

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

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

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”) hereby files its Reply Comments regarding its Petition for Rulemaking and Interim Relief to Allow Lifeline Subscribers to Establish Usage of Lifeline Service by Sending Text Messages.¹ In the Petition, TracFone requested the Commission to initiate a rulemaking proceeding to amend Commission Rule 54.407(c)(2) (47 C.F.R. § 54.407(c)(2)) to allow Lifeline subscribers of Eligible Telecommunications Carriers (“ETCs”) that do not assess or collect a monthly billing fee to establish usage of Lifeline service by sending and receiving text messages. TracFone also requested interim relief to allow TracFone’s customers to demonstrate their intent to use their Lifeline service via text messaging pending adoption of the proposed rule amendment.

As detailed in the Petition, allowing texting to demonstrate a subscriber’s usage of Lifeline service is a reasonable and appropriate expansion of Lifeline usage activities identified in Commission Rule 54.401(c)(2) (47 C.F.R. § 54.401(c)(2)) and is consistent with statutory principle in 47 U.S.C. § 254(c)(1) that universal service include an evolving level of telecommunications service. Moreover, grant of TracFone’s Petition ensures that Lifeline

¹ See Public Notice – Wireline Competition Bureau Seeks Comment on TracFone’s Petition for Rulemaking and Interim Relief to Amend the Lifeline Usage Rules, DA 14-1591, released Nov. 3, 2014.

customers, and especially those customers who are deaf or hard of hearing or have difficulty with speech, can avoid de-enrollment by utilizing an easily accessible means of communication to indicate that they are using their Lifeline service.

Five comments were filed in response to the Public Notice, all of which support TracFone's Petition. Each of the commenters presents arguments similar to those TracFone raised in its Petition. The overarching themes of the comments are that allowing texting to establish usage of Lifeline service is consistent with the Commission's current rule defining the types of activities that constitute usage of Lifeline service and enables Lifeline subscribers to continue to receive Lifeline benefits. As noted by the Lifeline Reform 2.0 Coalition, texting, like all the other usage activities identified in Commission Rule 54.407(c)(2) demonstrates a "continued desire to continue to receive Lifeline benefits."² Indeed, "[t]ext messaging has as much ability to confirm that a subscriber is still in possession of and using the phone as do the other methods of showing usage listed in Rule 54.407(c)(2)."³ Sprint Corporation similarly states that recognizing the sending of a text message as usage of Lifeline service is "consistent with the intent of Section 54.407(c)(2) – it demonstrates that the subscriber did not abandon his Lifeline service and is not engaging in waste, fraud or abuse related to account inactivity."⁴

² See Comments of Lifeline Reform 2.0 Coalition, at 3-4 (quoting *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶ 263 (2012)); see also Comments of Telscape Communications, Inc. and Sage Telecom Communications, LLC ("Telscape and Sage"), at 3.

³ Comments of National ALEC Association/Prepaid Communications Association ("NALA"), at 7.

⁴ Comments of Sprint Corporation ("Sprint"), at 2; see also Comments of Smith Bagley, Inc. ("Smith Bagley"), at 6-7 (adding text messaging as a permissible means of usage "would not break new ground").

The commenters also agree that, “[a]llowing text messages to establish usage would align the usage rule with current subscriber usage trends”⁵ As TracFone has observed with respect to its own Lifeline customers, other ETCs have found that their Lifeline customers increasingly use text messages in lieu of voice communications.⁶ Indeed, Sprint noted that almost ten percent of its Lifeline customers did not have any voice calls during a recent three month period.⁷ This is not surprising given that the use of text messaging has increased dramatically in recent years.⁸

Perhaps most importantly, commenters stress that the Commission’s failure to recognize text messaging as usage of Lifeline service “impermissibly discriminates against subscribers with disabilities.”⁹ TracFone fully supports a recent Recommendation Regarding Access for Eligible Individuals with Disabilities to Lifeline Service issued by the Commission’s Consumer Advisory Committee and referenced by two commenters.¹⁰ In the Recommendation, the Consumer Advisory Committee urged the Commission to allow individuals with disabilities who rely on text message communications to “allow such individuals to maintain eligibility even if they do not make a voice call during a specified period.”¹¹ As NALA wisely counsels, “[a]ll

⁵ Comments of NALA, at 1.

⁶ See Comments of Telscape and Sage, at 3 (some wireless Lifeline customers do not use the voice functionality of the phone during a 60 day period); Comments of NALA, at 3 (Lifeline subscribers use more text messages than voice minutes).

⁷ See Comments of Sprint, at 3.

⁸ See Comments of Sprint, at 2; Comments of Smith Bagley, at 2 (“Text messaging is now a dominant form of use for a wireless phone.”).

⁹ Comments of Lifeline Reform 2.0 Coalition, at 7.

¹⁰ See *id.*; Comments of Smith Bagley, at 6.

¹¹ Recommendation Regarding Access for Eligible Individuals with Disabilities, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-330090A1.pdf, October 20, 2014.

parts of participation in the program should be accessible, including the capacity to show continued usage and maintain benefits.”¹² TracFone and the commenters agree that allowing texting as usage will “prevent[] disabled and low-income consumers from losing an essential service.”¹³

CONCLUSION

For the reasons set forth in TracFone’s Petition and in these reply comments, TracFone respectfully requests that the Commission promptly commence a rulemaking proceeding for the purpose of amending 47 C.F.R. § 54.407(c)(2) to allow text messaging to constitute usage of Lifeline service and to permit ETCs to include text messaging as usage for purposes of the de-enrollment for non-usage rule on an interim basis.

Respectfully submitted,

TRACFONE WIRELESS, INC.

By: 

Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAURIG, LLP
2101 L Street, NW
Suite 1000
Washington, D.C. 20037
(202) 331-3100

Its Attorneys

December 16, 2014

¹² Comments of NALA, at 5.

¹³ Comments of Smith Bagley, at 5; see also Comments of Telscape and Sage, at 4.