

**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

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

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SUMMARY

TracFone supports the Commission's efforts in the Lifeline Reform Notice of Proposed Rulemaking ("Lifeline Reform NPRM") to further reform and modernize the Lifeline program by reducing incentives for waste, fraud, and abuse of Universal Service Fund ("USF") resources, enhancing Lifeline service, and increasing accountability and efficiency. TracFone urges the Commission to carefully consider how each of its proposed rules, as well any additional rules suggested by commenters, will impact low-income households that currently receive Lifeline benefits, Lifeline-eligible households that plan to apply for Lifeline service, entities that provide Lifeline service or play a role in administering the Lifeline program, and the goal of the program to provide all people with affordable access to telecommunications services. The Commission should only adopt rules that promote competition and consumer choice, increase participation in Lifeline by qualified low-income households, and reduce waste, fraud and abuse.

TracFone opposes minimum service standards for voice service that require a certain number of airtime minutes. The presence of robust competition in the market for Lifeline service has spurred Eligible Telecommunications Carriers ("ETCs") to enhance service offerings over time. There is no evidence that current Lifeline service offerings are not meeting the program's purpose to provide quality service at affordable rates. A requirement that ETCs offer unlimited voice or the national average number of minutes used for non-Lifeline service would jeopardize ETCs' ability to offer no charge service, which is the type of service preferred by Lifeline subscribers, thereby preventing Lifeline subscribers who cannot afford to pay a fee from receiving Lifeline service. There is no basis for requiring Lifeline subscribers to have "skin in the game" as a means to reduce waste, fraud, and abuse in the Lifeline program.

In light of the fact that providing low-income consumers with access to broadband services is a primary purpose of the Lifeline Reform NPRM, TracFone proposes that the

Commission require all ETCs that provide no charge voice service and handsets to offer Lifeline subscribers the option to receive a Wi-Fi-enabled “smartphone” device with Internet browsing capabilities. This requirement would not solve the “homework gap” problem, but it would enable Lifeline subscribers to utilize the increasing number of Wi-Fi hotspots, including hotspots in local libraries and other public facilities, and would be an important step in advancing the availability of broadband to low-income consumers.

TracFone agrees with the majority of commenters that oppose a budget or a cap to the extent that it would prevent eligible low-income households from receiving Lifeline service once the budget or cap amount has been reached. Instead of adopting a cap, the Commission should adopt a goal of significant participation by eligible households, especially given that the current participation rate among Lifeline-qualified households remains less than 33 percent. Moreover, given that the percentage of improper payments in the Lifeline program is insignificant, especially as compared to the percentage of improper payments in other federal programs, there is no need for imposing a strict budget that will prevent eligible low-income consumers from receiving the Lifeline benefits to which they are entitled.

In addition to the reforms proposed in the Lifeline Reform NPRM, the Commission should also adopt two other reforms proposed by TracFone: (1) prohibit Lifeline providers from using incentive-based compensation to compensate third party agents who market Lifeline services, enroll consumers, and distribute handsets and (2) prohibit distribution of handsets on a real time in-person basis. These practices improperly incentivize agents to flout the Commission’s rules as a means to obtain higher compensation. Other commenters have also proposed that the Commission prohibit incentive-based compensation for agents and employees

who are involved in submitting applications to Lifeline providers. These proposals, if adopted, would lead to meaningful reductions in program fraud.

TracFone agrees with the Commission and the vast majority of commenters that a third party verifier should have responsibility for verifying Lifeline applicants' eligibility. The most efficient and effective way to establish a third party verifier is to enhance the functions of the National Lifeline Accountability Database ("NLAD") to verify program-based eligibility for all qualifying programs by using existing federal and state databases where available. For situations in which no databases are available to verify applicants' eligibility, Lifeline providers would forward applicant eligibility documentation to the Universal Service Administrative Company for determinations of eligibility. The costs associated with establishing, maintaining, and operating an enhanced NLAD are administrative costs of the Lifeline program that should be covered by the USF.

TracFone remains concerned about a coordinated enrollment requirement whereby federal and state agencies would allow consumers to enroll in Lifeline when they enroll in programs administered by those agencies. Coordinated enrollment with SNAP would significantly increase the number of people enrolled in Lifeline thereby straining USF resources. Moreover, coordinated enrollment may not be a feasible option, especially with SNAP. The United States Department of Agriculture, the federal agency overseeing SNAP, advised the Commission that it does not have authority to require state agencies administering SNAP to perform any work related to another agency or program. Moreover, even if state agencies were willing to facilitate coordinated enrollment, such agencies have limited financial and human resources that must be allocated to their existing SNAP responsibilities. The Commission should

not require coordinated enrollment due to the associated significant legal, financial and administrative impediments.

TracFone also has serious concerns about providing Lifeline benefits directly to Lifeline consumers in the form of vouchers, debit cards, or assigned personal identification numbers (“PINs”). A direct benefit or “voucher” system would complicate Lifeline service and would unnecessarily burden consumers because it would require consumers to redeem a voucher or make a payment using a debit card on a monthly basis to retain service, rather than be able to rely on continuously available service. A voucher system would also increase the risk of fraud because vouchers or debit card/PIN information could be bartered or sold. A voucher system under which a Lifeline consumer could switch providers each month would negatively impact competition for Lifeline services because it would discourage ETCs from investing in outreach or from offering innovative competitive Lifeline service options.

TracFone strongly opposes limiting the Lifeline qualifying programs to SNAP. Such a limitation would effectively require a low-income consumer to enroll in SNAP, as opposed to any other low-income assistance program, as a prerequisite for receiving Lifeline benefits. Eligibility for SNAP and other federal assistance programs do not overlap, but even if they did overlap low-income consumers should be able to choose the assistance programs in which they wish to enroll. TracFone is especially concerned about the possibility that Medicaid would be eliminated as a qualifying program. TracFone has partnered with several health maintenance organizations (“HMOs”) to use Lifeline service to enhance healthcare delivery by enrolling HMOs’ Medicaid patients in Lifeline and providing Medicaid recipients with targeted benefits, such as unlimited 24/7 calling to the HMO, subscriptions to health care text messaging programs, and appointment reminders. Moreover, if Medicaid participants no longer qualify for Lifeline

service, they could lose the ability to rely on Lifeline benefits to facilitate communication with their health plans and healthcare providers.

TracFone supports streamlining the ETC designation process, but it is important that a designation process remain in place so that the Commission and State commissions can maintain authority over the recipients of Lifeline support as a means to protect the integrity of the Lifeline program. Indeed, Sections 214(e)(1) and 254(e) of the Communications Act direct that only common carriers designated as ETCs shall be eligible to receive universal service support.

The Commission should adopt its proposed rule that sending text messages should be considered as usage for purposes of the de-enrollment for non-usage rule because it reflects a customer's intent to use Lifeline service. TracFone also continues to urge the Commission to allow receipt of texts (or alternatively, receipt and opening of text messages) to be considered usage because it would be consistent with the manner in which the Commission treats voice calls and would recognize that text messaging has become the preferred method of communication by many wireless device users.

The Commission should not reduce the 60 day non-usage period to 30 days because it would be harmful to consumers who want to maintain access to phone service, but choose not to or are unable to use their phones for a short period of time. As stated by the Commission when it adopted the 60 day non-usage period, the 60 day period represents a fair and responsible balance of the interest of subscribers and the Commission's interest in preventing waste of USF resources. Finally, NLAD should not be used to calculate the amount of Lifeline support provided to ETCs each month because NLAD does not accurately state, and may actually overstate, the number of active subscribers that an ETC serves in the case of ETCs that do not charge monthly service fees to their subscribers.

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REPLY COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply comments in the above-captioned matter and states as follows:¹

INTRODUCTION

TracFone supports the Commission’s stated goals in the Lifeline Reform NPRM to expand and modernize the Lifeline program so that all consumers can access and utilize advanced networks, and to promote accountability, transparency and efficiency for low-income consumers and the public.² As the Commission considers various proposed reforms to the Lifeline program, TracFone urges the Commission not to lose sight of the underlying purpose of the program since its inception, which is to provide low-income households with access to affordable quality telecommunications service, specifically, reliable and affordable voice telephone service.

¹ See In the Matter of Lifeline and Link Up Reform and Modernization, et al. (Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order), WC Docket No. 11-42 *et al.*, 30 FCC Rcd 7818 (2015) “Lifeline Reform NPRM” or “NPRM.”

² See *id.* ¶ 9.

In these reply comments, TracFone refines its support for a third party verifier based on enhancing the current National Lifeline Accountability Database (“NLAD”) to determine applicant eligibility for Lifeline. Also, TracFone offers a proposal that would provide low-income households to utilize suitable devices to enable them to access the Internet at Wi-Fi locations. TracFone again urges the Commission to adopt two important reforms to the Lifeline rules which, more than any other proposals, would reduce incentives and opportunities to defraud the Lifeline program and thereby ensure that Universal Service Fund (“USF”) resources are available for their intended purposes. First, TracFone again recommends that the Commission prohibit Lifeline providers from compensating third party agents based on commissions or other incentive-based compensation mechanisms. Second, it reiterates its long-pending proposal that the Commission prohibit real-time in-person distribution of handsets associated with Lifeline services. Adoption of these two reforms would significantly reduce program fraud.

Some commenters support reform proposals, such as mandatory minimum service standards or the use of vouchers or other direct benefit transfer mechanisms to distribute Lifeline benefits, without fully analyzing or understanding that in practice such reforms would not result in higher quality service nor would they facilitate portability of Lifeline benefits. As described in these reply comments, reforms that impede the ability of low-income households to enroll in and retain Lifeline service with their preferred provider, reduce competitive choices for consumers, or unnecessarily increase program costs on providers and state government agencies, should be rejected. Further, such reforms would facilitate conduct that directly contributes to waste, fraud, and abuse of USF resources and should be rejected. The Commission should carefully evaluate the impact of those proposed reforms on low-income households who rely on

Lifeline service, entities that provide Lifeline service and administer the program, and on the integrity of the program. In short, before adopting such proposed reforms, the Commission should first determine whether those reform proposals would, in fact, promote competition and consumer choice, increase participation in Lifeline by qualified low-income households, and reduce waste, fraud and abuse.

I. Competition, Not Minimum Service Standards, Ensures That Lifeline Service Providers Offer Quality Service That Meets the Needs of Low-Income Consumers.

TracFone opposes minimum service standards for Lifeline voice service as both unnecessary and unjustified. As TracFone discussed in its initial comments, competition has incentivized wireless Lifeline providers to expand service offerings in response to market forces. In fact, during the period from 2008, when TracFone commenced offering Lifeline service, until now, TracFone has increased the number of free monthly minutes provided to its SafeLink Wireless[®] Lifeline customers by more than 500 percent - from 68 minutes to 350 minutes. During that same period, TracFone expanded its text messaging allowance from none, to three texts per minute of voice time, to unlimited texting (sent and received). Other wireless Lifeline providers, including, for example, Sprint Corporation (“Sprint”), have similarly enhanced their Lifeline service offerings.³ Other Lifeline providers’ responses to those service enhancements indicate that competition in the Lifeline services market is thriving, not stagnant, as alleged without factual basis by some commenters.⁴ As well-stated by the Internet Innovation Alliance (“IIA”), “innovation and competition have created a communications market that is dominated by and responsive to consumer power and consumer choice.”⁵ Lifeline providers have made independent business decisions to enhance their service offerings in response to market forces

³ See Comments of Sprint, at 6-7.

⁴ See Comments of National Association of Telecommunications Officers and Advisors and the National League of Cities (“NATOA”), at 3; Comments of Free Press, at 57.

⁵ Comments of IIA, at 17.

and in the absence of any Commission rule requiring that a certain number of minutes or texts be offered. The Commission should continue to allow competition, not regulation, to drive the evolution of Lifeline service offerings. In short, there is no reason for the Commission to promulgate minimum service standards in a telecommunications market segment such as Lifeline which is “dominated by and responsive to consumer power and consumer choice.”⁶

Commenters supporting minimum service standards incorrectly claim that Lifeline service offerings have not improved even though the costs of providing wireless service allegedly have declined.⁷ As noted above, Lifeline service offerings, particularly those of wireless providers, have been significantly enhanced over the past seven years. These commenters also overlook the fact that during the time that Lifeline providers have substantially increased the number of voice minutes and text messages offered with Lifeline service, the amount of monthly Lifeline support received by those providers has remained at \$9.25 per subscriber.⁸ Indeed, despite the fact that the Commission has imposed numerous additional costs on Lifeline providers, including various requirements established in the Commission’s 2012

⁶ *Id.* at 17.

⁷ *See* Comments of Free Press, at 57.

⁸ In fact, the support level actually decreased slightly following the 2012 Lifeline Reform Order. Prior to the 2012 rule changes, average monthly support based on the Tier 1, Tier 2 and Tier 3 formula codified in the prior rules was slightly more than \$10.00.

Lifeline Reform Order,⁹ wireless Eligible Telecommunications Carriers (“ETCs”) have enhanced their offerings to meet consumer demands.¹⁰

TracFone agrees with those commenters who advocate competition, rather than mandatory minimum service standards, as the means to ensure that quality innovative Lifeline service remains available to low-income consumers.¹¹ AT&T correctly states that minimum service standards reduce the incentive for providers to participate in the Lifeline program and limit providers’ ability to respond to market demands. As noted by AT&T, “[i]f, on the other hand, the Commission mandates particular service levels for specific services in order to participate in the Lifeline program or adopts overly prescriptive requirements for all Lifeline services, it would effectively limit the flexibility of service providers to be responsive to consumer needs and demands for voice and broadband services.”¹² CTIA rightly points out that “wireless competition in the Lifeline program has efficiently and effectively brought innovative products and affordable services to low-income consumers.”¹³ Those innovative products and services include low cost Lifeline service and no charge Lifeline service, like those offered by

⁹ Lifeline and Link Up Reform and Modernization et al. (Report and Order and Further Notice of Proposed Rulemaking), WC Docket No. 11-42 *et al.*, 27 FCC Rcd 6656 (2012) (“2012 Lifeline Reform Order”). A provider’s costs of offering Lifeline service are not limited to wireless transmission costs.

¹⁰ *See* Comments of the Lifeline Joint Commenters (“Joint Commenters”), at 5-10 (noting that wireless ETCs have improved service even though the Commission has imposed additional costs related to enrollment and recertification, connecting computer systems to NLAD, and “virtually incessant auditing, redundant inquiries and boundless investigations”); *see also* Comments of COMPTTEL, at 9 (although the Lifeline subsidy remains the same, minutes have increased and costs of compliance have increased); Comments of Sprint, at 8-10, 17-18 (costs of providing wireless Lifeline service have increased due to customer churn (de-enrollments), compliance costs, biennial audits, interfacing with NLAD, and risk of enforcement actions).

¹¹ *See, e.g.*, Comments of COMPTTEL, at 7; Comments of CTIA – The Wireless Association® (“CTIA”), at 10.

¹² Comments of AT&T Services, Inc. (“AT&T”), at 9; *see also* Comments of Commnet Wireless, LLC and Choice Communications, LLC, at 6 (“the Commission should allow the marketplace to dictate levels of service based [on] factors unique and specific to each market.”).

¹³ Comments of CTIA, at 5.

TracFone and others. Those services provide low-income households with quantities of wireless airtime at no charge to the enrolled Lifeline customer, along with free handsets provided to Lifeline consumers' at the Lifeline providers' expense, not the USF. Even consumer advocacy commenters such as, *e.g.*, Free Press, have questioned the wisdom of Commission-imposed minimum service standards, stating that "if the Commission were to adopt [a] simple minimum requirement of 400 minutes, that would certainly increase the utility of the service to some users. But such a change might not increase utility at all for other users, and it might push certain ETCs out of the market."¹⁴

Although some commenters suggest that a minimum number of minutes or unlimited minutes of service should be required each month,¹⁵ they have provided no evidence that the level of Lifeline service currently being offered does not meet the program's purpose to provide quality service at affordable rates.¹⁶ TracFone agrees with Joint Commenters that requiring ETCs to offer unlimited voice and text or the national average number of minutes used for non-Lifeline service for \$9.25 "is uneconomical and unsustainable for an ETC" and would require end user charges.¹⁷ In short, an excessive mandatory minimum quantity of minutes requirement would force the elimination of no charge service offerings which have been embraced by large numbers of Lifeline-eligible low-income households, and would result in a *de facto* "skin in the game" co-pay requirement which would cause millions of low-income households to discontinue

¹⁴ Comments of Free Press, at 57-58.

¹⁵ *See, e.g.*, Comments of AARP, at 5-7 (500 minutes and unlimited texting); Comments of the Benton Foundation and Rural Broadband Policy Group ("Benton Foundation"), at 14 (650-700 minutes); Comments of California Emerging Technology Fund, at 16-17 (unlimited talk and text); Comments of the National Association of State Utility Consumer Advocates, at 5 (unlimited or 750 minutes and unlimited texts).

¹⁶ *See* Comments of ITTA – The Voice of Mid-Size Communications Companies ("ITTA"), at 27-28; Comments of Sprint, at 17 ("[t]he Commission has no data on which to justify mandatory unlimited talk and text.").

¹⁷ Comments of Joint Commenters, at 21.

participation in the program. No charge options must remain available because, as TracFone and other ETCs have learned, many Lifeline households strongly prefer no charge service, even where the number of minutes is limited. A requirement that even a minimal payment be made for service would prevent low-income households from participating in the Lifeline program.¹⁸ TracFone has engaged Service Quality Assurance & Customer Experience to survey its Lifeline customers. Of those surveyed, 67 percent of respondents indicated that the 350 minutes per month being provided at no charge were sufficient to meet their needs. More importantly, 91 percent of respondents indicated that they could not afford to pay a monthly fee for a plan which included additional minutes. Furthermore, the National Housing Conference, a housing advocacy organization dedicated to affordable housing, advises the Commission to be cautious about having low-income consumers pay any amount for service.¹⁹ Moreover, as detailed in TracFone's comments, there is no evidence to support a conclusion that requiring a Lifeline subscriber to have "skin in the game" has any bearing on waste, fraud, and abuse in the Lifeline program.²⁰

For the reasons described herein, as well as in TracFone's initial comments, TracFone opposes imposition of a mandatory minimum number of monthly minutes requirement on voice

¹⁸ *See id.* at 18-19 (even minimal payments can foreclose participation); *see also* Comments of Sprint, at 19 (an increase in end user charges will cause a loss of service to those who are unable to pay); Comments of Telscape Communications, Inc. and Sage Telecom Communications, LLC, at 6-7 (consumer choice, including the right to choose a no cost plan, should be preserved).

¹⁹ *See* Comments of National Housing Conference, at 4-5.

²⁰ TracFone Comments, at 17-18. Also, as TracFone noted in its initial comments at page 15, some Lifeline households may desire greater quantities of airtime or unlimited minutes and would be willing to pay monthly charges for such services. ETCs perceiving a demand for such programs should be free to provide them. However, plans with greater quantities of minutes or unlimited service plans should not be mandatory.

service.²¹ However, there is one area where imposition of a minimum service standard would be appropriate as a means to facilitate access to broadband service by low-income households. TracFone recognizes that a primary purpose of the Lifeline Reform NPRM is to modernize the program so as to provide low-income consumers with affordable access to broadband services. To advance that goal, TracFone proposes that the Commission require all ETCs that provide no charge voice Lifeline service and handsets to offer Lifeline subscribers the option to receive a Wi-Fi-enabled “smartphone” device with Internet browsing capabilities. A Wi-Fi enabled handset would allow Lifeline subscribers to benefit from the increasing number of Wi-Fi locations, including hotspots in local libraries and other public facilities. TracFone believes that ETCs offering no charge Lifeline services can – and should be – required to provide such Wi-Fi-enabled devices with no additional USF support, and that such a requirement could be implemented by ETCs within six months to one year of enactment.

In proposing a Wi-Fi-enabled device standard, TracFone readily acknowledges that such a requirement would not connect all households to the Internet at high speeds nor would it by itself solve the “homework gap” problem so articulately described by Commissioner Rosenworcel. However, it would be a significant interim step which would advance important Commission broadband policy goals and objectives including, for example, utilizing both

²¹ Although TracFone opposes mandatory minimum service level requirements for voice telephony Lifeline service, TracFone urges the Commission to promulgate such rules as necessary to ensure that all Lifeline households in all states receive the full benefit of the Lifeline subsidy. States should not be allowed to reduce Lifeline benefits to low-income households residing in those states by imposing 911 taxes on those benefits as several states, including Alabama and Indiana, have done.

licensed and unlicensed spectrum bands to meet demand for broadband services.²² It would supplement recent reforms to the E-rate program to provide for Wi-Fi connectivity at schools and libraries.²³ It would enable more consumers, especially low-income consumers, to benefit from the Commission’s efforts to promote municipal broadband networks and “smart city” initiatives utilizing Wi-Fi hotspots to enable broadband connectivity.²⁴

II. If the Commission Determines That a Budget for the Lifeline Program Is Necessary, Then It Must Ensure that Eligible Low-Income Households Are Not Denied Lifeline Benefits.

TracFone understands the desire of several Commissioners and Members of Congress to establish a budget for the Lifeline program as a means to limit spending and control waste, fraud and abuse of USF resources. However, given that Lifeline support is provided directly to consumers in the form of subsidies on the price of services, TracFone again cautions the Commission against imposing a program cap that would exclude qualified low-income households from participation in the program.

TracFone agrees with the majority of commenters that oppose a budget or a cap to the extent that it would prevent eligible low-income households from receiving Lifeline service once

²² Lifeline Reform NPRM, ¶ 129 (seeking comment on how to utilize unlicensed bands to provide broadband service to low-income consumers); Expanding the Economic and Innovation Opportunities for Spectrum Through Incentive Auctions (Report and Order), GN Docket No. 12-286, 29 FCC Rcd 6567 (2014), ¶ 271 (“[m]aking spectrum available for unlicensed devices will result in economic and consumer benefits, including greater broadband innovation and increased access for broadband services.”).

²³ Lifeline Reform NPRM, ¶ 22 (referencing the Commission’s modernization of the E-rate program “to close the WiFi gap within schools and libraries”); Modernizing the E-Rate Program for Schools and Libraries, Connect America Fund (Second Report and Order and Order on Reconsideration), WC Docket No. 13-184 *et al.*, 29 FCC Rcd 15538 (2014).

²⁴ City of Wilson, North Carolina Petition for Preemption of North Carolina General Statute Sections 160A-340 et seq. (Memorandum Opinion and Order), WC Docket No. 14-155 *et al.*, 30 FCC Rcd 2408 (2015) (preempting provisions of North Carolina law restricting municipal provision of broadband service).

the budget or cap amount has been reached.²⁵ COMPTTEL aptly describes the impact of a strict budget: “More importantly, a budget would predictably have the unfair and, for some, even disastrous practical effect of excluding many eligible and deserving low-income participants from the ‘lifeline’ to economic and educational opportunity and emergency and health services that the program currently provides.” TracFone agrees with AT&T’s recommendation that the Commission evaluate carefully any budget to assess the impact on eligible consumers.²⁶ TracFone also agrees with the Leadership Conference’s suggestion that, rather than adopting a budget, the Commission should adopt a goal of significant participation by eligible households,²⁷ especially given that the current participation rate among Lifeline-qualified households remains less than 33 percent.

Like several of the other commenters, TracFone questions the necessity of a budget as a means to reduce waste, fraud, and abuse.²⁸ As detailed by COMPTTEL, there simply is no evidence that there has been a significant amount of improper payments. The “error rate” (*i.e.*, the percentage of improper payments) for the Lifeline program is 0.32 percent, which compares favorably with the error rates of the E-rate program (3.81%), Medicaid (10.1%), and the average for all federal government programs (3.58%), as well as with the Office of Management and Budget’s determination that only error rates at or above 1.5 percent are “significant.”²⁹

²⁵ See, e.g., Comments of Joint Commenters, at 24 (opposing any cap that would leave eligible consumers unserved); Comments of National Consumer Law Center *et al.*, at 16 (objecting to a budget that would deny Lifeline to any eligible household); Comments of Sprint, at 22 (expressing concern that a budget cap will jeopardize the universal service mandate by cutting off current subscribers or turning away newly qualified consumers).

²⁶ See Comments of AT&T, at 33-34.

²⁷ See Comments of the Leadership Conference on Civil and Human Rights, at 3.

²⁸ See, e.g., Comments of CTIA, at 17 (Lifeline cap is not necessary due to success of reforms and could foreclose eligible households from participating).

²⁹ Comments of COMPTTEL, at 29-30.

According to IIA, SNAP had a 96.8 percent payment accuracy rate in 2013.³⁰ Thus, SNAP's error rate of 3.2 percent (100 percent – 96.8 percent) is substantially higher than the Lifeline error rate of 0.32 percent. Although no amount of improper enrollments should be acceptable, in any government program errors will occur for various reasons, including inadvertent administrative errors. The substantially lower error rate for the Lifeline program as compared with other programs, including SNAP, and the federal government overall, demonstrates that the various reforms adopted in the 2012 Lifeline Reform Order have been effective in preventing waste, fraud, and abuse.³¹

Some commenters have suggested that the Commission set a cap based on the maximum amount the program will cost³² or by applying Lifeline eligibility criteria to poverty statistics.³³ At this time the Commission does not know how much a reformed Lifeline program that includes support for broadband will cost. However, it seems virtually certain that the inclusion of broadband support will increase the cost of the program. The Pennsylvania Public Utility Commission (“PUC”) wisely states that the Commission must have reliable data to ensure that all qualifying households get service.”³⁴ If and when the Commission decides to develop a budget for the Lifeline program, then the budget “must be correctly sized to meet program goals and ensure that service is truly universal, as Congress intended.”³⁵

³⁰ Comments of IIA, at 13.

³¹ See Comments of Public Knowledge, Appalshop, and the Center for Rural Strategies, at 32-33 (Lifeline reforms have led to declining disbursements).

³² See Comments of Michigan Public Service Commission (“PSC”), at 5-6.

³³ See Comments of Smith Bagley, Inc. (“Smith Bagley”), at 17 (“An examination of poverty statistics from the Census and the Lifeline program’s eligibility criteria could yield a reasonably accurate estimate of the ceiling on program size.”).

³⁴ See Comments of Pennsylvania PUC, at 17.

³⁵ Comments of TCA, Inc. – Telecom Consulting Associates (“TCA”), at 5.

III. The Commission Should Prohibit Lifeline Providers from Compensating Marketing Agents with Commissions.

In its initial comments, TracFone proposed that the Commission prohibit Lifeline providers from using incentive-based compensation to compensate third party agents who market Lifeline services, enroll consumers, and distribute handsets. As TracFone explained, such compensation systems create financial incentives for agents to attempt to enroll as many consumers as possible, and therefore, to find ways to avoid program requirements. TracFone believes that prohibiting incentive-based compensation of agents who recruit consumers and assist in completing enrollment applications for the Lifeline program will strongly discourage marketing practices that have resulted in program fraud. In fact, no fraud prevention reform proposed in the NPRM is likely to have as profound an impact on curtailing waste, fraud and abuse of USF resources as would reforming the compensation of third party agents.³⁶

In its initial comments, TracFone recommended that the Commission promulgate rules prohibiting all Lifeline providers from compensating agents by paying commissions on Lifeline enrollments as an additional reform to protect the USF from waste, fraud, and abuse. Several other commenters also proposed that the Commission prohibit incentive-based compensation for agents and employees who are involved in submitting applications to Lifeline providers. The Florida PSC refers to recent abuse by agents who are paid a commission for each applicant they sign up and states that agents should not be paid commissions for submitting Lifeline

³⁶ TracFone also reiterates its proposal first raised more than two years ago that the Commission prohibit the unseemly and often abusive practice of distributing handsets (like “Halloween candy” according to Commissioner Pai) associated with Lifeline on a real time basis on street corners, out of car trunks, across from public assistance offices, and elsewhere. No other practice has been subject to more criticism and besmirched the Lifeline program more than that practice. Its elimination is long overdue.

applications.³⁷ TracFone supports the Florida PSC’s suggestion that Lifeline providers be required to conduct annual training for the agents and that there should be a no tolerance policy for agents who knowingly sign up consumers who are not Lifeline-eligible.³⁸ In the context of verification of applicant eligibility, GVNW Consulting, Inc. (“GVNW”) advises the Commission to adopt a reform previously proposed by the Lifeline 2.0 Coalition that would prohibit employees paid on a commission from reviewing and approving Lifeline enrollment applications.³⁹ This proposal, although well-intentioned, fails to address a primary cause of fraud – agents’ submission of applications to Lifeline providers with inaccurate or altered information as a means to get credit (and compensation) for enrolling more customers. Prohibiting Lifeline providers from compensating marketing agents based on the number of the customers they enroll will remove any financial incentive to submit applications with fraudulent information.⁴⁰

IV. The Commission Should Adopt a Third Party Verification System Which Utilizes a Centralized NLAD Certification System Funded by the USF.

TracFone agrees with virtually all commenters that the responsibility for verifying Lifeline applicants’ eligibility should be transferred from Lifeline providers to an independent third party verifier. In its initial comments, TracFone identified certain problems that would arise by transferring responsibility for applicant eligibility determinations to a third party

³⁷ See Comments of Florida PSC, at 7-8; *see also* Comments of the Public Utility Division of the Oklahoma Corporation Commission, at 6-7 (similarly asserting that when third party agents are compensated on a per-phone basis there is an incentive to “find a way” to enroll as many consumers as possible).

³⁸ See Comments of Florida PSC, at 7-8.

³⁹ See Comments of GVNW, at 27.

⁴⁰ Elimination of such incentive-based compensation and the resulting incentives for fraud can only be achieved if all ETCs are subject to that prohibition. Even if TracFone or any other provider were to eliminate such agent compensation practices, those agents who have found ways to abuse the process to maximize their own revenues would move to other ETCs whose compensation systems incentivize such conduct.

verifier. TracFone has continued to consider that approach and has reviewed other parties' comments. It has concluded that the problems noted in its initial comments are solvable and the advantages of a third party verifier are sufficient that such a system should be adopted.

TracFone's recommendation for a third party verifier is that NLAD be enhanced so that it can be used to verify applicant eligibility in addition to its current purpose – prevention of duplicate enrollments. An enhanced NLAD would verify program-based eligibility for all qualifying programs and utilize existing resources, such as federal and state databases, to verify whether applicants are participating in the qualifying programs identified in their applications. When no databases are available to verify applicants' eligibility, Lifeline providers would forward any applicant eligibility documentation provided by the applicant to the Universal Service Administrative Company ("USAC") for determinations of eligibility. Many commenters agree with TracFone's view that an enhanced NLAD should be used as a central database.⁴¹ CTIA likewise supports a "single, integrated national consumer eligibility database or interface as the most effective method for protecting the Lifeline program against waste, fraud, and abuse."⁴²

USAC could develop a customer interface which would enable consumers to interact directly with NLAD for purposes of submitting Lifeline applications and supporting data for approval. However, ETCs, including wireless ETCs, would continue to engage in consumer outreach, and would continue to assist consumers in completing enrollment applications and sending those completed applications to USAC for review and approval.

⁴¹ See Comments of AT&T, at 13; Comments of COMPTTEL, at 15-16 (should leverage existing databases); Comments of NATOA, at 4 (same); Comments of National Consumer Law Center, at 11.

⁴² CTIA Comments at 13.

The development of an enhanced NLAD system or another verifier will be costly. There will also be costs associated with maintaining a verifier, updating data, performing searches, and interfacing with various federal and state databases. Each of these costs, like the costs currently associated with operating and maintaining NLAD, are administrative costs of the Lifeline program that should be borne by the USF. As several commenters point out, the costs of the verifier should be borne by the USF because the verifier would perform administrative functions, improve the efficiency of the program, and benefit Lifeline applicants.⁴³ It is also not appropriate to require Lifeline providers alone to bear the expense of a third party verifier because they, like other providers of interstate telecommunications services, already contribute to the USF.⁴⁴ If Lifeline providers are required to use a third party verifier, such as one that utilizes an enhanced NLAD, then the associated administrative costs of the verifier should be incorporated into and recovered through USF contributions.⁴⁵

V. Coordinated Enrollment Is Not a Viable Option for All Federal Programs and Could Substantially Increase Lifeline Enrollment.

TracFone supports coordinating with federal and state agencies for the purpose of educating low-income consumers about the Lifeline program. However, TracFone remains concerned about the appropriate role of government agencies in the Lifeline enrollment process and the impact such enrollment would have on the number of participants in the Lifeline program. In this regard, coordinating Lifeline enrollment with enrollment in the Supplemental Nutrition Assistance Program (“SNAP”) as proposed in the NPRM could be especially problematic. If all or most SNAP participants elect to enroll in Lifeline simultaneous with their

⁴³ See Comments of Verizon Communications Inc. (“Verizon”), at 4; Comments of California Emerging Technology Fund, at 39; Comments of Connected Nation, Inc., at 17; Comments of GVNW, at 19; Comments of NTCA-The Rural Broadband Association, at 8.

⁴⁴ See Comments of AT&T, at 34-35; see also Comments of Sprint at 34 (charging ETCs additional fees is contrary to cost recovery mechanisms used for other USF programs)..

⁴⁵ See Comments of Sprint, at 35.

enrollment or re-enrollment in SNAP, the number of Lifeline enrollees could nearly double from the current level of about 12 million to 22 million – the current approximate number of households receiving SNAP benefits, thereby substantially increasing the fiscal demands on the USF. Although TracFone believes that the current Lifeline participation rate by eligible households of less than 33 percent needs to be improved, a sudden and drastic increase in Lifeline participants (equal to the entirety of the SNAP enrollment base) would strain the financial resources of the USF. This kind of growth is precisely what proponents of a budget or a cap have been warning against.

There are several commenters who support government agencies being involved in enrolling low-income households in the Lifeline program.⁴⁶ AT&T proposes that state agencies managing SNAP engage in coordinated enrollment using the following steps: state agencies would enroll consumers in Lifeline by submitting enrollment requests to USAC; USAC would check NLAD for duplicates; USAC or the state agency would provide consumers with a list of Lifeline providers; and providers would receive a list of Lifeline-qualified households and could proactively market services to them.⁴⁷ AT&T also asserts that the USF could be used to reimburse state agencies for Lifeline administration functions.⁴⁸ Although AT&T claims that the Commission has authority to use USF resources to compensate state agencies for any administrative functions they perform, AT&T has provided no legal support for that conclusion,

⁴⁶ *See, e.g.*, Comments of AT&T, at 16; Comments of CTIA, at 13; Comments of GVNW, at 20; Comments of Multicultural Media, Telecom and Internet Council, at 11-14; Comments of New York PSC, at 5.

⁴⁷ *See* Comments of AT&T, at 16-19; *see also* Comments of TCA, at 4 (suggesting an enrollment process similar to AT&T's proposal). AT&T also proposes that USAC would send a debit card to approved consumers who can then use that card to purchase Lifeline service. As explained in Section VI of these reply comments, TracFone opposes providing Lifeline consumers with direct benefits, such as a debit card or voucher.

⁴⁸ *See* Comments of AT&T, at 24.

and it seems highly improbable that the Commission has the authority to utilize USF resources to pay for state administration of the federal Lifeline program. Moreover, even if the Commission could use funds from the USF to pay state agencies for their role in coordinated enrollment, such a system still would not be lawful. As explained by the United States Department of Agriculture (“USDA”), state agencies responsible for administering SNAP are under no obligation to support coordinated enrollment. Nowhere have either AT&T nor any other proponents of such coordinated enrollment explained how the additional costs of financing state agencies’ participation in the Lifeline enrollment process can be reconciled with stated concerns about conserving USF resources and limiting program growth.

Importantly, USDA opposes coordinated enrollment because it does not have any authority to require state agencies administering SNAP to work with other agencies or programs.⁴⁹ SNAP is administered at the state and local level. The USDA’s Food and Nutrition Service, the division that oversees SNAP, does not have authority to require state agencies that administer SNAP to participate in the administration of other programs, specifically non-USDA programs, including, *e.g.*, the federal Lifeline program. Therefore, if the Commission wanted a state agency that administers SNAP to coordinate enrollment with Lifeline, the Commission would need to approach each state agency individually and negotiate the terms of an agreement.⁵⁰ In short, the proposal to coordinate Lifeline enrollment with SNAP is beyond the

⁴⁹ USDA also states that SNAP and Lifeline eligibility criteria are not identical, so not all SNAP recipients will be eligible for Lifeline. In addition, not all individuals who are eligible for SNAP seek SNAP benefits. *See* Comments of USDA, at 5. For these reasons, coordinated enrollment with SNAP may be problematic.

⁵⁰ *See* Comments of USDA, at 1-2. Given the Commission’s reluctance to become involved in efforts of TracFone and others to arrange for access to state eligibility databases, the likelihood of the Commission embarking upon negotiations with 52 state governments (including the District of Columbia and Puerto Rico) to arrange for state involvement in the Lifeline enrollment process seems low.

Commission's authority since neither the Commission nor USDA can require participation by those state agencies necessary to such a process.

Furthermore, state agencies have finite financial and human resources that must be utilized to perform their existing SNAP responsibilities, so they are not likely to have available the additional resources needed to implement a new service focused on enrolling SNAP recipients in Lifeline.⁵¹ Indeed, as the Michigan PSC recognizes, “[g]iven the burdens already facing many social program agencies, they may resist assuming the responsibility of signing up consumers for the Lifeline program without a state or federal mandate.”⁵² Moreover, even if USDA had funding available to distribute to state agencies to reimburse them for additional work associated with coordinated enrollment, that funding could not be used for any work related to the Lifeline program. SNAP funding may only be used for SNAP activities.⁵³ Enrolling consumers in the Commission's Lifeline program is not a SNAP activity. Finally, USDA advises that, although state agencies have authority to disclose to ETCs whether an applicant is receiving SNAP benefits, state agencies can independently determine whether they want to share this information.⁵⁴

Based upon the foregoing, there are significant legal, financial, and administrative obstacles to utilizing state agencies administering SNAP to conduct coordinated enrollment in the Lifeline program. Because of those obstacles, the Commission should abandon its proposal to coordinate Lifeline enrollment with SNAP enrollment and its related proposal to limit Lifeline eligibility to SNAP enrollment. If the Commission elects to pursue those proposals notwithstanding those obstacles, then the Commission should consult with those state agencies

⁵¹ *Id.* at 3.

⁵² Comments of Michigan PSC, at 11.

⁵³ *See* Comments of USDA, at 3-4.

⁵⁴ *See id.* at 4-5.

that it contemplates would be involved with coordinated enrollment and carefully consider whether coordinated enrollment could be a viable option.⁵⁵

VI. Providing Direct Benefits to Lifeline Eligible Consumers in the Form of “Vouchers” Will Not Prevent Fraud Nor Promote Benefit Portability, but Will Make Lifeline Service Less Accessible to Low-Income Households.

Lifeline benefits should not be distributed directly to Lifeline subscribers as direct benefit transfers, whether in the form of debit cards (or as IIA calls such cards, “Lifeline Benefit Cards”), vouchers, or assigned personal identification numbers (“PINs”). Although on its face, such a “voucher” system may appear to some to make Lifeline benefits more portable, in practice it would be extremely burdensome to consumers and would discourage ETCs from engaging in marketing and outreach to attract qualified low-income consumers to their particular service plan. Furthermore, as explained in TracFone’s initial comments, benefits portability can be maintained without use of vouchers.

Proponents of a voucher or debit card system to distribute Lifeline benefits tout the alleged advantages of such a system but fail to consider how such a system would impact low-income consumers who are intended to benefit from Lifeline and competition in the Lifeline services market. Significantly, most comments favoring a voucher system are from carriers with little interest in offering Lifeline service beyond the minimum effort required of all ETCs and from other commenters allied with those parties. For example, AT&T claims that providing benefits directly to Lifeline eligible consumers will enable consumers to switch providers easily and apply the benefit to different providers each month.⁵⁶ AT&T states that USAC could manage the debit cards by establishing a relationship with a single bank that would issue all of

⁵⁵ If one of the anticipated benefits of coordinated enrollment with SNAP is a reduction in Lifeline fraud, it is questionable how such coordinated enrollment with SNAP – a program with a 3.2 percent error rate, would reduce fraud in Lifeline – a program with a 0.32 percent error rate.

⁵⁶ See Comments of AT&T, at 11.

the cards.⁵⁷ AT&T acknowledges that not all carriers issue bills so a debit card “might not be their preferred solution.”⁵⁸ AT&T suggests that non-billing carriers could establish a service renewal date and advise customers when a charge would be applied to the Lifeline debit card on file.⁵⁹ However, this supposed solution overlooks the fact that providers of non-billed Lifeline services would be forced to incur otherwise unnecessary substantial administrative costs to establish and maintain systems to collect and track debit card numbers or PINs.⁶⁰ As discussed below, there are several problems with a debit card system as proposed by AT&T and others, irrespective of whether that system uses a physical voucher or debit card or a PIN.⁶¹ This proposal is nothing more than a “clever” attempt by those with little interest in meaningful participation in the Lifeline program to reduce the burdens and costs of even their minimal participation.

A requirement that vouchers be redeemed monthly in order to retain service would unnecessarily burden consumers, including the elderly, disabled persons, and persons residing in rural areas for whom traveling to a provider location to redeem a voucher each month would be difficult and, in some cases, impossible. As noted by the Joint Commenters, a voucher system would complicate the process for consumers who would have to enroll on a monthly basis in person or online, thereby undermining the “always on,” “continuously available” nature of Lifeline service.⁶² Other commenters, including consumer rights advocates, oppose a voucher system because such a system would place the responsibility on recipients to travel to provider

⁵⁷ *Id.* at 21.

⁵⁸ *Id.* at 22.

⁵⁹ *Id.* at 23.

⁶⁰ *See* Comments of Sprint, at 28 (noting that no charge wireless carriers would need to develop a billing system or a way to accept end user payments).

⁶¹ *See* Comments of GVNW, at 16.

⁶² *See* Comments of Joint Commenters, at 45.

locations monthly in order obtain the next month's service. This is a burden and an added cost for consumers that will deter eligible low-income households from participation in the program.⁶³ In fact, TracFone has surveyed its own base of SafeLink Wireless® Lifeline customers. Of those surveyed, 79.2 percent indicated that they would prefer the current system to one which would require them to redeem vouchers on a monthly basis.⁶⁴ The fact that nearly 80 percent of Lifeline consumers responding expressed a preference for the current system over a voucher-based alternative contradicts the wholly-unsupported assertion of AT&T's philosophical ally, the IIA, that there is a "stigma" associated with Lifeline enrollment.⁶⁵ The vast majority of enrolled Lifeline households are not stigmatized by their Lifeline enrollment. Rather, they enjoy the security, safety, and convenience of Lifeline-supported service provided on an ongoing basis by the provider of their choice.

Several supporters of a voucher system claim without factual basis that it will reduce fraud.⁶⁶ However, such a system would actually increase the risk of consumer fraud because, unlike Lifeline support payments sent directly to ETCs, vouchers or debit card/PIN information

⁶³ See Comments of the National Association of the Deaf *et al.*, at 8-9; Comments of National Consumer Law Center, at 14 (it is inconvenient for customers to have to do something each month to get the benefit, such as go to store, make a payment or recall a PIN); Comments of Navajo Nation Telecommunications Regulatory Commission, at 15 ("This proposal [vouchers] appears to be nothing more than an attempt by the FCC to erect hurdles to participation and therefore the overall cost of the program.").

⁶⁴ SafeLink – Lifeline Proposed Changes Voucher Survey Results, prepared by Service Quality Assurance & Customer Experience, August 2015 at 4, attached to ex parte letter submitted by TracFone, September 21, 2015.

⁶⁵ Comments of IIA, at 16.

⁶⁶ See Comments of Illinois Department of Central Management Services, at 8; Comments of Information Technology and Innovation Foundation, at 8.

could be bartered or sold.⁶⁷ A voucher system also would add significant administrative costs to USAC and ETCs. Those additional costs would include Lifeline providers verifying the identity of the Lifeline subscriber with every monthly transaction and enormous costs associated with setting up such a system and having a bank process all debit card or other payments.⁶⁸

Moreover, a voucher system will have an adverse impact on competition in the Lifeline services market, thereby depriving low-income consumers of the benefits of a competitive telecommunications service marketplace long enjoyed by other consumers. Over the past several years, Lifeline participation by qualified low-income households has increased significantly due to the advent of competition and active outreach by providers, particularly wireless Lifeline providers which have engaged in extensive consumer outreach resulting in increases in Lifeline participation among low-income households. A voucher system under which Lifeline customers would receive Lifeline support that could be used to obtain telecommunications service in general, rather than service from a particular provider, and under which a Lifeline consumer could switch providers on a monthly basis would eliminate incentives for Lifeline providers to invest in outreach and to offer innovative competitive Lifeline service options. As TracFone described in its initial comments, no provider could be expected to expend resources advertising the availability of Lifeline in media of general distribution (as required by 47 U.S.C. § 214(e)(1)(B)) if all they could market would be a program which enables consumers to obtain services from their competitors. Removal of the incentives to engage in consumer outreach and

⁶⁷ See Comments of Joint Commenters, at 43; Comments of Sprint, at 28-29 (debit cards can be lost, stolen or hacked). It would only be a matter of time before Lifeline vouchers were posted for resale on eBay, Craigslist and other barter sites. A monthly voucher redemption requirement would create an opportunity some consumers to “game” the system by repeatedly switching providers in order to obtain additional handsets. This already has become a problem in California which now imposes a 60 day waiting period for changing providers.

⁶⁸ See Comments of Joint Commenters, at 44; Comments of Sprint, at 28 (a voucher system has substantial development and operation costs).

marketing will result in returning Lifeline to what the program was in its early years – a little-used, largely ignored program with relatively few qualified low-income households receiving supported service.

VII. Lifeline Qualifying Programs Should Not Be Limited to SNAP.

TracFone strongly opposes any proposal to limit the number of qualifying Lifeline programs to SNAP.⁶⁹ TracFone respectfully disagrees with the Florida PSC’s suggestion to limit Lifeline qualifying programs to SNAP, Medicaid, and TANF. Although many applicants qualify for enrollment through those three programs, other approved qualifying programs are no less valid as indicators of economic need. A low-income consumer should not be required to enroll in a particular low-income assistance program as a prerequisite for receiving Lifeline benefits.

AT&T’s recommendation that SNAP and Food Distribution Program on Indian Reservations (collectively referenced as “SNAP”) be the sole qualifying Lifeline programs would be unnecessarily harmful, and indeed, punitive to many low-income households, specifically those low-income households who may receive benefits from other assistance programs, but not from SNAP.⁷⁰ AT&T’s claim that eligibility for SNAP and other federal programs overlap fails to address the fact that participation in other assistance programs also demonstrates that a consumer has an income level that warrants receipt of Lifeline benefits.⁷¹

The assertion that SNAP and other Lifeline-qualifying programs often overlap is incorrect. For

⁶⁹ As noted in initial comments, TracFone supports the Commission’s proposals to include the Veterans Pension Benefit program and the Veterans Affairs Supportive Housing program as Lifeline qualifying programs. In addition, TracFone supports commenters’ requests to include consumers with disabilities who receive communications equipment through a state equipment distribution program as eligible to receive Lifeline benefits. *See* Comments of National Association of the Deaf, at 11-12; Comments of Prepaid Wireless Retail, LLC, at 9-10.

⁷⁰ *See* Comments of AT&T, at 14; *see also* Comments of IIA, at 13-14 (recommending that SNAP be the only qualifying Lifeline program).

⁷¹ *See* Comments of AT&T, at 15 (asserting that TANF and SSI participants qualify for SNAP, that SNAP participants qualify for National School Lunch Program, and that states can enroll SNAP participants in Medicaid).

example, TracFone has provided survey research data in this proceeding which show that more than 46 percent of TracFone's SafeLink Wireless[®] customers who qualified through Medicaid do not receive SNAP benefits.⁷² If Lifeline eligibility were limited to SNAP, then those low-income households would not be Lifeline-eligible. AT&T's proposal, if adopted, would deprive those thousands of Medicaid enrollees access to Lifeline. Moreover, Medicaid Health Plans of America ("MHPA") disputes that there is overlap between SNAP participants and Medicaid participants. According to MHPA, the Commission should not replace Lifeline eligibility based on participation in Medicaid with eligibility based on participation in SNAP because Medicaid covers a different population and only 75 percent of SNAP recipients are eligible for Medicaid.⁷³ Even if a low-income consumer could qualify for SNAP if he or she receives benefits from another federal assistance program, such as Medicaid, that consumer should not be required to enroll in SNAP as a prerequisite for receiving Lifeline benefits.⁷⁴

TracFone is especially concerned that elimination of Medicaid as a Lifeline-qualifying program would deprive thousands of Lifeline households the important healthcare-related benefits of Lifeline. TracFone, in partnership with health maintenance organizations ("HMOs"), has pioneered using Lifeline service to enhance health care delivery. TracFone has worked with 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, including unlimited 24/7 calling to the HMO, subscriptions to health care text messaging programs through Connect4Health, educational messages, and appointment

⁷² See, e.g., TracFone Wireless, Inc. WC Docket No. 11-42, Notice of Ex Parte Presentation, filed September 21, 2015, Enclosure 3 – SafeLink – Lifeline Proposed Changes Medicaid Survey Results, at 4.

⁷³ See Comments of MHPA, at 2.

⁷⁴ Many low-income households, including many enrolled in Medicaid, decline to enroll in SNAP because of the stigma associated with being on Food Stamps.

reminders. MHPA, like other commenting health care providers, strongly supports retention of Medicaid as a Lifeline-qualifying program, and notes that “if households no longer qualify for Lifeline support through Medicaid, Medicaid beneficiaries would lose communication with their health plans and access to these case management programs.”⁷⁵ TracFone urges the Commission to consider carefully the healthcare benefits that Lifeline affords Medicaid participants as a result of partnerships between Lifeline service providers and health care providers.⁷⁶ The opportunity for Lifeline to be used to enhance health care would be lost if Medicaid was to be eliminated as a qualifying program.⁷⁷

VIII. Only ETCs Should Be Permitted to Receive Lifeline Support.

As a matter of statutory mandate and as a means to ensure that recipients of funds from the USF operate in the public interest, the Commission should only permit ETCs to receive Lifeline service support. Section 214(e)(1) of the Communications Act explicitly and unequivocally provides that common carriers designated as ETCs shall be eligible to receive universal service support.⁷⁸ Section 254(e) of the Communications Act further provides that “only an eligible telecommunications carrier designated under section 214 (e) of this title shall be

⁷⁵ See Comments of MHPA, at 1.

⁷⁶ See *id.* at 2-4.

⁷⁷ If the Commission wishes to reduce the number of Lifeline-qualifying programs, then the qualifying programs could be limited to SNAP, Medicaid, TANF, SSI, plus the two veterans’ assistance programs proposed for inclusion in the NPRM (*i.e.*, the Veterans Pension Benefit program and the Veterans Affairs Supportive Housing program). However, the other Lifeline-qualifying programs (the Low Income Home Energy Assistance program, the National School Lunch program, and Section 8 Housing) are also valid indicators of low-income. Even though relatively few Lifeline applicants qualify for Lifeline through those programs, there is no reason why they should not continue to be Lifeline-qualifying programs, especially if the Commission establishes a third party verification process based on an enhanced NLAD.

⁷⁸ See 47 U.S.C. § 214(e)(1).

eligible to receive specific Federal universal service support.”⁷⁹ No commenter has identified any provision in the Communications Act that excludes those common carriers who wish to receive support from the USF for providing Lifeline service from the statutory requirement that carriers be designated as ETCs in order to receive federal universal service support.

Although TracFone supports streamlining the ETC designation process,⁸⁰ it is important that a designation process remain in place. Given the Commission’s efforts to curtail waste, fraud, and abuse in the Lifeline program, it is essential that the Commission and State commissions maintain authority to develop and implement appropriate criteria and conditions that must be met in order to be designated to be a recipient of Lifeline support and to maintain regulatory authority over entities receiving Lifeline support to protect the integrity of the program. Contrary to commenters’ assertions, the ETC designation process has not discouraged participation in the Lifeline program.⁸¹ Numerous carriers provide Lifeline service and competition has spurred those carriers to continue to enhance their service offerings. Allowing recipients of Lifeline support to receive USF funds with limited or no regulatory oversight could

⁷⁹ 47 U.S.C. § 254(e); *see* Comments of Pennsylvania PUC, at 30-31 (allowing non-ETCs to receive Lifeline support violates 47 U.S.C. § 254(e)); Comments of WTA-Advocates for Rural Broadband, at 14 (“Section 254 of the Act continues to require that only ETCs designated under Section 214(e) of the Act are eligible to receive specific Federal universal service support.”).

⁸⁰ *See, e.g.*, Comments of COMPTTEL, at 18-20; Comments of Sprint, at 32. As one way to streamline the ETC designation process, TracFone supports the recommendation by Joint Commenters that the Commission and State commissions be subject to a 90 day shot clock for making a decision on ETC applications and that states be prohibited from imposing conditions on participation in the federal Lifeline program that go beyond the federal rules. *See* Comments of Joint Commenters, at 52-56.

⁸¹ *See* Comments of AT&T, at 27 (ETC requirements discourage participation in the Lifeline program); Comments of IIA, at 20-21 (eliminating ETC designation requirements will make it easier for service providers to participate in Lifeline).

expose the Lifeline program to significant risk.⁸² Only those carriers willing to meet the statutory and regulatory requirements for designation as an ETC should be permitted to receive public funding from the USF.⁸³

IX. Sending and Receipt of Text Messages Should be Considered Usage of Lifeline Service for Purposes of De-Enrollment for Non-Usage Rule.

In a petition filed with the Commission on October 1, 2014, TracFone asked the Commission to initiate a rulemaking to amend the Commission's non-usage rules to allow sending or receipt of text messages to count as usage. Pursuant to Section 54.407(c)(2) of the Commission's rules, Lifeline providers who do not assess or collect monthly fees from consumers must de-enroll from Lifeline those customers who do not use their Lifeline service for 60 consecutive days. In the Lifeline Reform NPRM, the Commission proposed and sought comment on its proposal that sending, but not receipt, of text messages count as usage for purposes of the non-usage rule.⁸⁴

All commenters who addressed this issue supported the Commission's proposed rule that sending a text message should count as usage.⁸⁵ As noted by the Joint Commenters, the fact that text messaging is not a supported service is not dispositive as to whether texting reflects customer intent to use Lifeline service. Commission rule 54.407(c)(2), which defines the activities that constitute usage, includes two activities that involve the use of the supported service of voice telephony (*i.e.*, completing an outbound call and answering an incoming call) and two activities that do not require the use of voice telephony (*i.e.*, purchasing minutes and

⁸² See Comments of Pennsylvania PUC, at 30 ("allowing non-ETCs to receive Lifeline money may make it more difficult for states to ensure that consumers are receiving safe, adequate, and reliable service.").

⁸³ See Comments of NTCA, at 15-18; Comments of NTUA Wireless, LLC, at 9.

⁸⁴ See NPRM, ¶ 146.

⁸⁵ See, *e.g.*, Comments of AARP, at 40-41; Comments of California Emerging Technology Fund, 46-47; Comments of Joint Commenters, at 61-63; Comments of Michigan PSC, at 14.

responding to an ETC request to confirm that the subscriber wants to continue to receive Lifeline service).⁸⁶ Thus, the Commission already has recognized that actual use of voice telephony is not required to show usage of Lifeline service. Indeed, as Sprint points out, “[a]n end user who is sending text messages from his Lifeline handset is able to do so only because his Lifeline service is active.”⁸⁷ Moreover, including text messaging as usage is essential for individuals who are not able to use voice telephony. Persons who are deaf or hard of hearing and those who have speech difficulties rely on texting to communicate using their wireless devices. Voice telephone calls are not an option for them. As the National Association of the Deaf advises, “[f]or deaf and hard of hearing consumers that rely solely on text, they would face the obstacle of being de-enrolled from the program just because text messaging is not treated as valid usage.”⁸⁸

TracFone continues to urge the Commission to consider favorably its proposal to count receipt of text messages as usage. Only two commenters oppose this proposal, but neither provide a valid basis for their opposition. The Benton Foundation asserts that receipt of text messaging should not count as usage of Lifeline service because the subscriber cannot control whether others send texts.⁸⁹ The Missouri PSC similarly states that subscribers are not acting when they receive texts.⁹⁰ These views ignore the fact Section 54.407(c)(2)(iii) of the Commission’s rules recognize answering an inbound call (from someone other than an ETC) as usage.⁹¹ The subscriber has no control whether someone calls his or her telephone number nor does the subscriber need to take any action when there is an inbound call, such as when a call

⁸⁶ See Comments of Joint Commenters, at 63-64.

⁸⁷ Comments of Sprint, at 30; see Comments of Smith Bagley, at 27.

⁸⁸ Comments of National Association of the Deaf, at 9; see Comments of Joint Commenters, at 66-68 (exclusion of text messaging as usage discriminates against people with disabilities); Comments of Smith Bagley, at 25.

⁸⁹ See Comments of Benton Foundation, at 49.

⁹⁰ See Comments of Missouri PSC, at 6.

⁹¹ 47 C.F.R. § 54.407(c)(2)(iii).

gets answered by voicemail. Amending the non-usage rules to allow both the sending and receipt of texts to be considered usage would be consistent with the manner in which the Commission treats voice calls and would recognize that text messaging has become the preferred method of communication by many wireless device users. The Commission's concern about receipt of texts as articulated in the NPRM could be alleviated by requiring that received texts be considered as usage only if they are opened by the recipient, just as received calls are counted only if they are answered by the recipient.

X. The 60 Day Non-Usage Period Should Not Be Reduced to 30 Days.

In the NPRM, the Commission, without providing any reasoning, proposes to amend Section 54.407(c)(2) of its rules, which requires ETCs that do not charge monthly fees to their subscribers to de-enroll any subscriber who has not used the Lifeline service for 60 consecutive days, by reducing the 60 day non-usage period to 30 days. Several commenters, including TracFone, oppose this amendment as being harmful to consumers.⁹² A 30 day non-usage period is too short in that a person could be out of the country or incapacitated for that amount of time, but intend to continue to use his or her Lifeline service. TracFone agrees with Sprint's view that reducing the non-usage period to 30 days would likely double de-enrollments by de-enrolling low-income consumers who intend to continue to use Lifeline service, the majority of which would have usage the following month.⁹³ TracFone expects that many subscribers that would be de-enrolled under a 30 day non-usage rule would seek to re-enroll. As a result, the administrative costs to both a third party verifier and to ETCs would unnecessarily increase.⁹⁴

⁹² See, e.g., Comments of AARP, at 40; Comments of Missouri PSC, at 6; Comments of Smith Bagley, at 37-38.

⁹³ See Comments of Sprint, at 30-31.

⁹⁴ See Comments of Joint Commenters, at 89-90. GVNW's assertion that a customer de-enrolled under a 30 day non-usage rule could simply re-enroll fails to account for the administrative costs associated with re-enrollment. See Comments of GVNW, at 26.

Moreover, imposing a 30 day non-usage period on Lifeline subscribers would limit their freedom to choose how they want to use their services.⁹⁵

The few commenters who support a 30 day non-usage period fail to offer any convincing justification for shortening the non-usage period. The Michigan PSC supports a 30 day non-usage period because it “expects” that it will reduce waste, fraud and abuse, but it offers no reasoning or factual basis to support that expectation.⁹⁶ The Florida PSC supports a 30 day non-usage period because Commission rule 54.405 provides that an ETC with a reasonable basis to believe a subscriber is no longer eligible for Lifeline service must provide a 30 day notice that service will be terminated.⁹⁷ The fact that a 30 day notice period may be appropriate for terminating Lifeline service to a subscriber who is no longer eligible to receive service does not mean that the same period would be appropriate for terminating Lifeline service to someone who remains eligible to receive service, but who has not used the service in the past 30 days. Lifeline subscribers who remain eligible should receive the greater protection from de-enrollment afforded by a 60 day period. Indeed, when the Commission adopted the 60 day non-usage rule in 2012, it stated that the rule “balances the interests of subscribers with the risks associated with potential waste in the program.”⁹⁸ Neither the Commission in the NPRM nor any commenter in response to the NPRM has offered any reason for changing the Commission’s conclusion that a 60 day non-usage period represents a fair and responsible balance of the interest of subscribers and the Commission’s interest in preventing waste of USF resources.

⁹⁵ See Comments of Joint Commenters, at 89.

⁹⁶ See Comments of Michigan PSC, at 16.

⁹⁷ See Comments of Florida PSC, at 10-11.

⁹⁸ 2012 Lifeline Reform Order, ¶ 258.

XI. NLAD Should Not Be Used to Calculate Monthly Lifeline Support Disbursements.

TracFone opposes the Commission's suggestion that subscriber information in NLAD be used to calculate the amount of Lifeline support provided to ETCs. As TracFone described in detail in its initial comments, the Commission should not adopt this proposal because NLAD does not accurately state the number of active subscribers that an ETC serves in the cases of ETCs that do not charge monthly service fees to their subscribers. The two commenters who assert that NLAD should be used to calculate Lifeline fail to address the fact that NLAD's data may not be accurate for certain types of Lifeline providers.⁹⁹ In addition to the reasons for not using NLAD to calculate Lifeline support set forth in its initial comments, TracFone agrees with Joint Commenters that it is premature to extend the role of NLAD at a time when it is still being optimized to detect duplicates.¹⁰⁰ Joint Commenters correctly note that using NLAD to determine the number of subscribers and calculate Lifeline support would not yield accurate results.¹⁰¹ For example, some consumers are enrolled in NLAD after the time the provider can be reimbursed, such as when they continue to be identified as subscribers during the 30 day cure period that runs after the after 60 days non-usage period set forth in Commission rule 54.407.¹⁰² Given that NLAD does not accurately reflect the actual number of Lifeline subscribers that an ETC serves, and indeed may overstate that number, using NLAD to determine USF disbursements could result in waste of fund resources.

⁹⁹ See Comments of Missouri PSC, at 7; Comments of Verizon, at 5.

¹⁰⁰ See Comments of Joint Commenters, at 79; *see also* Comments of ITTA, at 12 (“NLAD is a young system and is not sufficiently reliable to be used for [calculating Lifeline support]”). Notwithstanding that concern about expanding the uses of NLAD, TracFone recommends that NLAD be enhanced and used for third party Lifeline eligibility verification.

¹⁰¹ Joint Commenters echo TracFone's concern that NLAD may overstate the number of active subscribers because NLAD counts some subscribers as being enrolled in Lifeline as of a certain date, even though they have not yet received a handset and activated service. *See* Comments of Joint Commenters, at 80.

¹⁰² *See id.* 79-80.

CONCLUSION

For the reasons stated in these reply comments and in TracFone's initial 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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