

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking and Interim)	
Relief to Allow Lifeline Subscribers)	DA 14-1591
Establish Usage of Lifeline Service)	
By Sending Text Messages)	
)	
Lifeline and Link-Up Reform and)	WC Docket No. 11-42
Modernization)	

COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc, (“SBI”) pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, hereby files these Comments regarding the recent Petition by TracFone Wireless, Inc. (“TracFone”) asking the Commission to permit Lifeline subscribers to establish “usage”, for purposes of the 60-day non-usage rule, by sending text messages.¹ As discussed in detail below, SBI supports TracFone’s Petition and further requests that customers be permitted to establish usage by accessing mobile data.

I. Introduction and Summary.

SBI operates as an ETC receiving high-cost and low-income support in Arizona, New Mexico, and Utah, providing service in both tribal and non-tribal lands. Within its service territory, SBI serves the Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo tribal lands. Most of its tribal service territory is very sparsely populated (less than 10 persons per

¹ Public Notice, DA 14-1591, rel. Nov. 3, 2014.

square mile) and economically challenging.² Many of its subscribers are elderly and disabled, live in isolated circumstances, and lack adequate transportation. For these individuals, wireless service is a critical link to emergency contacts, government services, and family.

II. Discussion.

As currently written, the 60-day usage tracking rule risks unfairly denying service to members of the vulnerable populations that SBI serves. Texting has become a standard means of communicating with one's cell phone, and persons with hearing disabilities are more likely to use texting than the voice capability of their phones. SBI therefore supports TracFone's request for a rule modification to allow Lifeline customers to establish "usage". In addition, because low-income consumers are disproportionately relying on wireless phones to access the Internet, SBI also urges the Commission to allow Lifeline customers to establish usage by utilizing mobile wireless data services.

A. Text Messaging Has Become a Dominant Use of Wireless Phones and Is an Essential Public Safety Tool.

Text messaging is now a dominant form of use for a wireless phone. As the Commission has emphasized, "[s]ending text messages, photos and video clips has become commonplace for users of mobile devices on 21st century broadband networks[.]"³ People have been using their wireless phones less and less for voice calling, and more and more for text messaging.

According to the Commission's *Sixteenth CMRS Competition Report*, the industrywide average

² See, e.g., SBI Petition for Waiver, WC Dockets No. 11-42 et al. (filed June 26, 2012) at p. 3; SBI ex parte notice, WC Dockets No. 11-42 and 03-109 (filed Dec. 15, 2011); SBI Comments, WC Dockets No. 11-42 and 03-109 and CC Docket No. 96-45 (filed April 21, 2011).

³ *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment, Notice of Proposed Rulemaking*, 26 FCC Rcd 13615,13616 (2011).

for minutes of use (“MOUs”) declined by 20% between December 2009 and December 2011.⁴ The report noted there was “evidence indicating that the declining trend of voice minutes is due to substitution from mobile voice to mobile messaging and other mobile data services.”⁵ Indeed, text messaging volume increased by 42% over the same time period, and by more than 400% since December 2007. In 2012, 70 percent of Americans over age 25 used their mobile phones for text messaging.⁶

As it has taken its place alongside voice as a primary means of wireless communication, text messaging has correspondingly become an essential tool for accessing emergency services. In adopting text-to-911 rules earlier this year, the Commission noted that “[p]eople faced with the stress of emergency situations can communicate more quickly and effectively when they are able to use the same ubiquitous technologies that they use for everyday communications.”⁷

Text messaging has become especially important as a means of communication for persons with disabilities, as the Commission noted in its *Text-to-911 Order*:

people who are deaf, hard of hearing, or speech disabled have been consistently migrating away from specialized legacy devices, and towards more ubiquitous forms of text messaging communications because of the ease of access, wide availability, and practicability of modern text-capable devices.⁸

⁴ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Sixteenth Report*, 28 FCC Rcd 3700, 3867 (Chart 20) (2013) (“*Sixteenth CMRS Competition Report*”).

⁵ *Id.* at ¶ 261.

⁶ *Exploring the Digital Nation: Embracing the Mobile Internet*, U.S. Dept. of Commerce, NTIA (Oct. 2014) at Figure 5.

⁷ *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-253 and 10-255, *Second Report and Order and Third Notice of Proposed Rulemaking*, FCC 14-118 (rel. Aug. 13, 2014) (“*Text-to-911 Order*”) at ¶ 12.

⁸ *Id.* at ¶ 14.

Social services agencies use text messaging among the primary ways for people with hearing disabilities to make contact.⁹

B. Members of Low-Income Communities Rely Disproportionately on Wireless Phones to Access the Internet.

Consumers depend heavily on their wireless phones for Internet access, e-mail, and other data uses. According to a recent Pew study of Internet use in the United States, nearly two-thirds of all adult cell phone owners use their cell phones to access the Internet.¹⁰ Across the globe, mobile wireless data traffic is projected to more than quintuple between 2014 and 2018.¹¹ As with text messaging, mobile data – including the use of social media via wireless handsets – has become an essential tool for public safety, emergency alerts, and disaster recovery.¹²

Reliance on wireless phones for Internet access is especially pronounced among low-income consumers. The above-cited Pew study showed that 45% of mobile internet users living in households with an annual income of less than \$30,000 mostly use a wireless phone to go online instead of other technologies; this is compared with only 27% of those living in households with an annual income of \$75,000 or more. And according to the 2013 American Community Survey conducted by the U.S. Census Bureau, households with a total annual income of less than \$25,000 were more than four times more likely than households with annual

⁹ See, e.g., Veterans Crisis Line, accessed on November 25, 2014 at <http://www.veteranscrisisline.net/GetHelp/Accessibility.aspx> (“Individuals who are deaf or hard of hearing can connect with professional, caring VA responders through online chat, text message (838255), and TTY service 1-800-799-4889.”)

¹⁰ PewResearch Internet Project, Mobile Technology Fact Sheet, available at <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/>.

¹¹ Cisco Visual Networking Index: Forecast and Methodology 2013-2018 (June 10, 2014) at Table 10, available at http://www.cisco.com/c/en/us/solutions/collateral/service-provider/ip-ngn-ip-next-generation-network/white_paper_c11-481360.pdf

¹² Cloud & Mobile Tech Improve Emergency Systems, INFORMATIONWEEK (Oct. 29, 2014), available at <http://www.informationweek.com/government/mobile-and-wireless/cloud-and-mobile-tech-improve-emergency-systems/a/d-id/1317040>.

incomes between \$100,000 and \$149,999 to have only handheld devices and not computers or other means of accessing the Internet.¹³

C. Text Messaging and Data Usage Should Both Count as “Usage”.

Because of the essential nature of text messaging and its importance to public safety and accessibility, SBI supports TracFone’s request to allow Lifeline customers to establish usage for purposes of the 60-day usage tracking rule by sending SMS text messages. For the same reasons, SBI also urges the Commission to rule that mobile data access similarly counts as “usage” for this purpose.

Allowing text messaging and mobile data access to count as “usage” will serve important Commission objectives by preventing disabled persons and low-income consumers from losing an essential service. Currently, many Lifeline customers only keep their cell phones as “peace of mind” phones for purposes of being reachable; they make few, if any, voice calls. Often, over a given 60-day period these customers will have no voice usage but they will use their cell phones to send text messages and/or access the Web, e-mail, or social media. Customers who are deaf or hard of hearing may similarly go more than 60 days without voice usage but have a significant volume of SMS texting and/or mobile data usage on their account. According to the *Text-to-911 Order*, one of the factors that made text-to-911 most urgent was that “many consumers believe text-to-911 is already an available service[.]”¹⁴ The same might be said for Lifeline: most Lifeline customers already believe they are “using” their Lifeline service when they use their wireless phone to send a text message or utilize data services.

¹³ Computer and Internet Use in the United States: American Community Survey Reports (Nov. 2014), available at <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>.

¹⁴ *Text-to-911 Order*, *supra*, at ¶ 1.

Recently, the Consumer Advisory Committee (“CAC”) made a series of recommendations to make Lifeline more accessible to people with disabilities. Specifically, the CAC urged the Commission to work with carriers to ensure “a reasonable level of text message communication and to allow such individuals to maintain eligibility even if they do not make a voice call during a specified period.”¹⁵ Forcing carriers to terminate Lifeline service for lack of voice calls would not only frustrate their intent, it would also deprive these customers of a critical means of staying connected. In keeping with the CAC’s recommendation, the Commission should ensure that individuals with disabilities do not face service termination for “failure” to use a cell phone’s voice feature.

There is no need to classify text messaging or mobile data access as “supported services” under the Lifeline program rules in order to accomplish this result. As TracFone points out, text messaging requires a customer to have a voice-grade connection to the public switched telephone network, a supported service.¹⁶ Moreover, two of the four forms of “usage” under the current rules involve, or potentially involve, methods of communication other than voice telephony: (1) purchasing minutes, whether over the phone, over the Internet, or during an in-person visit to a store;¹⁷ and (2) affirmatively responding to direct carrier contact by indicating their desire to keep their service, whether in a voice call, a text message, an e-mail, an in-person visit, or through other means.¹⁸ Thus, under the current rules, customers may establish “usage” through a variety of methods that do not constitute supported services. Therefore, adding text messaging

¹⁵ Consumer Advisory Committee Recommendation Regarding Access for Eligible Individuals With Disabilities to Lifeline Services (Oct. 20, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-330090A1.pdf.

¹⁶ See Petition at p. 8.

¹⁷ See 47 C.F.R. § 54.407(c)(2)(ii).

¹⁸ See 47 C.F.R. § 54.407(c)(2)(iv).

and mobile data usage would not break any new ground by introducing “unsupported services” to the permissible means of demonstrating usage.

III. Conclusion.

Text messaging and mobile data services are now pervasively used by mobile wireless customers, and they are increasingly essential to low-income consumers and people with disabilities. Customers who use their cell phones to send text messages or use mobile data services clearly intend to keep their service. Accordingly, SBI respectfully requests that the Commission add text messaging and mobile data access as actions that can demonstrate “usage” under the 60-day usage tracking rule.

Respectfully submitted,

Smith Bagley, Inc.



By: _____

David A. LaFuria
Steven M. Chernoff
LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102
(703) 584-8669

Its Attorneys

December 1, 2014