

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

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In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
TracFone Wireless, Inc.)	WC Docket No. ____
Petition for Declaratory Ruling)	
)	
_____)	

**REPLY COMMENTS OF THE LIFELINE REFORM 2.0 COALITION ON TRACFONE
EMERGENCY PETITION FOR DECLARATORY RULING**

The Lifeline Reform 2.0 Coalition (“Coalition”),¹ by and through its undersigned counsel, respectfully submits these reply comments in response to the Wireline Competition Bureau’s (“Bureau’s”) Public Notice² seeking comment on TracFone Wireless, Inc.’s (“TracFone’s”) Emergency Petition for Declaratory Ruling to preempt enforcement of state and local laws and regulations that impose 911/E-911 taxes and fees on low-income Lifeline subscribers who receive no-cost wireless Lifeline service.³ The Coalition supports 911/E-911 initiatives by state and local governments and understands the importance of collecting fees to fund and operate the 911/E-911 infrastructure. However, the Coalition does not support applying such taxes and fees to no-cost Lifeline services, which effectively and unlawfully taxes

¹ The Coalition is comprised of Blue Jay Wireless, LLC; Global Connection of America Inc.; i-wireless LLC and Telrite Corporation, which are all wireless eligible telecommunications carriers (“ETCs”) that provide no-cost wireless Lifeline service to eligible low-income Americans.

² See *Wireline Competition Bureau Seeks Comment on TracFone Wireless Inc. Emergency Petition for Declaratory Ruling*, WC Docket No. 11-42, Public Notice, DA 14-1624 (rel. Nov. 3, 2014) (“Public Notice”).

³ See *TracFone Wireless, Inc. Emergency Petition for Declaratory Ruling*, WC Docket No. 11-42 (filed Oct. 23, 2014) (“Petition”).

a federal benefit intended to improve communications services for those Americans that need it most. Therefore, the Commission should grant TracFone's petition and preempt enforcement of 911/E-911 taxes and fees imposed on no-cost Lifeline services.

I. The Coalition Supports 911/E-911 Emergency Initiatives

The Coalition supports 911/E-911 emergency initiatives by state and local governments and understands the importance of collecting fees to fund and operate the 911/E-911 infrastructure. All of the Coalition members' subscribers pay 911/E-911 taxes and fees when they purchase telecommunications services by adding minutes to their Lifeline plans ("top-up"). Those top-ups are services purchased on top of the standard federal Lifeline benefit, rather than the benefit itself. In this way, like all prepaid wireless customers, Lifeline customers that purchase a service plan with a value greater than the Lifeline benefit (i.e., \$9.25 in most jurisdictions) or that receive no-cost Lifeline service but pay to top-up with additional minutes (i.e., receive a \$9.25 discount for 250 minutes, but then pay \$5 or \$10 to top-up) are required to pay into the state or local 911/E-911 system. This approach fairly assesses 911/E-911 taxes and fees on consumers purchasing telecommunications services on a competitively neutral basis and should fully fund state and local 911/E-911 infrastructure.

II. 911/E-911 Taxes and Fees Should Not Be Applied to the Federal Lifeline Benefit

While the Coalition generally supports 911/E-911 initiatives by state and local governments as discussed above, the 911/E-911 infrastructure should not be funded by taxing the federal Lifeline benefit that is provided to connect veterans, the elderly, single mothers and other low-income Americans to job opportunities, healthcare providers, schools and emergency services. Many programs are successfully run and funded without imposing additional burdens on the least fortunate in society. For example, the federal Universal Service Fund ("USF")

assessment does apply to Lifeline subscribers, but only to the extent that they purchase services beyond the \$9.25 monthly benefit.⁴ The federal USF charge does not apply to the actual Lifeline benefit, in that providers are not required to pay 16.8 percent of the value of the basic no-cost wireless Lifeline service to the USF because to do so would be counterproductive.⁵ State and local 911/E-911 taxes and fees should operate in the same manner.

The Commission does not require ETCs to provide a no-cost Lifeline service and many do not. However, as noted by CTIA,⁶ the Commission specifically endorsed the availability of no-cost Lifeline services when it declined to impose a minimum charge for Lifeline in the *Lifeline Reform Order*.⁷ The Commission was “concerned that requiring a minimum consumer charge could be burdensome for those low-income consumers who lack the ability to make such payments electronically or in person, potentially undermining the program’s goal of serving low-income consumers in need.”⁸ The FCC determined after extensive analysis that imposing a minimum charge would have a detrimental impact on unbanked subscribers, who would likely need to use “money transfer services or purchase money orders to make minimum

⁴ See Comments of Sprint Corporation, WC Docket No. 11-42 at 4-5 (filed Dec. 8) (“Sprint Comments”) (noting that “the Commission has exempted Lifeline customers from the Local Number Portability surcharge...and from the USF surcharge...”).

⁵ ETCs do not currently pay USF contributions on the Lifeline reimbursements received from the Universal Service Administrative Company (“USAC”) for Lifeline service provided to low-income consumers because those reimbursements are not end-user revenues.

⁶ See Comments of CTIA, WC Docket No. 11-42 at 3 (filed Dec. 8, 2014) (“CTIA Comments”).

⁷ See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 266 (2012) (“*Lifeline Reform Order*”).

⁸ *Lifeline Reform Order*, ¶ 266.

payments,” the cost of which would likely exceed *any* nominal monthly minimum.⁹ Such small charges would discourage eligible consumers from enrolling in Lifeline and would drive existing eligible Lifeline customers away from the program.¹⁰ The Commission determined that “[t]he Lifeline program is serving the truly neediest of the population in the most dire economic circumstances and for whom even a routine charge is an excessive financial burden.”¹¹

This analysis holds with respect to a small minimum charge for Lifeline service or requiring often unbanked subscribers that receive a no-cost Lifeline service to pay a 911/E-911 tax or fee on the benefit. The Commission views the availability of no-cost Lifeline services to the truly needy as an important component of the Lifeline program, which in turn satisfies the Commission’s statutory obligation that “consumers in all regions of the Nation, *including low-income consumers*...should have access to telecommunications and information services, including...advanced telecommunications and information services...”¹²

Some commenters have suggested that no-cost wireless Lifeline providers could avoid charging their subscribers the 911/E-911 taxes and fees by simply reducing the Lifeline benefit provided to low-income Americans by reducing the number of minutes provided.¹³ Lifeline providers that do not provide service using their own facilities are required to file and receive Commission approval of compliance plans that describe how they will comply with the

⁹ *Id.*

¹⁰ *See id.*, ¶ 267.

¹¹ *Id.*

¹² 47 U.S.C. § 254(b)(3) (emphasis added).

¹³ *See, e.g.*, State of Indiana’s Comments in Opposition to TracFone Wireless Inc.’s Emergency Petition for Declaratory Ruling, WC Docket No. 11-42 at 11-13 (filed Dec. 8, 2014) (“Indiana Comments”); Comments of State of Alabama and its Statewide 9-1-1 Board Opposing TracFone Wireless’s Petition for Declaratory Ruling, WC Docket No. 11-42 at 9-10 (filed Dec. 8, 2014).

Commission's rules.¹⁴ As part of the compliance plan approval process, the Bureau has informally required ETCs that provide a no-cost Lifeline service to provide a plan with at least 250 minutes. That 250 minute requirement has been built into approved compliance plans, including those of the Coalition members. If Coalition members do not provide a plan with at least 250 minutes, they have not passed along the full \$9.25 benefit to their Lifeline subscribers, as required by the Commission's rules.¹⁵ Therefore, the Coalition could not "change the services offered" as the State of Indiana suggests by filing a new tariff with the Indiana Utility Regulatory Commission.¹⁶

Pursuant to FCC compliance plans, state ETC designation orders and the Commission's requirement that the entire Lifeline benefit be passed through to customers, Coalition members cannot reduce the 250 minute benefit provided to subscribers to account for 911 taxes and fees. Therefore, the Lifeline providers are obligated by state and local laws and regulations to pay 911/E-911 taxes and fees and obligated by federal requirements to provide the full 250 minute benefit to customers, which leaves ETCs to pay the 911/E-911 taxes and fees themselves.¹⁷

III. CONCLUSION

The Coalition supports 911/E-911 initiatives by state and local governments and understands the importance of collecting fees to fund and operate the 911/E-911 infrastructure.

¹⁴ See *Lifeline Reform Order*, ¶ 368.

¹⁵ See 47 C.F.R. § 54.403(a)(1); Sprint Comments at 3; CTIA Comments at 2.

¹⁶ Indiana Comments at 13.

¹⁷ The \$9.25 federal Lifeline benefit typically involves slender margins after purchasing the airtime, providing customer service and complying with extensive state and federal compliance obligations. Without federal checks, more states and localities may decide to impose fees in the range of \$1.75 like Alabama or potentially even higher, which puts in jeopardy the Commission's goal of getting more from the federal Lifeline benefit, including broadband for low-income Americans.

However, the Coalition does not support applying such taxes and fees to no-cost Lifeline services, which effectively and unlawfully taxes a federal benefit intended to improve communications services for those Americans that need it most. Therefore, the Coalition supports TracFone's petition for declaratory ruling to preempt enforcement of state and local 911/E-911 taxes and fees assessed on no-cost Lifeline services.

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