responded the Total Call representative. “It’s verification that you are on some kind of assistance program. It’s to get you through.”

He promptly gave the CBS4 worker a free phone. The Total Call agent said he received \$3 for every phone he is able to give away.

Mark Wigfield, Deputy Director of media relations for the FCC, which oversees the Lifeline program, said using someone else’s food stamp card to get a phone is a clear violation of program guidelines.

“Lifeline providers may not activate service for a consumer unless that consumer is eligible for the program and provides proof of eligibility. Lifeline rules,” said Wigfield, “are enforceable rules and punishable by fines and other means.”

But over and over, wireless phone company representatives proved eager to bypass federal rules so they could hand out phones.

Approached by a CBS4 reporter and producer, a representative of another cellphone company said it would be fine to use another person’s food stamp card to establish eligibility. She said it would be acceptable to pass off someone else’s food stamp card “as long as she hasn’t already used it.” The woman then said anyone could get a phone for someone else “as long as you bring their ID and card.”



At a Total Call phone tent, CBS4 Investigator Brian Maass asked a representative if he could use a friend's food stamp card to establish eligibility and obtain a free phone. "Sure can," replied the representative.

"My driver's license and his food stamp card is OK?" Maass asked.

"Yeah," replied a phone agent.

"But the phone is for me, though," Maass said. "That's fine," responded the Total Call distributor.

Hideki Kato, Chief Operating Officer for Total Call mobile, said, "If protocols and procedures have been violated, we take appropriate action against agents or distributors including their possible termination." Kato said after CBS4 contacted him, the company identified and corrected the issue, although he declined to provide specifics. Kato said Total Call Mobile utilizes distributors in Colorado who hire and train agents. He said the people passing out the free phones in Denver were not Total Call employees but had been hired by a Total Call distributor.

But the abuse appears to be occurring on the part of phone recipients of the free phones as well. Over and over, men and women who obtained the free phones told CBS4 they were already paying for iPhones or smartphones but couldn't resist getting a free phone, courtesy of taxpayers.

One man told CBS4 he wanted a free cellphone but did not have a food stamp card and did not qualify. He showed CBS4 his current smartphone that he said he was paying \$57 a month for. But he explained that he went across town, got a food stamp card anyway, then returned to Civic Center with a food stamp card that has no money on it, but was still able to use it to qualify for an "Obamaphone."

"Completely free. I didn't pay a dollar, not a dime, not a nickel," said the man. "That's what everybody calls them in the 'hood, Obamaphone," laughed the man.

At one point, a CBS4 reporter returned to one of the phone tents with a food stamp card that had simply been printed off the internet. He showed the paper card to a Total Call representative. Instead of having a name on the paper card, it was imprinted with the words, "training card." Rather than immediately reject the clearly bogus card, the agent said, "I'll try it," and tried to qualify the CBS4 employee using the obviously fake food stamp card. It did not work.

The problems CBS4 found in the giveaway program have been raised before. The FCC said that since 2012, it has fined its vendors more than \$95 million for the kind of shenanigans uncovered in the CBS4 Investigation.

"We take any evidence of violations seriously and will not hesitate to enforce our rules, where warranted," said Wigfield. "The FCC's comprehensive reforms of the Lifeline program since 2012 have made significant progress in reducing waste, fraud and abuse in the program."

Jon Caldara, a critic of government entitlement programs and president of the Independence Institute, said what the CBS4 Investigation revealed was a "systematic rip-off."

"They actually put out tents and work with you to scam taxpayers. That's got some bravado to it," Caldara said. "We're seeing that people who get these are people who don't need them. Those of us who pay for our cellphones, we're paying more because they are getting those for free."

Caldara went on to say that the cellphone handout is set up in such a way as to automatically engender fraud and abuse.

“You have several examples of how the system is rigged to give out free goodies to people who don’t need it. And we’re paying for this,” exclaimed Caldara