Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90

COMMENTS OF TRACFONE WIRELESS, INC.

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August 31, 2015

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SUMMARY

TracFone supports the underlying goals of the Lifeline Reform Notice of Proposed Rulemaking ("Lifeline Reform NPRM"). The reform and modernization effort reflects the Commission's commitment to strengthening and improving the Lifeline program. TracFone shares the Commission's vision in leveraging Universal Service Fund ("USF") resources to narrow our nation's digital divide, specifically by expanding Lifeline support to cover fixed and mobile broadband Internet access services. TracFone encourages the Commission to approach Lifeline modernization and reform with the objectives of promoting affordability, improving administrative efficiency and convenience for program participants, and weeding out sources of abuse in the existing program. However, TracFone cautions that negative unintended consequences easily could result from well-meaning, but ill-informed or poorly implemented, changes to Lifeline. Absent full study and careful implementation, these new steps could backfire by reducing consumer choice, creating barriers to participation by many low-income households, increasing program costs on providers, burdening the USF, and introducing inefficiency, waste, fraud, and abuse and undermining the program's overall integrity and effectiveness.

TracFone supports reforms to the Lifeline program, so long as the purpose of the program – to provide low-income households with access to affordable telephone service – is not thwarted. Indeed, when modernizing and reforming the Lifeline program, it is imperative for the Commission to preserve the availability and affordability of Lifeline services relied upon by existing low-income households who use free mobile voice connectivity provided by Lifeline carriers for critical communications needs.

TracFone urges the Commission to adopt two important reforms not proposed in the NPRM but which would have a material impact on preventing program fraud and enhancing the public perception of Lifeline. Those two important reforms are: 1) prohibiting the practice of in-person handing out of phones at public places in connection with Lifeline (the subject of a petition by TracFone that has been pending for over two years) and 2) barring the practice of utilizing third party agents and sub-agents who are subject to incentive-based compensation arrangements to market Lifeline services and distribute Lifeline handsets. Both of these practices increase the risk of fraud by incentivizing representatives to hand out as many phones as possible to maximize their own compensation. Other federal support programs are subject to rules prohibiting incentive-based compensation. So too should Lifeline be subject to such rules.

Imposition of minimum service standards is unnecessary and inappropriate because the providers in the highly competitive Lifeline market have responded to consumers' needs by improving and expanding their service offerings. For example, TracFone has increased the number of monthly minutes provided to Lifeline consumers by over 500 percent since the program's inception and by 40 percent (to 350 minutes per month) in August 2015. Providers now include text messaging as part of their Lifeline plans. Requiring minimum service standards, such as a certain number of minutes of use per month, also disregards the fact that wireless and wireline service offerings differ in that wireless service can be used anywhere and the associated Lifeline benefits are not limited to local exchange service. Low-income households benefit most by being able to choose the Lifeline service that best meets their needs. TracFone also advises the Commission not to require a minimum payment by Lifeline consumers as a way to reduce waste, fraud, and abuse (a theory that has no factual support) because even relatively small monthly charges would make Lifeline service unaffordable for

many low-income households. No charge wireless Lifeline service was introduced by TracFone and other providers which provided emergency Lifeline service to displaced Hurricane Katrina victims. That service enabled thousands of gulf state residents to remain connected. It worked well then and works well now.

Although TracFone understands policymakers' desire to impose a budget on Lifeline to contain its size, it should be understood that the growth of the fund that has occurred since Lifeline's modernization in 2008 is primarily due to the growth in its popularity, not because of waste, fraud, or abuse. Still, the program remains underutilized, with a participation rate below 50 percent today. Any Lifeline budget should be tied to a participation rate as close to 100 percent of eligible households as possible. Expanding the Lifeline program to cover broadband also must be done in a responsible manner that fully recognizes the financial realities of such an expansion while taking into consideration the need to preserve the types of voice services that many Lifeline customers need and have come to rely upon. Given the expense of Internet service and Internet access devices, the Commission must determine how to fund an expanded program by considering appropriate and fair changes to the contribution methodology.

With regard to reforming the Lifeline program, TracFone is concerned that the purported benefit of the Commission's effort to remove providers from the process of verifying customer eligibility is insufficient to justify the total cost, complexity, and inefficiency of a national third party verification system. The creation of a third party verification system is not necessary given that state databases are available to verify eligibility. Indeed, TracFone has worked with 17 states to access such databases. TracFone urges the Commission to be mindful of wasteful duplication of existing state efforts. Therefore, TracFone suggests that as a first step towards a national verification system, a limited number of states should be used to test a third party

verification system so that all interested parties can learn from experience and determine what structures and rules would work best for a national verifier. Whether or not a national third party verification system is implemented, Lifeline providers should continue to have the option of conducting the annual re-certification of eligibility of their customers. If the Commission decides to go forward with a third party verification system, then TracFone recommends that a Centralized NLAD Certification System be implemented to verify eligibility using three sources: 1) state eligibility databases; 2) federal databases containing enrollment data in Lifeline qualifying programs; and 3) applicant-provided documentation of program-based eligibility that is required to be reviewed and retained by ETCs. TracFone also urges the Commission to improve the accuracy of applicant personal identity verification by adopting additional rules.

TracFone has concerns about coordinated enrollment whereby federal and state agencies allow consumers to enroll in Lifeline when they enroll in programs administered by those agencies. Coordinated enrollment would quickly strain the USF in that anyone who enrolls in an assistance program, *e.g.*, SNAP, would be almost automatically enrolled in Lifeline. In addition, agencies would be required to incur significant expenses to meet the responsibilities associated with Lifeline enrollment, such as developing systems to connect with participating Lifeline providers and with NLAD or other databases and allocating personnel to perform those responsibilities.

Similarly, TracFone is concerned that the benefits of increased portability through a voucher-style distribution mechanism could be greatly outweighed by the burden imposed on Lifeline customers (particularly the disabled, elderly, rural poor, and those without ready access to transportation) due to the need to redeem Lifeline benefits monthly under such a system, whether online or at a physical store. A voucher system would reverse the substantial increase in

Lifeline participation that has occurred since 2008 following the emergence of no charge wireless Lifeline service providers and the consumer outreach and advertising conducted by those providers. ETCs would have no incentive to market a program which provides a voucher to a consumer that could be used to obtain service from any ETC. TracFone believes the goals of increasing consumer choice and reducing incentives for fraud could more easily be served by enhancing the existing NLAD and simplifying the process of transferring Lifeline benefits between carriers. Portability of benefits can be obtained by other means.

TracFone does not oppose the elimination of income-based eligibility, but encourages the Commission not to reduce the number of Lifeline-qualifying programs. Also, while the Commission and State commissions should continue to designate ETCs, as required by statute, a more streamlined process would enable low-income consumers to more quickly gain the benefits of having additional Lifeline service options.

Sending and receipt of text messages should be considered as usage for purposes of the de-enrollment for non-usage rule, just as sending and receipt of voice calls counts as usage. Reducing the 60 day non-usage period to a 30 days would unfairly penalize consumers who need access to phone service, but do not need or are unable to use the their phones for a short period of time. TracFone also opposes the use of NLAD to calculate Lifeline support payments, because NLAD does not accurately state the number of active subscribers, and in many cases would overstate that amount, thereby causing waste of USF resources.

TracFone stands ready and willing to work with the Commission to modernize and reform the invaluable Lifeline program without harming those low-income households who rely on Lifeline for essential connectivity.

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COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby submits its comments in the above-captioned matter and states as follows:

Introduction

On June 22, 2015, the Commission issued its Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order in this consolidated proceeding.[1] In the Further Notice of Proposed Rulemaking portion of the Lifeline Reform NPRM, the Commission proposes a series of reforms to the rules governing the Lifeline program to enhance the program, to strengthen measures to prevent waste, fraud and abuse of Universal Service Fund ("USF") resources, and to modernize and expand the program to support broadband Internet access service in addition to voice telephony service. With about 4.4 million qualified low-income households currently enrolled in its SafeLink Wireless® Lifeline program, TracFone is the nation's leading provider of Lifeline-supported services. As a pioneer in wireless Lifeline, TracFone has been at the forefront of prior Lifeline

[1] In the Matter of Lifeline and Link Up Reform and Modernization, *et al.*, FCC 15-71, released June 22, 2015. Since these comments are limited to the notice of proposed rulemaking portion of the Commission document, it will be referred to as the "Lifeline Reform NPRM" or "NPRM" unless indicated otherwise.

reform efforts and supports the Commission's continuing commitment to strengthen and improve this invaluable program. TracFone encourages the Commission to approach Lifeline reform with a view toward efforts to improve efficiency and weed out fraud without reducing the availability and affordability of Lifeline to those low-income households who rely on their currently-available Lifeline services to remain connected with family, current and prospective employers, healthcare providers, and government offices, and to respond to emergency situations.

In 2012, the Commission issued its first important series of Lifeline reforms.[2] Those 2012 reforms necessitated that TracFone and other Lifeline providers alter the manner in which they determined applicant eligibility, enrolled consumers and operated their Lifeline programs. Those changes proved to be well worth the effort. As noted by the Commission in the Lifeline Reform NPRM, those "transformational" 2012 reforms resulted in immediate benefits, saving the program about $2.75 billion between 2012 and 2014.[3] More importantly, those savings and efficiencies resulting from the 2012 Lifeline Reform Order are continuing as the reforms adopted continue to be implemented. For example, the all-important National Lifeline Accountability Database ("NLAD") was not placed in service until 2014 (nearly two years after the 2012 Lifeline Reform Order) and continues to be fine-tuned. Furthermore, in the Order on Reconsideration portion of the Lifeline Reform NPRM, the Commission has taken another important action to prevent program fraud, thereby conserving USF resources. It acted favorably on a recommendation made by TracFone in 2012 to require Lifeline providers to retain and make available for audit eligibility documentation provided to them by applicants for program enrollment. This document retention requirement (codified in amended Section 54.410 of the

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[2] Lifeline and Link Up Reform and Modernization, *et al.* (*Report and Order and Further Notice of Proposed Rulemaking*), 27 FCC Rcd 6656 (2012) ("2012 Lifeline Reform Order").
[3] Lifeline Reform NPRM, ¶ 3.

Commission's Rules) will deter providers and their representatives from claiming to have "reviewed" applicants' eligibility documentation without actually having done so. Providers will now face the risk of audit and sanctions for falsely claiming to have reviewed such documentation. It is anticipated that this long overdue but important reform will further the Commission's continuing efforts to insulate the Lifeline program from fraud and produce additional program savings.

Preliminary Observations and Proposals

Before addressing the substantive rule proposals raised in the NPRM, several preliminary observations are in order. First, the NPRM and the individual Commissioners' statements accompanying the NPRM mention the need to "modernize" Lifeline to bring it into the 21st Century. TracFone agrees with those goals. Lifeline, like any federal program, should be subject to continuous scrutiny and modifications as necessary and appropriate to address changed circumstances and to keep the program current. TracFone understands and agrees that expansion of Lifeline to support broadband service in a fiscally prudent manner is an essential aspect of such modernization. However, TracFone disagrees with the notion that the Lifeline program has not been modernized since its inception in the mid-1980s. As will be explained in these comments, Lifeline has been modernized in several important respects.

Originally conceived as a program to offset increases in the monthly charges for telephone service resulting from Commission access charge reforms and the breakup of the Bell System in 1984, Lifeline was little used and largely ignored for more than two decades. For years, no one complained about "massive growth" of Lifeline because, frankly, few households were receiving Lifeline-supported service. According to Commission data published in 2004, only about one-third of qualified low-income Lifeline-eligible households nationwide were receiving Lifeline-supported service despite the fact that Eligible Telecommunications Carriers

("ETCs") were required by statute and by the Commission's rules to advertise the availability of the program using media of general distribution.[4] In fact, excluding California (whose participation rate was nearly 132 percent, meaning that more households were enrolled than were qualified, presumably due to a lack of effective program controls at the time in that state), Lifeline participation nationwide was closer to twenty percent of qualified households, with many states having Lifeline participation rates in the single digits.[5]

In 2005, even before the advent of wireless no charge Lifeline programs as we know them today, TracFone and others demonstrated the important role which wireless providers could play in helping communities in times of great need through the Lifeline program. That year, following the displacement of thousands of families, including many low-income families, as a result of the devastation caused by Hurricane Katrina, the Commission established a temporary Lifeline program to provide relief to persons who had lost their homes.[6] Several wireless providers, including TracFone,[7] volunteered and were approved by the Commission to participate in a special Lifeline program in which they provided qualified displaced persons with free cell phones and 300 minutes of use, based upon a service proposal of TracFone.[8] TracFone alone enrolled nearly 30,000 Katrina victims. This month marks the tenth anniversary of

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[4] 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

[5] Lifeline and Link-Up (*Report and Order and Further Notice of Proposed Rulemaking*), 19 FCC Rcd 8302 (2004), at Appendix K – Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002). For example, the reported Lifeline participation rate in Kansas was 10.3 percent and the participation rate for South Carolina was 7.5 percent. Mississippi – one of the most impoverished states in the nation – had a Lifeline participation rate of only 6.9 percent. Even the District of Columbia – home of the Commission's headquarters – had a Lifeline participation rate of only 21.5 percent.

[6] In the Matter of Federal-State Joint Board on Universal Service *et al.*, 20 FCC Rcd 16883 (2005) ("Katrina Order").

[7] Public Notice – The Wireline Competition Bureau Announces the Designation of a Temporary Eligible Telecommunications Carrier for the Purpose of Providing the Hurricane Katrina Lifeline Assistance, DA 05-2976, released November 16, 2005.

[8] Katrina Order, ¶ 12 nn.24, 25.

Katrina. As the Commission considers reforms to Lifeline, it is reminded of the important role that wireless providers played during one of the nation's worst natural disasters and how the Commission was able to utilize the Lifeline program to bring needed relief to thousands.

Another way in which the public benefits of the Lifeline program have been enhanced following the advent of wireless Lifeline services such as TracFone's SafeLink® has been the coordination of Lifeline with health care delivery. TracFone has entered into arrangements with health maintenance organizations ("HMOs") which facilitate enrollment in SafeLink® by HMO members who are enrolled in Medicaid. When these Medicaid recipients apply for Lifeline enrollment, TracFone is able to confirm through the HMO whether the applicant is enrolled in Medicaid (and therefore Lifeline-eligible). Those Medicaid members enrolling in SafeLink® through their HMOs receive certain health care-related services in addition to the standard Lifeline benefits. These include, for example, unlimited calling any time day or night to the HMO, the ability to subscribe to mobile health text messaging programs through Connect4Health such as text4baby, text4kids, and text4health. Other features include educational messages and appointment reminders.[9] Working with governmental and non-governmental departments and agencies, including health care providers, to educate low-income consumers about Lifeline should be encouraged, especially by those departments and agencies which have frequent contact with the Lifeline-eligible population.

In 2008, following the Commission's courageous and wise decision in 2005 to exercise its forbearance authority under Section 10 of the Communications Act[10] to allow TracFone – a non-facilities-based provider of commercial mobile radio service – to utilize USF funding to

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[9] As will be described in Section VI of these comments, these important health care-related Lifeline benefits would be lost if Medicaid were to be eliminated as a qualifying program.

[10] 47 U.S.C. § 160. *See* Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance, 20 FCC Rcd 15095 (2005).

provide wireless Lifeline service, low income households were presented with new and attractive Lifeline service options. TracFone's SafeLink Wireless® service brought to the Lifeline program such innovations as mobility, all distance calling, roaming, vertical features (call waiting, caller ID), and text messaging. Moreover, it also presented low-income households, including many of the nation's most impoverished households, with a Lifeline service option that required no out-of-pocket expenditures. No charge Lifeline service enabled many low-income households for the first time to be able to afford telecommunications service. Reducing a $30 local phone bill to $20.75 through a $9.25 federal subsidy is of little value to a low-income household who cannot afford to pay $20.75 for local dial tone (not to mention, having to pay additional, non-subsidized charges for long distance calling, service features, etc.). Also, Lifeline providers for the first time actively marketed the availability of Lifeline service using such advertising media as television and radio, and direct mail. It is no wonder that this historically underutilized program grew. For the first time, more than 20 years after the Lifeline program's inception, providers were actually offering and promoting Lifeline services which low-income consumers found important and desirable, and which they could afford. The difference between program growth due to fraud on the one hand, and program growth due to increased need and increased demand on the other hand, is a critical distinction, and one about which the Commission should remain mindful as it embarks upon its efforts to responsibly and meaningfully reform and modernize the Lifeline program.

TracFone does not dispute that there has been fraud in the Lifeline program (although there is no evidence that indicates that the level of program fraud is as high as other federal benefit programs, including other programs supported by the USF) and that responsible measures should continue to be taken to enable the industry and government to prevent fraud from

occurring, to identify it when it occurs, and eliminate it where it exists. The primary reason for growth of Lifeline is not waste, fraud and abuse, but rather is the increasing popularity of a long-ignored and little-used federal program and the innovative services and marketing of those services which have occurred since the program was modernized in 2008.

In order to eradicate program fraud and enhance the public perception of this all-important program in the face of public criticism and adverse media portrayals of the program, there are important steps the Commission can and should take, including some that are not mentioned in the Lifeline Reform NPRM. One important reform would be to eliminate perhaps the most offensive and abusive practice affecting the Lifeline program – the practice of handing out phones associated with Lifeline services on street corners, out of car trunks, and from tents near government assistance offices and other public venues. Few, if any, factors have besmirched the Lifeline program more than news reports and videos showing Lifeline provider agents approaching persons on parking lots, in front of public assistance centers and other public venues and literally handing them Lifeline phones to passersby with few, if any, questions asked.[11] More than two years ago, in May 2013, TracFone petitioned the Commission to prohibit this unseemly practice which has generated so much program criticism.[12] As TracFone explained in that petition, there is no need to hand out phones in this manner. Since the inception of its SafeLink Wireless® Lifeline program in 2008, TracFone has enrolled nearly 16 million qualified low-income households in its Lifeline program and has never handed out a phone on a real time basis anywhere. With TracFone, no consumer's application for Lifeline service is approved until the company verifies the applicant's personal identity and the applicant's

[11] *See, e.g.*, Dissenting Statement of Commissioner Ajit Pai to the Lifeline Reform NPRM where he compared the distribution of Lifeline phones to handing out Halloween candy.
[12] Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers, WC Docket No. 11-42, filed by TracFone Wireless, Inc., May 13, 2013.

eligibility for Lifeline in accordance with Commission and (where applicable) state enrollment requirements. After that approval process has been completed, TracFone sends to the applicant via express delivery service a handset activated for use with its Lifeline service.[13] TracFone has found that sending handsets to approved and enrolled customers' addresses provides an additional layer of fraud prevention that does not exist with in-person handset distribution. There is no reason why all Lifeline providers should not be prohibited from real time in-person phone distribution. Yet, notwithstanding the rampant media stories documenting such unseemly practices and notwithstanding Commissioner Pai's observation that phones are being handed out like "Halloween candy," TracFone's two year old petition remains unacted on, and nowhere in the Lifeline Reform NPRM does the Commission even propose or invite comment on the proposal to prohibit in-person handset distribution.

Another practice that has led to program fraud and which should be prohibited has been the practice of utilizing third party agents and sub-agents who are subject to incentive-based compensation arrangements to market Lifeline services and distribute Lifeline handsets. Most Lifeline providers, including TracFone, use third party distribution channels. Those channels involve commission-based compensation. Under such compensation systems, the more customers an agent enrolls in Lifeline, the more money the agent receives. Those agents have financial incentives to look for ways to get around program requirements and limitations. TracFone recommends that all Lifeline providers be prohibited from compensating persons marketing Lifeline-supported services based on commissions or other incentives. Such a change would necessitate that Lifeline providers, including TracFone, revise how they market their

[13] In accordance with Commission requirements, TracFone does not request reimbursement from the Universal Service Administrative Company ("USAC") for any Lifeline customer until that customer has used his/her Lifeline service either to initiate or receive a call.

Lifeline services, and specifically, how they compensate their representatives. Such a profound change will not be easy to implement and may necessitate a reasonable transition period. Yet, TracFone believes that elimination of incentive-based compensation would significantly reduce, if not eliminate, the untoward sales practices and resulting program fraud that has occurred in the Lifeline program.

There is precedent for such compensation restrictions. Other federal benefit programs are subject to regulatory requirements explicitly prohibiting such incentive-based compensation. For example, the United States Department of Education has promulgated regulations to implement certain higher education financial support and funding programs under the Higher Education Act of 1965. One such regulation, codified at 34 C.F.R. § 668.14(b)(22), prohibits participating institutions from "provid[ing] any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of title IV HEA [Higher Education Act] program funds." Just as the Department of Education has prohibited incentive-based compensation for persons recruiting participants in federally-funded education benefit programs, so too should the Commission similarly prohibit incentive-based compensation for persons recruiting participants in the federally-funded Lifeline program.

One final preliminary observation: whatever rules are promulgated in this proceeding should be prospective only, and should be implemented in a manner which would not jeopardize the ability of currently-enrolled households to continue to receive Lifeline-supported services of their choice, whether such services are offered as discounts below standard billed rates or as no charge services. Today, nearly 12 million qualified low-income households are enrolled in

Lifeline. Those households have demonstrated their eligibility in accordance with current laws and regulations. Whatever changes to the program rules are adopted, those changes should not have the unintended and unfair consequence of depriving those households of the Lifeline-supported services they are now receiving, so long as they remain eligible under the current rules. In short, Lifeline households who were enrolled in accordance with existing requirements should have their enrollments and their receipt of Lifeline-supported service grandfathered.

With these general considerations in mind, TracFone will address the reform proposals raised in the Lifeline Reform NPRM.

I. The Commission Should Not Establish Minimum Service Standards for Voice Service

The Commission asks whether it should adopt minimum standards for voice service and, if so, what should be those standards.[14] Specifically, the Commission asks about minimum usage quantities for wireless Lifeline services, including whether Lifeline providers should be required to provide unlimited calling. Imposition of such minimum service standards would be unnecessary and inappropriate. Noting its view that the cost of wholesale wireless minutes has declined, the Commission implies that Lifeline providers are not passing through to their Lifeline customers the full value of the support received.[15] More importantly, the Commission's proposal to mandate minimum quantities of service ignores 1) the dynamics of the marketplace; and 2) the inherent differences between wireless and wireline telecommunications services, and how those differences are perceived by consumers, including low-income, Lifeline-qualified, households.

[14] Lifeline Reform NPRM, ¶¶ 16, 34-42. The Commission also asks about minimum standards for broadband service.

[15] Whether or not wholesale prices for wireless service have decreased as claimed in the NPRM, wholesale wireless transmission is not the only cost incurred by wireless resale Lifeline providers. There are customer acquisition costs, regulatory compliance costs, general and administrative costs and other costs. Historically, those Lifeline providers subject to rate regulation, including wireline local exchange carriers, have charged rates for Lifeline-supported service sufficient to recover all of their costs, not just their transmission costs.

Wireless Lifeline services have not remained "stagnant," as suggested in the NPRM.[16] There have been profound enhancements in wireless Lifeline benefits, all of which have resulted from market forces without the need for regulatory intervention. In understanding those changes, a brief history of the wireless Lifeline market is instructive.

When TracFone became the first wireless ETC to commence offering no charge Lifeline service in 2008, following its designation by the Commission as an ETC in ten states,[17] its initial Lifeline offering was 68 minutes per month at no charge to the customer. In retrospect, 68 minutes was not a very substantial monthly benefit. Yet the Commission and many state commissions approved that plan when they designated TracFone as an ETC. Furthermore, the fact that millions of low-income households enrolled in Lifeline for the first time and selected TracFone as their Lifeline provider indicates that even a 68 minute monthly benefit was deemed to be valuable to many consumers.

Shortly thereafter, other wireless Lifeline providers entered the market and one offered a monthly benefit of 200 minutes. TracFone responded to that marketplace development as one would expect a competitor to do – it increased its monthly benefit in response to competition, in that case, to 250 minutes. Other providers later entered the market and matched that offering. The increase from 68 minutes to 250 minutes did not end the market-driven service enhancements. For example, TracFone and other providers allowed for text messaging, initially at a rate of 3 texts per minute of talk time. In March 2015, TracFone extended its Lifeline text benefit to allow for **unlimited** text messages by Lifeline customers. Other providers soon followed. For millions of wireless consumers, including Lifeline consumers, for whom text

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[16] Lifeline Reform Order, at ¶ 16.

[17] Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York for the Limited Purpose of Offering Lifeline Service to Qualified Households, *et al.*, 23 FCC Rcd 6206 (2008).

messaging is their primary (sometimes only) cell phone usage, unlimited texting is a substantial and important benefit enhancement.

Also, in March 2015, TracFone sought to strengthen its position as a leading Lifeline provider by offering 500 minutes for the first four months of enrollment as an inducement to attract new customers. Not surprisingly, competing Lifeline providers responded by offering similar 500 minute benefits for the first few months. Even more recently, on August 1, 2015, TracFone implemented yet another important Lifeline benefit enhancement: effective that date TracFone's standard monthly Lifeline benefit was increased *from 250 minutes to 350 minutes* – a forty percent increase in the monthly benefit, all provided at no cost to the Lifeline customer! In short, since becoming a Lifeline provider in 2008, TracFone's no charge monthly Lifeline voice service benefit has increased by more than 500 percent and its text benefit increased from none to unlimited, all based on market forces and the company's response to those market forces. If the history of competitive telecommunications markets is any guide, it is virtually certain that competing wireless Lifeline providers will respond to TracFone's 40 percent benefit increase either by matching or by exceeding that increase. That history demonstrates that market forces will continue to drive enhancements in Lifeline benefits without the need for Commission-imposed minimum service standards.

The Commission's proposal to impose a minimum usage requirement for wireless Lifeline programs also disregards the important differences between wireline and wireless services and consumer perceptions of those differences. Today (as in 1985), wireline telephone companies provide Lifeline service as a discount below the retail price of only one telecommunications service: local exchange service (dial tone and calling within a local exchange area). Those relatively few consumers who elect to use their Lifeline benefit with

wireline telephone service receive monthly bills with the local exchange service portion of the bills reduced by $9.25. All other services provided by those carriers and billed to their Lifeline customers are billed at full, non-discounted rates.[18] Added to those bills are undiscounted charges for long distance service, and for all optional services offered by the provider including, *e.g.*, caller ID, call waiting, voice mail, three way calling, etc. Even directory listings are subject to monthly billed charges. In short, those Lifeline consumers receive unlimited **local** calling service at a subsidized discounted price, but receive no other subsidized or supported service.

Lifeline consumers who prefer to receive their entire Lifeline benefit as a discount on the local dial tone portion of their monthly telephone bill can select those services as they have been able to do since the mid-1980s. Those who prefer the advantages of mobility, all distance dialing, vertical features, unlimited text messaging, and specified quantities of no charge voice service, may avail themselves of such plans offered by TracFone and others.[19] In a competitive marketplace such as that which has emerged in the Lifeline service market since 2008, consumers have choices. With multiple providers offering various wireline and wireless Lifeline options, low-income households may choose from among those available options the services, plans, features and pricing that best meet their needs. This is how a competitive market should function.

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[18] Of course, important features of wireless service desired by consumers such as mobility, text messaging, and roaming are not available to Lifeline customers of wireline carriers or to any other customers of those carriers at any price.

[19] Recent data indicate that more than 80 percent of Lifeline support is being paid to providers of no charge wireless Lifeline service, indicating that a substantial majority of Lifeline consumers prefer those plans. *See* Low Income Support Mechanism, Wireless Disbursements as a Percentage of Total Disbursements, 3Q2014 (October 27, 2014), http://www.usac.org/res/documents/about/pdf/quarterly-stats/LI/Wireless-Disbursements-as-a-Percentage-of-Total-Disbursements.pdf (disbursements to wireless providers represent 85 percent of Lifeline disbursements).

The Commission notes that in California, the existence of an additional state-funded subsidy results in Lifeline programs which provide more minutes than do Lifeline plans funded only by the federal USF.[20] That is correct. In California, the California LifeLine program, funded by a state fund, provides a monthly state-funded benefit of $12.65. That amount is in addition to the $9.25 federal support amount. With a total (federal and state) monthly support level of $21.90 ($12.65 + $9.25), California Lifeline providers are able to offer Lifeline programs with much greater benefits than those possible with just the federal subsidy. For example, TracFone has proposed to offer California Lifeline customers a no charge unlimited talk and text plan. Qualified low-income California households selecting that plan when it becomes available will be able to receive unlimited voice and text messaging with no monthly out-of-pocket expenditure.[21] Other providers already approved to offer Lifeline service in California subsidized by both the federal USF and the California LifeLine fund are offering similar unlimited voice and text plans. Some California Lifeline plans even include some broadband Internet service. TracFone encourages other states to follow California's lead and establish robust state-funded programs that provide supplemental support levels which make possible unlimited calling plans such as those that will be available from TracFone in California.

In proposing minimum service standards such as unlimited calling plans, the Commission acknowledges that such plans would require consumers to contribute their own funds in order to obtain such benefits. TracFone agrees that some qualified low-income households place such value on unlimited all distance calling plans that they would be willing to contribute their own

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[20] Lifeline Reform NPRM, ¶ 40.

[21] On August 13, 2015, the California Public Utilities Commission approved TracFone's advice letter seeking designation as an ETC and as a Lifeline provider under the California LifeLine program. As a result of that favorable action, TracFone's Lifeline plans, including the unlimited talk and text plan, will soon be available to low-income California households.

resources to obtain such a plan. Lifeline providers who perceive consumer demand for such services should remain free to offer such plans. For example, on August 25, 2015, Boomerang Wireless, LLC filed with the Commission an amendment to its pending application for designation as an ETC in certain states. In that amended application, Boomerang proposes variations on its Lifeline plans which provide options as to quantities of service, including broadband data, and subsidized prices for (not free) handsets. TracFone has no position on whether Boomerang's amended application should be granted or on the merits of those plans. However, the fact that Boomerang has proposed these plans (which differ from the no charge offerings of TracFone and others) demonstrates that some providers perceive a demand for Lifeline plans which include greater benefits but that require customer payment TracFone strenuously opposes any Commission-imposed requirement that Lifeline consumers pay for a portion of the Lifeline benefits received or that Lifeline providers provide greater benefits than that which can be provided within the limits of the support amount (currently $9.25 per month) under the Commission's rules. The rapid growth in the historically underutilized Lifeline program following the advent of no charge wireless Lifeline programs pioneered by TracFone and others demonstrates significant consumer demand for such options.[22]

TracFone has surveyed its own base of Lifeline customers and found that most of those responding cannot afford to make any monthly payment, and that even a $5.00 monthly charge

[22] In the 2012 Lifeline Reform Order, the Commission considered, but wisely rejected, the idea of mandatory charges on Lifeline service. *See* 2012 Lifeline Reform Order, ¶¶ 266-268, noting that such charges would be burdensome on low-income consumers and would discourage enrollment by qualified low-income households. More recently, an ill-advised attempt by the Georgia Public Service Commission to promulgate a mandatory $5.00 monthly fee on Lifeline was enjoined by the United States District Court for the Northern District of Georgia. CTIA – The Wireless Association, *et al.* v. Tim G. Echols, *et al.*, Civil Action No. 1:13-CV-399-RWS, filed December 17, 2013. Following the federal court's injunction, the Georgia PSC wisely rescinded that rule.

would cause many of its Lifeline customers to discontinue their enrollment. Of those responding to TracFone's customer survey, 86 percent of its SafeLink® customers indicated that they would discontinue their enrollment if they were required to pay any amount. Further, 67 percent of responding Lifeline customers indicated that 350 minutes per month was sufficient to meet their needs. 91 percent responded that they could not afford to pay for a wireless Lifeline plan which provided more than 350 minutes but which included a monthly charge, and would de-enroll from the program if required to pay a monthly charge. Such de-enrollments based on service unaffordability would cause millions of low-income households to be disconnected from the public switched network, thereby undermining the historic reason for Lifeline – to connect low-income households. TracFone also has learned from its customer research that more than 41 percent of its Lifeline customers are "unbanked," meaning that they do not have checking accounts or credit cards, and therefore have no practical means for remitting a monthly payment even if they could afford the payment.[23] By sharing these survey results, TracFone does not suggest that no Lifeline customers could afford to pay monthly charges or that there is not a portion of the Lifeline customer base which needs more than 350 minutes and would be willing to pay monthly charges to receive more minutes. TracFone's data show that there is a portion of the addressable Lifeline market that values 350 minute no charge plans, and providers, including TracFone, should be allowed to continue to serve that market segment as they have been doing since 2008.

The fact that Lifeline enrollment among qualified low-income households has grown from around 20 percent of qualified households (excluding California) to nearly 50 percent since

[23] As a provider of prepaid services only, TracFone has no billing system. A mandatory minimum charge requirement would necessitate that TracFone invest in a billing system for no purpose other than to comply with that requirement. Other providers of prepaid-only services would be similarly affected.

2008 indicates that substantial progress has been made connecting low-income consumers and that, for the first time, Lifeline benefits are available to all qualified low-income households, including those millions for whom even a modest monthly payment would preclude their enrollment.

In discussing minimum service standards, the Commission cites to Section 254 of the Communications Act for the statutory requirement that "quality services should be available at just, reasonable, and affordable rates."[24] Making service available at affordable rates is indeed an important statutory requirement. TracFone urges the Commission to recognize what TracFone has learned from its years as a major Lifeline provider: for many low-income households, even relatively small monthly charges would effectively deprive millions of consumers of service at rates that are affordable to them.

Though not explicitly stated in the Lifeline Reform NPRM, it appears that the suggestion that consumers be required to contribute to their Lifeline service may be based on the so-called "skin in the game" theory articulated by program critics. *See, e.g.*, Dissenting Statement of Commissioner Ajit Pai ("We should have proposed requiring Lifeline recipients to make a minimum contribution of at least 25% of the cost of service."). The "skin in the game" theory is built on a premise that requiring low-income households (many of whom could not afford to pay anything) to pay for some portion of their Lifeline service would somehow (without explanation) reduce waste, fraud and abuse. (*See* Commissioner Pai Dissent). There is no factual basis for this theory. If no charge Lifeline services were a major cause of program fraud as alleged by "skin in the game" proponents, one would expect that a substantial portion of the customer bases of carriers offering no charge services would be unable to re-certify their continuing program

[24] 47 U.S.C. § 254(b)(1), as quoted at Lifeline Reform NPRM, ¶ 35 n.114.

eligibility as required by the Commission's rules, and would be forcibly de-enrolled. Yet, in the years since the inception of the annual re-certification requirement following the 2012 Lifeline Reform Order, many of the Lifeline providers with the highest percentages of customers who would not or could not re-certify their eligibility were wireline telephone companies, none of whom offer no charge Lifeline service, and all of whose customers have "skin in the game." Major wireline ETCs including AT&T and Verizon, had to de-enroll more than 40 percent of their Lifeline customers who either could not or would not certify their Lifeline eligibility.[25] The Montana Public Service Commission reported that more than 50 percent of the wireline Lifeline customers in that state had to be de-enrolled, notwithstanding the fact that every one of those customers who had to be de-enrolled had "skin in the game."[26] In contrast, only about 15 percent of TracFone's Lifeline customers failed to re-certify their continuing eligibility.[27]

II. The Commission Should Proceed Carefully in Determining Whether and How to Establish a Lifeline Program Budget

In the Lifeline Reform NPRM, the Commission invites comments on whether and how a budget should be set for the Lifeline program. Prudent fiscal management compels budgeting of federal expenditures and federal programs. The important questions are 1) how to develop a Lifeline budget? and, 2) what would be the impact of a budget? Proponents of a Lifeline budget often note that Lifeline is the only USF-supported program not on a budget. Whether or not that statement is true, it is largely irrelevant. Lifeline is the only USF-funded program in which

[25] *See* AT&T Services, Inc. Annual Lifeline Eligible Telecommunications Carrier Certification Form (FCC Form 555), WC Docket No. 14-171, January 30, 2015; Verizon Annual Eligible Telecommunications Carrier Certification Form (FCC Form 555), WC Docket No. 14-171, January 30, 2015.

[26] News Release, PSC Urges Telephone Customers to Verify Lifeline Status, Montana Public Service Commission, February 25, 2013.

[27] When thousands of gulf state residents displaced by Hurricane Katrina were provided with free Lifeline-supported handsets and 300 no charge minutes of use, no one was complaining that those Katrina victims should have "skin in the game." It was not appropriate then, and it is not appropriate now.

support is provided directly to consumers in the form of subsidies on the price of service. The Commission acknowledges in the NPRM that "not every eligible household participates in the Lifeline program."[28] That statement is correct. However, it significantly understates the magnitude of the Lifeline enrollment problem. As noted above, following the advent of popular wireless Lifeline services, Lifeline enrollment nationwide is closer to, but still under, 50 percent of qualified low-income households.[29] Stated conversely, well over one-half of the nation's Lifeline-eligible low-income households are not yet receiving Lifeline-supported service. The percentage of Lifeline-eligible low-income households receiving Lifeline service is far below the participation rates among qualified persons for other federal support programs, including those programs which are Lifeline-qualifying programs. Indeed, the percentage of eligible households receiving Supplemental Nutritional Assistance Program (SNAP) benefits is well above 50 percent.[30] No doubt, more than one-half of the school age children eligible for support under the National School Lunch program are receiving those lunches. Among federal support programs, Lifeline is unique in its failure to reach the majority of qualified households. That is a major shortcoming, which can and should be addressed before limits are placed on the program.

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[28] Lifeline Reform NPRM, ¶ 57.

[29] As of March 2014, only 33 percent of households eligible for Lifeline participated in the Lifeline program. *See* Lifeline Reform NPRM, ¶ 111 ("As of March 2014, roughly 42 million households were eligible for support under the Lifeline program"); USAC, FCC Filings, 2014 Third Quarter Appendices, LI08 Lifeline Subscribers by State or Jurisdiction – January 2014 through March 2014 (total number of Lifeline subscribers at the end of March 2014 was 14,057,574). Following the failure-to-re-certify de-enrollments at the end of 2014, the number of enrolled Lifeline customers has been further reduced.

[30] For example, in 2013, 85 percent of eligible persons received SNAP benefits. United States Department of Agriculture, Food and Nutrition Service, Trends in Supplemental Nutritional Assistance Program Participation Rates: Fiscal Year 2010 to Fiscal Year 2013 – Summary (August 15, 2015), http://fns.usda.gov/sites/default/files/ops/Trends2010-2013-Summary.pdf. Approximately 42 percent of households eligible for Lifeline through participation in a federal assistance program, are eligible through SNAP. *See* Lifeline Reform NPRM, ¶ 95.

If the Commission establishes a Lifeline budget, then the budget should not be tied to an arbitrary monetary amount, but rather to a minimally acceptable participation rate. For example, there should be no limits on the program size until at least 75 percent of qualified households are enrolled. Even if that lofty goal were to be reached, still a quarter of eligible low-income households would not be receiving assistance. TracFone wholeheartedly agrees with Commissioner Clyburn who recently stated that any Lifeline budget "should take into account as close to 100 percent as possible . . . ."[31]

III. TracFone Supports the Commission's Commitment to Expand Lifeline to Encompass Broadband and to do so Without Jeopardizing Continued Availability of Voice Lifeline Services

TracFone endorses the Commission's stated commitment to expand Lifeline to support broadband and commends the Commission for its commitment to make available to low-income households affordable broadband Internet access service through Lifeline. However, it also urges the Commission to address in a responsible manner the financial realities of an expanded program encompassing broadband. Based upon TracFone's experience as a participant in the broadband pilot program, as well as the experiences of other participants whose results were documented in a recent report,[32] meaningful levels of broadband adoption by low-income households will require more than a $9.25 monthly support amount. Whether that entire support amount is used for broadband or whether the support is split among a combination of broadband and voice services, the data compiled by pilot program participants, including TracFone, indicate that few low-income consumers will enroll and, of those who enroll, few will remain in the program and make the required payments. Even fewer will be able to afford a suitable Internet

[31] *See* "FCC on 'Collision Course' with Privacy This Fall, O'Rielly Warns," Communications Daily August 19, 2015, at 5 (summarizing Commissioner Clyburn's comments at the Technology Policy Institute Conference in Aspen, Colorado).

[32] Wireline Competition Bureau Low-Income Broadband Pilot Program Staff Report, WC Docket No. 11-42, May 22, 2015.

access device (such as a smartphone, a tablet, or a laptop computer) without assistance. Unlike basic mobile handsets that can be acquired by Lifeline providers in bulk at wholesale prices which enables those providers to give phones to qualified Lifeline customers, Internet access devices are costly and, without substantial subsidization, are priced beyond the reach of many low-income households.

A major change in the scope of supported services will require changes to the manner and level in which the USF is funded. For more than a year, the Federal-State Joint Board on Universal Service has been tasked with reviewing the USF contribution methodology and recommending changes.[33] Is seems impracticable for the Commission to consider changes to the scope of USF-supported programs (changes which may impact the amount of USF funding needed) without also addressing whether there should be changes to the funding of the USF and what those changes should be. TracFone recognizes the Commission's desire to set a program budget for Lifeline. However, establishing a program budget will not address concerns regarding the funding necessary to operate the program without the Commission also addressing the all-important question of contribution methodology.[34]

Although a Lifeline program budget should be considered, an equally pressing issue requiring resolution is the USF contribution methodology. If the scope of services to be supported by the USF is to be expanded to include broadband, then it follows that the level of support needed will grow. Even more important than a Lifeline budget, there must be resolution

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[33] In the Matter of Federal-State Joint Board on Universal Service, *et al.* (*Order*), FCC 14-116, released August 7, 2014.

[34] TracFone notes that Commissioners Clyburn and O'Rielly have indicated an intent to re-examine the purpose for high cost subsidies to telephone companies serving rural, but affluent, areas. TracFone commends that initiative and urges the Commission to consider Lifeline budgeting as part of an examination into the entire USF and the funding of all USF programs, including high cost support in situations where such support is not needed to enable rural households to remain connected.

of the scope of the USF and how the USF is to be funded. For that reason, TracFone urges the Commission to address USF contribution methodology and that it consider appropriate ways to broaden the funding base if greater USF resources will be needed to expand the scope of USF-supported programs.

TracFone agrees that a program budget should be established and urges the Commission to recognize the all-important difference between a budget and a program cap. No qualified low-income household should be excluded from the Lifeline program simply because a certain number of qualified households already are enrolled or because a specified spending amount for any year has been reached. In considering whether and how to expand Lifeline to support broadband, TracFone urges the Commission not to force that choice (voice or broadband) on low-income households. The Commission should not lose sight of the fact that access to reliable telephone service in general and mobile service in particular remains critically important. For that reason, low-income households should not be forced to choose between Lifeline-supported telephone service (wireline or wireless) and Lifeline-supported broadband service. Although a broadband connection is necessary to complete an online employment application, mobile telephone service is equally important to answer calls from prospective employers or to respond to demands of current employers. Expanding Lifeline to support broadband services should not jeopardize the continued availability of existing voice Lifeline services relied on by millions of low-income households, including mobile Lifeline services.

As part of its analysis for these comments, TracFone engaged a survey research firm, Service Quality Assurance and Customer Experience, to conduct several surveys of TracFone's Lifeline customer base. When asked why they use their wireless Lifeline service, nearly 67 percent said they used the service to stay in touch with family and friends; 65 percent, said they

used the service for emergencies, more than 20 percent said they used their wireless phones to search for employment or to perform their job. When asked which service is more important to them – wireless phone service or broadband access at home – 86 percent replied wireless phone service; 14 percent replied broadband at home.

TracFone is neither suggesting that the Commission place greater priority on Lifeline voice service than broadband, nor is it suggesting that consumers prefer Lifeline voice service to subsidized broadband. However, the results of that survey research indicate that many low-income households place great importance on Lifeline-supported mobile voice service, and the Commission should remain mindful of that importance as it considers whether and how to expand the program.

Expansion of the Lifeline program to include support for broadband is a critical aspect of the Commission's commitment to modernize Lifeline for the 21st Century. It is a worthy objective to provide sufficient support such that many of the nation's low-income households (including, those households with school-age children for whom Internet access is essential to meeting performance expectations at school – what Commissioner Rosenworcel and others perceptively refer to as the "homework gap"). The Commission should determine whether that objective can be achieved with a $9.25 monthly subsidy, whether allocated entirely to broadband or divided between broadband and telephone service – wireline or wireless.

IV. Third Party Eligibility Verification Will be Costly and May Not Prevent Fraud. All Options Should be Considered Before Mandating Such a Fundamental Change in Lifeline

The Commission proposes to remove Lifeline providers from the process of verifying applicant eligibility for Lifeline and replace that system with one in which responsibility for eligibility determinations is transferred to a third party – either a government entity or a private entity under contract to the government. TracFone recognizes that several commissioners

already have expressed strong preferences to move to a third party verifier. TracFone understands and respects those preferences. However, there are challenging issues associated with such a change. The Commission should not mandate a third party verifier unless and until those problems are evaluated and addressed based on a full record established in this proceeding. In Section V of these comments, TracFone presents a proposal for a third party verification system for the Commission's consideration.

Although a third party verification process may sound attractive in theory, in practice, such a system raises important questions. Who would select the third party? How much would a third party verifier's services cost? Who would pay for those services – Lifeline providers? – the Universal Service Fund? – Consumers? – Someone else? Most importantly, would a third party verification system be a more reliable and effective means to prevent program fraud than would other systems and other program safeguards? TracFone does not oppose a transition to a third party verifier. However, before such a profound change in the enrollment process is adopted, these and other important questions and proposals (including, for example, TracFone's suggestions to ban in-person handset distribution and to prohibit incentive-based compensation for persons marketing Lifeline service) must be addressed.

In order for a Lifeline applicant can be deemed qualified to receive Lifeline-supported service, two determinations must be made: 1) that the applicant is the person he/she claims to be (*i.e.*, that the applicant's personal identity can be verified); and 2) that the applicant qualifies for Lifeline, either based on income or through enrollment in a qualifying program. Prior to undertaking the draconian step of gutting the current system with an expensive and unproven third party verification system, the Commission should first consider whether and how to ensure that Lifeline providers are able to verify applicant identity and applicant eligibility.

As for applicant identity, the Commission does not have clear and specific rules as to how a provider must verify customer identity. In this regard, utility bills, employee identification cards and other such forms of identification which have been accepted by some providers (in the absence of any rule prohibiting such forms of identification) are wholly insufficient. For that reason, TracFone respectfully urges the Commission to promulgate clear and specific applicant identification requirements, as described at Section VIII of these comments and enforce those requirements by holding ETCs accountable for failure to properly verify applicants' identity in accordance with those requirements.

With respect to eligibility, specifically, program-based eligibility,[35] there is also a preferable solution. Since 2008, TracFone has expended significant resources negotiating terms of access to state databases which contain state-maintained lists of persons enrolled in Lifeline qualifying programs. Since such state databases for Lifeline-qualifying programs including, *e.g.*, SNAP and Medicaid, are maintained at the state level, these are reliable indicators of program-based eligibility. Those negotiated agreements address such factors as how to protect privacy of consumer data. TracFone has negotiated access to state eligibility databases in seventeen states and efforts to reach agreements with other states are continuing. It is anticipated that TracFone will finalize database access arrangements with additional states during 2016. TracFone has been able to work with these states and achieved these results largely on its own with little involvement of other providers or the Commission. If the Commission were to encourage other states to allow access to state eligibility databases, providers would soon be able to verify

[35] Most applicants for Lifeline service qualify based on enrollment in qualifying programs rather than based on income. In the Lifeline Reform NPRM, the Commission proposes to eliminate income-based eligibility and have eligibility determined solely by enrollment in qualifying programs. Since few applicants for Lifeline service attempt to qualify based on income, TracFone concurs that limiting eligibility to program-based eligibility would simplify program administration and supervision without limiting who may receive Lifeline-supported service.

applicant eligibility throughout the nation. This would be a much more effective and efficient solution than would creation and implementation of a third party verifier – a system which would be costly and would take years to fully and properly implement.[36] Also, access to state databases containing enrollment information for qualifying programs would obviate any reason for limiting Lifeline eligibility to a single program such as SNAP.

The Commission acknowledges the importance of access to state databases as a mechanism for ensuring that only qualified households obtain Lifeline-supported service.[37] Noting that some states have allowed access to state databases and other states have developed their own eligibility verification systems, the Commission asks whether states with their own systems should be allowed to opt out of using a national verifier should one be established.[38] Although TracFone questions the feasibility and economic benefits of a national verifier, it knows based on experience that access to state databases of persons enrolled in qualifying programs is invaluable in enabling providers to determine applicant eligibility and to allowing applicants to complete the enrollment process, and receive Lifeline service in a timely manner. For that reason, TracFone recommends that any state which allows access to a state database of enrollees in Lifeline-qualifying programs be exempted from any requirement to utilize a national verifier to verify eligibility of persons claiming eligibility based on enrollment in a program verifiable through a state database, if and when a national verifier is developed and implemented. Alternatively, as will be described in the following section of these comments, TracFone offers

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[36] The National Lifeline Accountability Database (NLAD) – the Commission-mandated database to identify and prevent duplicate enrollments — did not become operational until nearly two years after issuance of the 2012 Lifeline Reform Order. When it finally did become operational, it was plagued by numerous shortcomings which are still being worked on more than a year later. There is no reason to expect that similar delays and implementation challenges would not surround any attempt to establish a third party verification system.

[37] Lifeline Reform NPRM, ¶ 72.

[38] *Id.*, ¶ 75.

for the Commission's consideration a proposal for a third party verification process. That process utilizes state databases where they are available.

Without requirements governing personal identity verification and without access to reliable databases of persons enrolled in Lifeline-qualifying programs, providers must rely on documentation of program-based eligibility shown to them by applicants. The Commission took an important step in the Report and Order portion of the Lifeline Reform NPRM to prevent enrollment fraud. It promulgated a rule requiring Lifeline providers not only to have "reviewed" eligibility documentation provided by applicants, but also to retain copies of such documentation so that they can prove that they reviewed eligibility documentation.[39] This important enhancement to the Commission's rules will close a major loophole in the rules and will impede ETCs' ability to assert falsely (without fear of contradiction) that they have viewed eligibility documentation. That rule should be given an opportunity to be implemented and its effectiveness carefully evaluated before major costly and unproven reforms such as national third party verification are implemented.

Whether a national third party verifier can be designed, constructed and implemented in a timely manner, whether such a system would add any efficiency to the Lifeline enrollment process, and whether such a system, if implemented, would have any impact on detection and prevention of program fraud, is questionable. What is not questionable is that such a system will take multiple years to become operational and to have all system flaws and bugs identified and rectified. As the Commission notes, several states have attempted to implement their own eligibility verifier. The results in those states have been mixed. California, which has the benefit of a substantial state fund to draw upon, has engaged the services of a third party verifier,

[39] Lifeline Reform NPRM, ¶¶ 224-237; 47 C.F.R. § 54.417.

currently Xerox. California petitioned the Commission to opt out of participation in NLAD on the basis that its third party verifier system was as robust as NLAD. Because it took longer than anticipated for Xerox to implement its verification system, the California PUC deemed it necessary to ask for and receive a five month extension of time to implement a third party identification verification system in connection with its opt out request.[40] In Oregon, the Public Utilities Commission staff verifies the eligibility of every Lifeline applicant. The staff is dedicated, hard-working, and committed to protecting the USF (and Oregon's state fund) from waste, fraud and abuse. Nonetheless, the approval process is conducted manually by a small staff and is very slow. As a result, Lifeline providers in Oregon find it difficult to enroll qualified low-income households in Lifeline and few providers other than the incumbent local exchange carriers even promote Lifeline service in Oregon.[41]

Because a national verifier would be a complex, costly, and time-consuming undertaking and would dramatically change the manner in which Lifeline services are marketed to low-income households, TracFone respectfully urges the Commission to proceed cautiously. Given that states which allow access to their eligibility databases and states which do not allow access to their eligibility databases would have different eligibility verification processes, rather than attempting to impose such a system on a nationwide basis, it should first be attempted on a limited basis in a small number of states. That would give the Commission, the states, and the

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[40] *See* Lifeline and Link Up Reform and Modernization, 28 FCC Rcd 2012 (2013) (conditionally granting California's request to opt out of NLAD; Lifeline and Link Up Reform and Modernization, 28 FCC Rcd 11188 (2013) (granting California's request to extend by five months its third party verification vendor's implementation of a third party identification process).

[41] In Oregon, CareOregon, a leading health care provider in that state, sent a letter to the Office of the Governor complaining the state commission's Lifeline enrollment process had created "unique and . . . unnecessary regulatory barriers" which were precluding Oregon Medicaid enrollees from obtaining Lifeline services available to Medicaid members in other states.

industry an opportunity to learn from experience – to determine what works, what does not work, and what adjustments and modifications need to be made before implementing a Lifeline eligibility verifier on a national level. Supreme Court Justice Louis Brandeis once said that states were laboratories of democracy.[42] Just as states have for decades been laboratories of democracy, so too, should states be laboratories of Lifeline reform and modernization. By allowing a limited number of states to design and implement Lifeline eligibility verification systems, the Commission can ascertain whether such a system could work on a national level and identify what safeguards must be built in to any such system to ensure that it achieves its objective – precluding unqualified households from receiving Lifeline-supported service – without having the unintended adverse consequence of impeding or delaying qualified low-income households from enrolling in Lifeline.

Several other aspects of the national verifier portion of the Lifeline Reform NPRM warrant comment. The NPRM asks whether a national verifier should also be used for the mandatory annual re-certification.[43] As with the current rules which allow, but do not require, ETCs to have USAC perform the annual re-certification, whether to use a national verifier (if and when a national verifier becomes operational) should be optional with the ETC. TracFone and other ETCs have learned that the annual re-certification process, which must be completed by December 31 each year, is time-consuming and costly. Every enrolled household must be contacted and have its Lifeline eligibility re-certified. During the year, all customers are reminded that they will need to complete an annual re-certification of their Lifeline eligibility. TracFone has committed the resources necessary to send multiple reminders (including e-mails, telephone calls and text messages) to its Lifeline customers so that they are aware of the re-

[42] New Ice Company v. Liebman, 285 U.S. 262 (1932).
[43] Lifeline Reform NPRM, ¶ 86.

certification requirement. In early December, TracFone sends official re-certification requests to all Lifeline customers advising them that if they do not re-certify their eligibility by the deadline, they must be de-enrolled from the program even if they remain Lifeline-eligible. This investment has proven to be worthwhile for TracFone because it has been able to re-certify the continuing eligibility of a higher percentage of enrolled Lifeline households than have other ETCs. For those ETCs unwilling to commit the resources to pursue the re-certification process in this manner, current use of USAC or future use of a national verifier should be an option. However, it should not be mandatory for those ETCs who prefer to conduct their own annual re-certification processes.[44]

V. If the Commission Wishes to Implement a Third Party Verification Process, Then TracFone Recommends a Centralized NLAD Certification System

As noted in the preceding section of these comments, TracFone has concerns about the use of a third party verifier to make determinations as to Lifeline eligibility. Notwithstanding those concerns, TracFone believes that such a system could be workable and offers its proposal for such a system. For purposes of these comments, that system is called the Centralized NLAD Certification System. As its name suggests, the Centralized NLAD Certification System utilizes the National Lifeline Accountability Database or "NLAD" – the database developed and implemented by USAC to identify Lifeline applicants whose households already receive Lifeline service. Although the original purpose for NLAD was to prevent duplicate enrollment in light of

[44] It should remain the responsibility of the ETC to determine that customer re-certifications are valid. Also, the costs borne by the national verifier (or USAC) for performing the annual re-certification process should be recovered from those ETCs who elect to utilize those services, not from those ETCs who elect not to use that service. The Centralized NLAD Certification System described in Section V of those comments could be used to re-certify customer eligibility, at least for persons whose Lifeline eligibility is based on enrollment in programs accessible through a state or federal database.

the Commission's one-per-household rule established in the 2012 Lifeline Reform Order,[45] NLAD could be enhanced and its use could be expanded to verify applicant eligibility for Lifeline.

Under this system, the NLAD would verify applicant eligibility by using three sources: 1) state eligibility databases (such as those already available to TracFone in seventeen states); 2) federal databases containing enrollment data in qualifying programs such as SNAP and Medicaid; and 3) applicant-provided documentation of program-based eligibility such as that required to be reviewed and retained by ETCs. Either Lifeline providers or state departments and agencies in coordinated enrollment situations would send applicant information to the NLAD. Where an applicant resides in a state which has an available state database and the applicant is claiming eligibility through enrollment in a program which can be verified through the state database, NLAD would query the database for a "yes" or "no" response as to whether the applicant is enrolled in a qualifying program in the same manner that ETCs, including TracFone, do today. No personal information about the applicant would be shared – only a yes or no response as to whether the applicant is enrolled. USAC would develop interfaces with those databases just as those which ETCs, including TracFone, currently use. Where enrollment data in qualifying programs are maintained in federal databases, NLAD would query those databases in the same manner. For situations in which applicants have submitted documentation of enrollment in qualifying programs, USAC personnel (or those of an independent entity under contract to USAC or the Commission) would review that documentation in the same manner that ETCs do today.

[45] The one-per-household rule is codified at 47 C.F.R. § 54.409(c).

Once a Lifeline applicant's eligibility has been verified and the applicant has been enrolled using the Centralized NLAD Certification System, the customer would remain enrolled until the customer either fails to re-certify his or her Lifeline eligibility pursuant to the annual re-certification requirement, is removed from the applicable state or federal database (so-called "coordinated de-enrollment"), is de-enrolled for non-usage, or notifies either the provider or USAC directly either that the customer no longer is Lifeline-eligible or that the customer is withdrawing from the program for other reasons.

The Centralized NLAD Certification System offers several advantages. First, for existing customers, customer information would be stored in NLAD so there would be no service disruption to those already-enrolled Lifeline customers. Second, this system could accommodate all qualifying programs so there would be no need to limit eligibility to SNAP or any other program, and additional qualifying programs, such as the Veterans' programs proposed in the NPRM as additional Lifeline-qualifying programs could be easily accommodated. Lifeline providers would continue to have the ability and the incentive to engage in customer outreach and marketing of Lifeline service. All states that have eligibility databases, including the seventeen states where such databases are now available, as well as additional states that allow database access in the future, could utilize this system. Because enrolled customer data are already in NLAD, the system would facilitate and expedite provider change selections by enrolled Lifeline households. Enrolled customers electing to change providers could easily do so by contacting USAC to request the provider change and confirm that the customer name, address, date of birth and Social Security number (last 4 digits) in the database are correct. Third, USAC, not the ETCs, would perform the eligibility verification. Concerns articulated by

several Commissioners and others about removing providers from the eligibility verification process would be satisfied.

If the Commission elects to remove ETCs from the applicant eligibility determination process and transfer the responsibility for eligibility verification to a third party, TracFone respectfully recommends that the Commission adopt the Centralized NLAD Certification System described herein. TracFone is prepared to work with the Commission, USAC and others to design and implement that system.

VI. Coordinated Enrollment Might Cause More Problems than it Solves

The Commission invites comment on coordinated enrollment. The term "coordinated enrollment" can have various meanings. However, the Commission defines it as coordinating with other federal agencies and state agencies to educate consumers about Lifeline or to simultaneously allow consumers to enroll in Lifeline when they enroll in programs administered by those agencies such as, for example, SNAP, and Medicaid.[46] TracFone favors participation of such agencies in the Lifeline **education** process. In fact, it has worked effectively with non-governmental health care providers to identify and enroll Medicaid recipients who not only receive Lifeline support but also receive special service features for the explicit purpose of enhancing their health care. Those efforts are described earlier in these comments. TracFone has serious concerns about the appropriate roles for such agencies, if any, in the Lifeline **enrollment** process.

Mandatory enrollment through other government agencies raises issues which warrant careful and thorough consideration by the Commission before such procedures are implemented. Critics of the Lifeline program, both within and outside the Commission, have expressed the concern that if the enrollment process is too easy, consumers will enroll who do not actually

[46] Lifeline Reform NPRM, ¶ 92.

need the support simply because it is available.[47] Currently, there are approximately 12 million enrolled Lifeline households. There are more than 22 million households (comprising more than 45 million persons) receiving Food Stamp benefits though SNAP. If every SNAP enrollee were specifically invited to enroll in Lifeline, either during the initial enrollment or during the SNAP annual re-enrollment, it seems probable that nearly all would accept that invitation, especially if they did not have to do anything other than say yes. Thus, before adopting coordinated enrollment with SNAP, it is necessary to acknowledge the reality that Lifeline enrollment could nearly double, from 12 million to about 22 million by requiring coordinated enrollment with SNAP.[48]

Another issue with coordinated enrollment is the participating agencies' costs and who would bear those costs. If federal and state administrators of SNAP, Medicaid and perhaps other qualifying programs were to assume the additional responsibilities of enrolling consumers in Lifeline, then those agencies would become participants in Lifeline administration. They would have to develop computer systems for that purpose, communications systems to correspond with participating providers and other databases such as NLAD, and would have to assign personnel to perform those responsibilities. With many federal and state governmental departments subject to strict budget limitations, what would be the sources of funding for these departments' and

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[47] Such concerns have been articulated by those who have asserted concerns about "skin in the game."

[48] TracFone opposes limiting Lifeline eligibility to SNAP enrollment or to any individual program. The Commission in 2012 wisely established a list of seven national qualifying programs which enable low-income households to qualify in various ways. There are many persons not enrolled in SNAP but who demonstrate their Lifeline eligibility in other ways who cannot afford telecommunications service without Lifeline support. Recently-obtained survey data indicate that about 44 percent of SafeLink customers qualify through enrollment both in SNAP and Medicaid, but that more than 46 percent of SafeLink® customers qualify only through enrollment in Medicaid. Thus, limiting Lifeline eligibility to SNAP would preclude large numbers of Medicaid enrollees from qualifying for Lifeline assistance.

agencies' additional responsibilities, *i.e.*, their Lifeline responsibilities? It is one thing for other federal and state departments to provide information about Lifeline to consumers who have contact with those departments. It is quite another thing for those federal and state departments to take on the additional responsibilities of enrolling consumers in another federal agency's program. Any attempt by the Commission to delegate to other federal and state departments aspects of Lifeline program management will have profound impacts on those departments' resources and should not be undertaken without first determining that those many federal and state departments and agencies are willing to take on those functions, are prepared and have the resources to do so.

Notwithstanding its concerns about other agencies' participation in the Lifeline enrollment process through "coordinated enrollment," TracFone commends the Commission for its proposal to coordinate the outreach and enrollment efforts to better reach low-income veterans.[49] The Veterans Affairs Supportive Housing program provides an outstanding opportunity for the involved agencies and ETCs to reach out to those persons who have served the nation but who now need assistance. Many of the proposals set forth in the Lifeline Reform NPRM are controversial. This is not one of them. Anything that the Commission can do to facilitate access to affordable telecommunications service to veterans of the armed services who have fallen on hard times should be done as soon as possible.

VII. Direct Benefit Transfers, *i.e.*, "Vouchers" Is an Untested Solution to a Non-problem Which Should be Rejected by the Commission

The Commission invites comment on whether it should mandate a system which would replace the current enrollment process with one in which a third party would provide Lifeline benefits directly to qualified consumers which could then be used by the recipients to obtain

[49] Lifeline Reform NPRM, ¶ 102.

Lifeline-supported services from their chosen service provider. This proposal, generically referred to as a "voucher" system, could involve distribution of debit-type cards or assignment of personal identification numbers to qualified consumers. Though the voucher proposals might have some superficial appeal, in practice, they would be cumbersome, difficult to implement, costly, and would do little or nothing to address the concerns which have led to the proposal. Rather than preventing waste, fraud and abuse, such a system may create new opportunities to defraud the Lifeline program and waste USF resources.

It is questionable whether or not a voucher system (no matter what it is called) would impact program fraud. What is not open to question is that such a system would have a deleterious effect on Lifeline participation by qualified low-income households, and would undo much of the positive growth in Lifeline participation which has occurred since 2008. As noted earlier in these comments, Lifeline enrollment has increased significantly since the advent of wireless Lifeline and no charge Lifeline services in 2008. Contrary to the assertions of program critics, the primary reason for that growth has not been waste, fraud and abuse. Rather, most of that growth has been the result of a new group of Lifeline providers who actually want to provide the service and who actually comply with the letter and the spirit of the statutory requirement that ETCs actively market USF-supported services (including Lifeline) using media of general distribution.[50] TracFone and other providers have grown their businesses and increased Lifeline participation (still under fifty percent nationally despite those efforts) by actively advertising and doing consumer outreach and education.

Under a voucher system, providers would have little incentive to expend resources to advertise the availability of their Lifeline services using media of general distribution. Why

[50] 47 U.S.C. § 214(e)(1)(B). *See also* 47 C.F.R. § 54.201(d)(2).

would a provider incur that investment if all it could achieve for its efforts (and expenditures) would be to persuade qualified households to enroll in a program which would provide it with a coupon (or other media) which could just as easily be used to obtain service from any of that provider's competitors as from the provider itself? Active marketing of Lifeline by service providers would end under a voucher system, leaving consumer outreach to federal and state government departments. In short, a voucher system would hasten the return of Lifeline to pre-2008 conditions – conditions which resulted in little marketing, little outreach, and abysmal national participation rates. Rather than modernizing the program as the Commission committed to do in the Lifeline Reform NPRM, a voucher system would return the program to its 1980s roots – a little-used, widely-ignored and inconsequential program which had no significant impact on making available affordable telecommunications service to low-income households.

In the discussion of the voucher proposal, the Lifeline Reform NPRM states that its goal is to reduce waste, fraud and abuse. TracFone supports that goal. However, it questions whether a voucher system would help achieve that goal or whether it would have the perverse consequence of facilitating program fraud. Would vouchers be transferable? Would there emerge a *de facto* "resale" market for Lifeline vouchers? What, if anything, would the Commission or other authorities do when Lifeline vouchers began to be posted for sale on eBay and Craigslist? TracFone does not know whether such voucher trading would occur but it seems virtually certain that trading of vouchers (and resulting unlawful transfer of Lifeline benefits) could occur.

The NPRM notes that SNAP benefits are encoded on SNAP EBT cards (which apparently function similar to debit cards). Leaving aside the question whether that benefit card

system prevents fraud in the SNAP program,[51] the Commission should recognize that there are profound differences between SNAP and Lifeline which render a voucher or benefit card system inappropriate for Lifeline. With SNAP, consumers use their SNAP EBT cards to purchase food at grocery stores. Lifeline services are not purchased in grocery stores. There is no need for a Lifeline customer to travel to a retail store or anywhere else in order to obtain Lifeline-supported telecommunications service. The SNAP program – which currently has more than 22 million participants – grew due to government promotion of the program. Grocers played no role in promoting the availability of SNAP. In contrast, Lifeline services are promoted not by government departments, but by the service providers who do outreach to consumers to inform them about Lifeline and to encourage their enrollment in the program. A program which enables an enrollee to use a government-provided EBT card to purchase a can of beans at the grocery store of the consumer's choice is not the same as a program which enables low-income consumers to obtain subsidized telecommunications service directly from the provider of that service.

At paragraph 108 of the Lifeline Reform NPRM, the Commission seeks comment on Internet-based mechanisms for remitting payment for Lifeline services. Specifically, it suggests the use of online portals or applications on a user's device. Such "solutions" might be workable if the base of Lifeline enrollees possessed such devices and had broadband access to the Internet. However, as the NPRM acknowledges, the broadband adoption rate among low-income

[51] There have been many reports of rampant program fraud in SNAP *See, e.g.*, Chuck Ross, Charges Filed In 'One of the Largest' Food Stamps Fraud EVER (June 11, 2014), http://dailycaller.com/2014/06/11/charges-filed-in-one-of-the-largest-food-stamp-frauds-ever; Food Stamp Fraud Rampant: GAO Report (August 22, 2014), http://www.foxnews.com/politics/2014/08/22/food-stamp-fraud-rampant-gao-report/.

households is low.[52] Without question, there remains a significant digital divide. It is for that reason that the Commission now proposes to expand Lifeline to subsidize broadband. That expansion has not yet occurred and it is not known whether or when such expansion will occur, or when there will be significant broadband adoption and utilization by low-income households. Unless and until that expansion and resulting adoption occur, most Lifeline-eligible households do not and will not have access to online portals and do not and will not own devices on which they can download apps.

There are other problematic aspects of a voucher system, both from the perspective of service providers and, most importantly, from the perspective of qualifying low-income households. As for service providers, the key to a voucher system would be redemption of those vouchers at a place of business of the provider. Several major national wireless and wireline carriers operate retail stores where vouchers could be redeemed.[53] For those Lifeline providers who do not operate retail stores, they would need to make other arrangements for voucher redemption, *e.g.*, through independent retail establishments. This would include virtually all of the wireless Lifeline providers whose innovative no charge Lifeline services have been responsible for the growth and modernization of the program. Those arrangements would be costly and would impose additional cost requirements on providers at a time when they are being asked to increase their benefits and incur additional regulatory burdens.

Moreover, a voucher system would be especially detrimental to Lifeline subscribers. Currently, once a subscriber has been determined to be qualified and enrolls in a provider's Lifeline program, the subscriber remains enrolled and receives his or her monthly Lifeline

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[52] Lifeline Reform NPRM. ¶ 4.

[53] Of the four major national wireless carriers, only one (Sprint, through its Assurance brand) even offers Lifeline service. Since none of the other national wireless carriers provide Lifeline service there would be no Lifeline vouchers to redeem at their retail locations.

service automatically until such time as the subscriber either withdraws from the program or is de-enrolled in accordance with the Commission's rules. Under a voucher system, subscribers would have to redeem their vouchers monthly. Although this would be inconvenient for all subscribers, it would be especially burdensome for the most vulnerable Lifeline customers, including elderly and disabled subscribers. It would also be detrimental to rural Lifeline customers who would have to travel vast distances each month simply to redeem their vouchers for another month of service. For millions of such Lifeline customers, monthly trips to retail stores to redeem their vouchers and arrange for another month of service may not be practicable. As noted above, online redemption methods would not be available for the large number of Lifeline households which are not online. Consumers would be forced to journey to a store – either a company-owned store or an agent of the provider – monthly to redeem each month's voucher and to continue to receive service. These factors explain why more than 79 percent of Lifeline customers surveyed by TracFone indicated that they would prefer the current system to a voucher-type system requiring monthly redemptions.

There is one benefit to a voucher system – portability. A voucher system would enable consumers to change their chosen provider each month simply by taking the voucher for redemption at a location of their chosen provider. TracFone agrees that consumer choice should be a priority and that Lifeline benefits should be easily portable from one provider to another. Fortunately, portability and consumer choice can be achieved using alternative means. TracFone recommends modifying NLAD to simplify the process for enrolled Lifeline customers to change providers. This would eliminate the need for customers seeking to switch providers to first de-enroll from their existing provider's Lifeline service and then re-enroll in another provider's service. An enhanced NLAD would permit such seamless benefit transfers. Lifeline customers

could change their chosen provider in any month by contacting the program administrator, *i.e.*, USAC, providing customer identification information, and requesting that the consumer's Lifeline service be assigned to another company. That could be done by a telephone call or on line for those Lifeline enrollees who do have Internet access. Under such a system, any Lifeline customer could change his or her provider in any month without use of a voucher and without having to leave his or her home.

In short, a voucher system would unnecessarily complicate the Lifeline enrollment process, would discourage program participation by qualified low-income households and would do nothing to detect or prevent waste, fraud and abuse. Indeed, it might result in additional program fraud. It would also impose otherwise unnecessary monthly burdens on enrolled customers in order to continue to receive Lifeline-supported service. The one unquestioned advantage of vouchers – benefit portability – can be achieved in other ways. Accordingly, the Commission should not impose a voucher system.

VIII. The Commission Should Adopt Clear and Stringent Rules for Verifying Applicant Identity

Before an applicant's eligibility for Lifeline service can be verified, either by the Lifeline provider or by a third party verifier, the verifier must first be able to determine with certainty that an applicant is the person whom he/she claims to be. To date, the Commission's rules have not been specific in this regard and, in the absence of clear and specific rules governing personal identity, it has been possible for some consumers to enroll in Lifeline programs without being eligible. To remedy this shortcoming and resulting opportunity to defraud the program, the Commission proposes to adopt rules requiring applicants to provide additional information regarding their identity.[54]

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[54] Lifeline Reform NPRM, ¶¶ 118-120.

TracFone supports this proposal and recommends that the Commission require ETCs or a third party verifier to view and retain copies of documents which contain the following personal identifying information for each applicant: 1) full name; 2) address; 3) date of birth; 4) Social Security number or Tribal Identification Number (last 4 digits); and 5) a photo ID. Concerns about consumer privacy should not deter the Commission from imposing such a requirement. First, Lifeline applicants would affirm their consent to ETCs or a third party verifier obtaining this information as part of the Lifeline application process. Second, all such personal identifying information retained by ETCs would be subject to strict protections against unauthorized disclosure.

In the absence of such a rule, it has been permissible for Lifeline providers to accept other forms of personal identification which do not contain all the required information. For example, some providers have accepted copies of utility bills containing customer name and address, but nothing else to verify applicants' personal identities; other providers have accepted copies of employee identification cards that also lack important identifying information. Verification that a Lifeline applicant is the person who he/she claims to be is as important as verifying that the applicant is enrolled in a qualifying program. TracFone supports this proposal.

IX. The Number of Lifeline-Qualifying Programs Should Not be Reduced

Recognizing that relatively few applicants for Lifeline service attempt to qualify based on their income levels, the Lifeline Reform NPRM proposes to eliminate income-based qualification. TracFone agrees that income-based eligibility could be eliminated with little or no impact on the program. Whether or not limiting Lifeline eligibility to enrollment in qualifying programs would simplify the enrollment process or reduce the administrative burden on

providers as suggested in the NPRM[55] is questionable. However, since the vast majority of Lifeline households qualify based on enrollment in the Commission-approved qualifying programs (or programs approved by the states), elimination of income-based eligibility would not preclude qualified households from enrolling.

TracFone does not agree that the list of qualifying programs should be reduced. While it is true that most applicants qualify for enrollment through three programs – SNAP, Medicaid, and SSI – the other approved qualifying programs (the National School Lunch program, the Low Income Home Energy Assistance program, TANF, and Section 8 Housing) are no less valid as indicators of economic need. Moreover, the list of qualifying programs should not be locked in permanently but should be adjusted when appropriate. For example, the NPRM proposes that persons enrolled in the Veterans Pension Benefit program should qualify for Lifeline support.[56] TracFone encourages the Commission to adopt that proposal. As with other qualifying programs, the Veterans Pension program, like the Veterans Affairs Supportive Housing program discussed in Section VI of these comments, is need-based. Moreover, the Veterans Pension program is available to an especially deserving portion of the low-income population – persons who served in the armed services, including at least one day in wartime. It is difficult to imagine any portion of the population more deserving of our gratitude and our assistance than those who performed military service in wartime and who are struggling economically.

The Commission should not eliminate Medicaid as a Lifeline-qualifying program. One of the most important benefits of the advent of wireless Lifeline has been the ability of Lifeline providers to partner with health care providers such as health maintenance organizations to deliver important health care-related features through the Lifeline program. TracFone, for

[55] *Id.*, ¶ 112.
[56] *Id.*, ¶ 115.

example, has worked with several major HMOs to enroll the HMOs' Medicaid members, verify those members' Medicaid-based eligibility through the HMO enrollment database, and deliver additional benefits focused on consumer health care. These include unlimited 24/7 calls to the HMOs and access to several text-based services focused on health. As Commissioner Clyburn correctly noted in her separate statement, "[o]ne area I have been passionate about is health care and what technology can do to improve outcomes. The potential for Lifeline to be a catalyst here has been too often overlooked."[57] TracFone shares Commissioner Clyburn's passion for improving health care through telecommunications. While Commissioner Clyburn and others promote expansion to broadband to facilitate health care delivery, TracFone and the participating HMOs are already demonstrating daily that the Lifeline program provides important health-related benefits to Medicaid patients – benefits which would be lost if Medicaid were to be removed from the list of Lifeline-qualifying programs.

X. The ETC Designation Process Should be Streamlined and Made Uniform, but Should not be Eliminated

Section 214(e)(1) of the Communications Act is explicit and unequivocal: "A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support . . . ."[58] Nothing in Section 214 or any other provision of the Act or in its legislative history indicates any legislative intent to exclude those common carriers who wish to receive support from the USF for providing Lifeline service from the requirement that they be designated as ETCs in order to provide Lifeline service. Absent a lawful exercise of its statutory forbearance authority under Section 10 of the Act,[59] the Commission may not permit common carriers to receive USF support for providing Lifeline

[57] Lifeline Reform NPRM, Separate Statement of Commissioner Mignon L. Clyburn, at 2.
[58] 47 U.S.C. § 214(e)(1).
[59] 47 U.S.C. § 160.

service unless they are designated as ETCs, either by State commissions pursuant to 47 U.S.C. § 214(e)(2), or, in appropriate situations, by the Commission pursuant to Section 214(e)(6).

That said, the Commission may promulgate appropriate rules and procedures for streamlining the ETC designation process and it should do so. Section 214(e)(2) empowers State commissions to designate common carriers as ETCs. TracFone has gone through the ETC designation process in about thirty states (in addition to the ten states where TracFone was designated as an ETC by the Commission pursuant to Section 214(e)(6) of the Act). The designation procedures and time frames for the ETC proceedings have varied widely. In some states, after an ETC application was submitted, it was timely reviewed by State commission staff, additional requested information was promptly provided, and the applications were considered by the State commissions in a timely manner – sometimes within a few months of filing. In other states, TracFone was subject to prolonged discovery by State commission staff and overzealous intervenors demanding all manner of company-specific business information, much of which had little or nothing to do with TracFone's qualifications to be an ETC or with its Lifeline program; formal evidentiary hearings were required; and applications for ETC designation to provide Lifeline service supported by the **federal** USF remained pending for many months, in some cases, for several years.[60]

Given that many states' ETC designation processes are limited to approving provision of service supported only by the federal USF, it disserves the public interest for State commissions to defer action on such applications for prolonged periods, thereby delaying the availability of **federally-funded** Lifeline service options to the States' neediest households. For that reason,

[60] In one state, TracFone was subject to extensive discovery on its costs of providing a service which was free to qualifying residents of that state. In short, TracFone was being asked to cost justify a free service.

TracFone respectfully requests that the Commission promulgate rules governing the time within which states must act on ETC applications to provide Lifeline service.

In the NPRM, the Commission suggests that the ETC designation process has deterred potential providers, including cable operators and wireless companies, from becoming ETCs and even cause some to relinquish their designations.[61] There is no reason and no evidence to support a belief that any ETC ever has relinquished its ETC designation because of the designation process. A company cannot relinquish its ETC designation unless it already has been designated, *i.e.*, it has already gone through the ETC designation process. Lifeline providers who relinquish their ETC designations do so because they no longer wish to offer Lifeline-supported services. That is a business decision for each provider based upon its strategic objectives and its perception of the market for Lifeline services. As for the potential entry into the Lifeline market by cable operators, it seems highly improbable that those companies would decide not to enter that market based on the perceived burdens of the ETC designation process. It strains credulity to suggest that cable operators which are subject to rigorous local franchising requirements would avoid the Lifeline market and the opportunity to provide service subsidized by the federal USF because they do not want to file ETC applications with State commissions as have all other Lifeline providers.

In addition to the statutory command of Section 214(e), there is another reason why providers should obtain ETC designation in order to provide Lifeline service. As described throughout the Lifeline Reform NPRM, there has been a lingering concern about misconduct by certain Lifeline providers which has led to waste, fraud and abuse. A regulatory authorization, such as an ETC designation granted by the Commission or by a State commission carries with it

[61] Lifeline Reform NPRM, ¶ 123.

both the status of regulatory approval and the obligations of being a regulated entity. The ETC designation process affords the designator (whether the Commission or a State commission) the opportunity to develop and implement appropriate criteria and to impose reasonable conditions intended to promote the goals of universal service and to ensure that ETCs operate in the public interest.

One related issue is whether existing Lifeline providers, including wireline telephone companies, should be permitted to opt out of providing Lifeline service. Section 54.405 of the Commission's rules[62] requires such ETCs to provide Lifeline. AT&T and others have requested to be relieved of this requirement in situations where competitive sources of Lifeline service are available. TracFone agrees with AT&T and supports that request. The proliferation of new Lifeline providers, including wireless providers, since 2008, has resulted in most low-income households having choices of providers and choices of Lifeline services. With competitive options now available, no telephone company should be required to provide a service which it does not want to provide or compete in a market segment where it does not wish to compete. The success of the Lifeline program depends on the presence in the market of providers ready, willing and able to offer and promote innovative Lifeline programs attractive to low-income consumers. Companies which are not ready, willing and able to do so should not be compelled to provide such service against their will where competitive sources are available.

XI. Any Modernization of Lifeline Should Recognize How People Communicate in the 21st Century and Include Text Messaging as Usage

On October 1, 2014, TracFone petitioned the Commission to modify its non-usage rule so as to allow sending and receiving text messages to be considered as usage for purposes of the de-

[62] 47 C.F.R. § 54.405.

enrollment for non-usage rule.[63] Section 54.407(c)(2) of the Commission's rules, applicable only to those Lifeline providers who do not assess or collect monthly fees from customers, requires those providers to de-enroll from Lifeline those customers who do not use their Lifeline service for 60 consecutive days. "Usage" for purpose of the rule includes: 1) completion of an outbound call; 2) purchase of additional minutes from the ETC; and 3) answering an incoming call from a person other than the ETC or its agent or representative. Absent from the list of permissible "usage" for purposes of the rule is text messaging.

In its petition, TracFone explained that, for many consumers, including many Lifeline consumers, text messaging is the preferred means of communicating with others using their wireless devices. Moreover, for the deaf and hard of hearing community as well as for those persons who have speech difficulties, texting is the only means of communication using mobile phones without use of special equipment. Commenting parties without exception favored that proposal. TracFone is gratified that the Commission has now recognized that it may now be time to modernize the Lifeline rules by inclusion of text messaging as a permissible use.

However, the Commission's text messaging proposal differs from that put forth in TracFone's petition in one important respect. The Commission proposes to limit texting for purposes of the non-usage rule to sending of texts, not the receipt of texts. TracFone respectfully urges the Commission to further consider this proposal and to allow both the sending of texts and the receipt of texts to be considered usage. By doing so, the rule would be consistent with the manner in which Section 54.407(c) allows both completion of an outbound call and answering an inbound call to count as usage, provided that the inbound call is not made by the ETC or its agents or representatives. The purpose of placing a voice call or sending a text is the same – to

[63] Petition of TracFone Wireless, Inc. for Rulemaking and for Interim Relief, WC Docket No. 11-42, filed October 1, 2014.

convey information to the recipient. In some cases, the recipient responds. In the case of voice calls, the recipient may respond by saying something to the caller. In the case of texts, the recipient may respond by sending a reply text to the caller. However, with many text messages, the conveyed information does not result in a response by the recipient. A recipient of a text message who reads the text obtains the information conveyed by the sender just as the called party who answers the call receives the information conveyed by the caller. By opening the text and receiving the information contained therein, the recipient has used his or her service, whether or not the recipient deems it necessary to send a response. Accordingly, there is no public interest reason for excluding receipt of text messages from the usage definition, provided that the sender is not the ETC or its agent or representative.

XII. The Non-usage Period Should not be Reduced to 30 Days

Section 54.407(c)(2) of the Commission's rules[64] prohibits ETCs that do not assess or collect monthly fees from Lifeline customers from receiving USF support for serving Lifeline customers who have not used their Lifeline service for 60 consecutive days. The so-called 60 Days' Non-usage Rule was promulgated by the Commission in the 2012 Lifeline Reform Order at TracFone's suggestion. In that 2012 order, the Commission explained the purpose for the 60 Day Non-usage Rule as follows: "the 60 day period we adopt is fiscally responsible and balances the interests of subscribers with the risks associated with potential waste in the program."[65] Now, with no analysis or explanation, the Commission proposes to reduce that 60 day non-usage rule to 30 days as part of its efforts to reduce waste and inefficiency in the Lifeline program.[66]

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[64] 47 C.F.R. § 54.407(c)(2).
[65] 2012 Lifeline Reform Order. ¶ 258 (citing to a 2010 report of the Government Accountability Office which endorsed the need for a 60 day rule).
[66] Lifeline Reform NPRM. ¶ 198.

Nowhere does the Commission explain why a rule found to be fiscally responsible in 2012 must be changed in 2015 to reduce waste and inefficiency. The 60 Day Non-usage Rule was not created in a vacuum. As the Commission acknowledged in the 2012 Lifeline Reform Order, the rule had its origins in a series of state ETC designation conditions – conditions which were the result of discussions among ETC applicants (including TracFone), state commission staff and other interested persons. The 60 day non-usage rule strikes that appropriate balance between the interests of subscribers (who are, of course, low-income households) and the risks of potential waste. Nothing has changed since 2012 which indicates that the appropriate balance struck then is no longer appropriate.

Reducing the non-usage period to 30 days would result in the loss of Lifeline supported service for many low-income households who continue to need the service. 30 days is a short period. Some subscribers may be out of the country for 30 days; other subscribers may be incapacitated for 30 days. In many cases, the fact that a Lifeline subscriber has not used his or her service for 30 days does not mean that the subscriber no longer intends to use the service. Nor does it mean that the subscriber will not use the service within the 60 day period now set forth in the rules. In fact, based on experience, TracFone knows that a substantial portion of those Lifeline customers who would be de-enrolled for non-usage after only 30 days would remain Lifeline-eligible, would intend to continue to use their service, and would re-enroll in the program. In short, reducing the non-usage period from 60 to 30 days may satisfy those program critics who object to the Lifeline program and will reduce by some relatively modest amount the level of disbursements. It will do nothing to prevent waste or make the program more efficient.

XIII. Lifeline Subscribers Should be Allowed To De-enroll at Any Time

The Commission's Lifeline rules contain various provisions requiring customer de-enrollment (*e.g.*, the 6o Day Non-usage rule, the one-per-household rule; the annual re-

certification rule). Currently, there is no rule explicitly **allowing** consumers to de-enroll and obligating ETCs to honor those de-enrollment requests. TracFone believes that Lifeline is a federal support program which should be available to those qualified low-income households who elect to participate, but that no consumer should be required to participate or to remain enrolled if they no longer want to participate in the program. Relatedly, ETCs should be required to honor customer de-enrollment requests and to do so expeditiously. Therefore, TracFone supports the proposal articulated at paragraphs 147-153 of the Lifeline Reform NPRM.

TracFone does not agree that it is necessary for ETCs to have available 24 hour customer service numbers for consumers to communicate their de-enrollment decisions. A customer service number available during normal business hours should be sufficient, provided that the ETC is required to act on the customer's request to de-enroll within five business days of the request, and provided further, that ETCs be prohibited from including de-enrolled customers on any FCC Form 497 reimbursement report for periods following the date of de-enrollment.[67]

XIV. NLAD Should Not be Used to Calculate Monthly Lifeline Support Disbursements

The Commission suggests that USAC use subscriber information in NLAD to calculate the amount of Lifeline support.[68] Specifically, the Commission proposes the following rule:

> **§ 54.407 Reimbursement for offering Lifeline.**
> (a) Universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month in NLAD.

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[67] Section 54.407(a) of the Commission's rules, as amended by the 2012 Lifeline Reform Order, allows Lifeline providers to receive support in a month for all customers enrolled on the first day of the following month. By advocating that customers be allowed to de-enroll whenever they choose and prohibiting ETCs from receiving USF reimbursement following de-enrollment, TracFone does not seek to modify or limit the effect of the revisions to Section 54.407(a).
[68] Lifeline Reform NPRM, ¶¶ 178-79.

The Commission should not adopt this proposed rule because NLAD does not accurately state the number of active subscribers that an ETC "serves directly" in the case of ETCs that do not charge a monthly fee to their Lifeline subscribers. Indeed, reliance on NLAD to determine the number of subscribers served by an ETC will result in disbursing Lifeline support to ETCs for qualifying customers who are not using the service. Such a result would be contrary to the Commission's policy of protecting the USF from waste, fraud and abuse.

Section 54.407 of the Commission rules (47 C.F.R. § 54.407) governs reimbursement to ETCs for offering Lifeline. Section 54.407(a) provides that Lifeline support shall be provided directly to an ETC "based on the number of actual qualifying low-income customers it serves." Section 54.407(c)(1) further requires that an ETC offering a Lifeline service for which the ETC does not assess or collect a monthly fee from its subscribers "[s]hall not receive universal service support for a subscriber to such Lifeline service until the subscriber activates the service by whatever means specified by the carrier, such as completing an outbound call … ." In addition, pursuant to Section 54.407(c)(2), after service activation, an ETC that does not assess and collect a monthly charge from its subscribers may only continue to receive Lifeline support for those subscribers who have used the service within the last 60 days (or who have cured any non-usage in accordance with the Commission's rules).

TracFone does not assess or collect a monthly charge from its Lifeline subscribers. In accordance with the Commission's rules, TracFone does not request universal service support for any subscriber until that subscriber activates TracFone's service. As part of TracFone's approval process it conducts its own verification of an applicant's identity, checks NLAD to ensure that neither the applicant nor another member of the applicant's household is already receiving Lifeline benefits, and reviews the applicant's documentation of eligibility to ensure that the

applicant is qualified to receive Lifeline service. After TracFone determines that an applicant is qualified to receive Lifeline service, TracFone updates NLAD regarding its enrollment of a new customer and sends a handset to the customer. When the customer receives the handset, he or she activates the Lifeline service and receives the first monthly allotment of airtime minutes provided with TracFone's Lifeline service by turning on the phone. At that point, TracFone's Lifeline service becomes available to the customer. However, NLAD shows that the customer was enrolled in Lifeline as of the date that TracFone approved the customer, which could be several days or more before the date the customer activates the Lifeline service. Thereafter, the customer continues to be an active customer for which Lifeline support may be received by the ETC so long as he or she continues to use the service at least once every 60 days, as required by the Commission's rules.

Under the current process for receiving reimbursement for providing Lifeline service, ETCs file FCC Form 497 on a monthly or quarterly basis to report to USAC the number Lifeline subscribers they have in each state where they provide Lifeline service. When completing FCC Form 497, TracFone only includes those subscribers who have had active service during the prior month. NLAD only indicates the date when TracFone approved a customer; it does not indicate the date that the customer activated service after receiving a handset, thereby becoming an active customer entitling the service provider to receive USF support for that customer. Thus, NLAD does not have a record as to when TracFone first "serves directly" the customer. Under the proposed rule suggesting that NLAD be used to determine Lifeline support, if a customer did not activate Lifeline service during the month he or she received the handset, then NLAD would count the customer as a current customer, but TracFone would not. More significantly, if a new customer never turns on the handset and then is de-enrolled under the 60 day non-usage rule,

TracFone would never have sought Lifeline support for that customer, but NLAD would have considered that same person the be a customer during those 60 days. The fact that NLAD does not accurately reflect "the number of actual qualifying low-income customers [an ETC] serves directly," and indeed will often overstate that number, demonstrates why the Commission should not adopt a rule that relies on NLAD to calculate Lifeline support. In short, using NLAD to determine USF disbursements could result in increased waste of fund resources.

The Commission asks whether those ETCs that use NLAD should contribute additional funds to the USF. Under 47 U.S.C. § 254(d), the "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." ETCs, as telecommunications carriers, contribute to the USF based on their revenues, which include the amount of Lifeline support received.[69] Thus, ETCs effectively return a portion of the Lifeline support received to the USF. USAC's most recent annual report discloses that administrative expenses, which include the operation of NLAD, represent only 1.57 percent of the authorized support for all programs supported by the USF. The Commission has not provided any basis for requiring those ETCs who use NLAD to further increase their contributions to the USF. Furthermore, to the extent that NLAD would be used to calculate Lifeline support payments in lieu of using ETCs' FCC Form 497s, USAC's administrative costs would decrease. Rather than processing FCC Form 497s, USAC would simply use information transmitted to NLAD by the ETCs to calculate the amount of Lifeline support due to ETCs.

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[69] *See* FCC Form 499, line 308.

The Commission also seeks comment on how well NLAD is working. The main problem with NLAD is that it uses a subscriber's telephone number as one of the database keys or identifiers. In any database it is essential that an identifier be unique, have no chance of being repeated or edited, and cannot be reused. A person can have several telephone numbers and can change his or her telephone numbers. TracFone agrees that subscriber telephone numbers are data to include in NLAD. However, due to the problems inherent with using a telephone number as an identifier, TracFone spends a significant amount of time providing records to USAC to justify approval of individuals incorrectly thought to be duplicates because other individuals listed in NLAD had the same telephone number as the applicant. TracFone recommends that the Commission adopt a new unique identifier to be used for all Lifeline subscribers, such as the study area code for the ETC followed by a unique customer number that will be permanently assigned to an individual even if he or she decides to change Lifeline service providers.

XV. Expanding ETCs' Access to Their USAC Accounts Will Allow ETCs to Track the Status of Reimbursements and Improve Administrative Efficiency

The Commission seeks comment on whether there are modifications that should be made to USAC's online disbursement tool.[70] The disbursement tool provides the public with sufficient information regarding the amount of Lifeline support received by each ETC, and the timing and distribution of those support payments among the states.[71] However, both USAC and ETCs would benefit if ETCs had access to additional information regarding their USAC accounts.

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[70] Lifeline Reform NPRM, ¶ 202.

[71] The Commission suggests that USAC modify its online disbursement tool to display the total number of subscribers for which an ETC seeks support. *Id.*, ¶¶ 200-01. The Commission correctly notes that the number of subscribers is included on completed FCC Form 497s and can be determined using various USAC reports. Given that this information is already available, TracFone does not object to the Commission's proposed modification to USAC's disbursement tool.

USAC is responsible for collecting and processing FCC Form 497s submitted by ETCs on a monthly or quarterly basis. Those FCC Form 497s list the number of Lifeline subscribers served in the previous month(s) and the amount of support requested by the ETC. USAC's online disbursement tool can be used by ETCs, as well as by the public, to learn the total amount of authorized disbursements for each ETC by month and by state. The disbursement tool also indicates whether there have been any revisions to the disbursement amount in a particular month and the months to which the revisions applied. For example, the disbursement tool may show that in June 2015, a certain amount of support was authorized for an ETC that provided service in New York, but that during June it was determined that the ETC had received too much support in April 2015. The amount of the authorized disbursement for June 2015 would be decreased by the April 2015 overpayment.

The USAC disbursement tool reflects disbursements that already occurred in a given month and can be used by ETCs to check whether the amount of Lifeline support they received is consistent with USAC's records. However, the disbursement tool does not disclose the precise date when any adjustments were made to the amount of Lifeline support that was requested or previously paid nor does it provide the reason for those adjustments. USAC can make upward or downward adjustments to the amount of Lifeline support requested on an ETC's FCC Form 497 or to the amount of Lifeline support USAC previously paid to an ETC based on an ETC's submission of a revised FCC Form 497, USAC's review of an ETC's FCC Form 497, or the results of a USAC audit. Thus, the disbursement tool only provides ETCs with a summary end-of-month statement of their USAC account without any details of the transactions underlying the statement.

ETCs are able to obtain additional details about their accounts only by contacting USAC staff. Upon request, USAC staff will provide ETCs with a "Latest View" report. This report provides an ETC with the current status of its USAC account as of a particular day and shows all entries in an ETC's account, the exact date of those adjustments and the reason for the adjustments. In a comments column, USAC can note whether a change to the Lifeline support for a certain month was entered due to the ETC filing a revised FCC Form 497, USAC's own review of FCC Form 497s, or findings from a USAC audit. A review of the Latest View report enables ETCs to confirm that all requested revisions were processed by USAC and to learn whether USAC has made any adjustments to its account. An ETC can then check its records against the information in its USAC account in the same way that a business may balance its checking account to ensure that the bank's records and its corporate records are consistent. When an ETC notices an inconsistency, it can promptly contact USAC staff to obtain additional information and resolve the issue, rather than wait until the end of the month to conduct a search in the online disbursement tool.

Allowing ETCs to have real time access to the information contained in the Latest View report, rather than requiring ETCs to request USAC staff to run the report each time it wants to check its USAC account, would improve USAC's administrative efficiency by eliminating a task normally performed by USAC staff. Furthermore, any discrepancies between USAC and ETC records can be identified and resolved more quickly. TracFone recommends that an ETC's access to its USAC account have the same level of security that is used when an ETC files its FCC Form 497s by requiring a password that may only be used by authorized ETC employees.

CONCLUSION

For the reasons stated in these comments, TracFone respectfully urges the Commission to modify its rules governing the federal Lifeline program in accordance with the positions set forth herein.

Respectfully submitted,

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August 31, 2015