Suite 800
1919 Pennsylvania Avenue N.W.
Washington, D.C. 20006-3401

James M. Smith
202.973.4288 tel
202.973.4499 fax

jamesmsmith@dwt.com

March 23, 2016

VIA ECFS

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Submission, Lifeline and Link Up Reform and Modernization
WC Docket Nos. 11-42, 09-197, 10-90

Dear Ms. Dortch:

On March 21, 2016, the undersigned and Danielle Frappier spoke by telephone with Trent Harkrader and Ryan Palmer of the Wireline Competition Bureau with regard to the above captioned proceedings on behalf of True Wireless, LLC and TerraCom, Inc. (the "companies"), both of which are wireless service providers focused on the Low Income ("Lifeline") universal service program. The conversation closely tracked the attached written *ex parte* presentation submitted in these dockets on March 17, 2016. In addition, we expanded on several points, as described below, and hereby submit additional information as contemplated in that conversation:

In particular, we discussed the fact that the March 8, 2016 "fact sheet" summarizing a draft order being circulated in this proceeding[1] either fails to recognize or discounts the reality that adoption of the draft order summarized in the fact sheet would effectively cut off Lifeline service to many current low income program participants, because they will be unable to afford the significant "co-pays" that will become the norm for mobile voice services and unwanted bundled service with costly mandatory minimum service standards, in contradiction of the key statutory objective of ensuring that all Americans have access to telephone service. While a recent blog post by the Chiefs of the Wireline and Wireless Competition Bureaus cites selected, unrealistic (inasmuch as it cherry-picks price elements as if they are offered on a stand-alone basis, which they are not) data of large, facilities-based incumbent network providers, that data in fact reflects the wholesale pricing paid by smaller providers that do not enjoy the economies of scale of the nation's largest carriers.[2] It is precisely these smaller, more innovative and

[1] Fact Sheet, "Chairman Wheeler and Commissioner Clyburn Propose Rules to Modernize Lifeline Program to Provide Affordable Broadband for Low-Income Americans" (rel. Mar. 8, 2016).

[2] *See* Lifeline: Striking the Right Balance, blog post by Jon Wilkins, Chief, Wireless Competition Bureau and Matt DelNero, Chief, Wireline Competition Bureau (Mar. 21, 2016), *available at* https://www.fcc.gov/news-events/blog/2016/03/21/lifeline-striking-right-balance (citing data from the FCC 18th Mobile Competition Report).

Lifeline-focused competitive carriers who finally raised the program's historically low participation rate from well under 30% to today's 40%. Relying on large ILEC providers has never been the solution, and is contrary to the Commission's stated goal of promoting competition. The recent growth in Lifeline participation is directly attributable to innovative competitors who have brought a valuable service to millions of Americans. Prior to this innovative market entry, consumer choice was limited, the ILECs were reluctant and indifferent Lifeline providers, and services designed for low income Americans were hard to find.

Moreover, the fact sheet and Bureau chiefs' blog post fail to reflect the on-the-ground realities of service costs and Lifeline service provision in many other ways. Based on the companies' collective experience, as purchasers of wholesale voice and broadband services as well as retail Lifeline service providers, we submit the following information:

- "Unlimited" voice plans are unnecessary and needlessly unaffordable at the current $9.25 monthly Lifeline subsidy. While average monthly minutes of use (MOU) by Lifeline subscribers is about 1,500 minutes in Tribal areas (where the Lifeline subsidy is $34.25), it is about 150-200 minutes in most other service areas.

- Wholesale mobile voice minute rates offered by underlying carriers to non-facilities based Lifeline ETCs range from about $.013 - $.02. Based on these and related current costs of providing mobile voice service and current retail prices, an "unlimited" mobile voice-only monthly service plan could not be offered profitably at less than about $30. When bundled with broadband and text messaging at the required levels contemplated in the FCC fact sheet, the service could cost $40-$70— more than quadruple the Lifeline subsidy, and far beyond the affordable reach of the vast majority of low income subscribers who currently receive their Lifeline service "free" of out-of-pocket payments.

- Current wholesale pricing in the marketplace may support an FCC mandate of a minimum 500-minute monthly stand-alone mobile voice standard, which would be double the current 250-minute industry standard. But a higher or "unlimited" mandate cannot be supported or achieved at the current $9.25 monthly Lifeline subsidy, and would force low income Lifeline subscribers to pay substantial out-of-pocket monthly charges. (Providers could be required to offer an *optional* higher-minute or "unlimited" plan, but such plans could not be offered without an out-of-pocket payment).

- Only about 3-6 percent of Lifeline subscribers in most areas currently choose to pay for data above that offered in some current Lifeline plans (typically 200 Mb) offered at the fully subsidized $9.25 monthly rate.

- On close examination, the blog post statement that "the 500 MB [proposed] minimum standard for data would be consistent with a retail price point of $7.50 per month, well within the current $9.25 Lifeline discount. Add in a few dollars per month for a device,

and other standard business expenses, and that would be a very affordable mobile data choice for a Lifeline consumer" evinces a fantastical antithesis of the "right balance" proclaimed in the post's title. It jumbles a stand-alone data rate that includes no voice with a device cost that in fact approximates $100, and minimizes all other "standard" expenses like customer service. Though unstated, it also obviously contemplates a significant co-pay by Lifeline consumers.

- Statements of perennially declining data prices and the projected future availability of network efficiency technologies like VoLTE technology "in the years ahead" are merely predictive-- hardly justifying untethered "confidence" in "very affordable offers" in the near-term future at the robust minimum service levels mandated immediately and then escalating rapidly under the proposed rules.

- The blog post statement that "some subscribers will want standalone broadband, others will want voice packages of either higher or lower numbers of minutes *too*" contradicts the fact sheet's requirement of *unlimited* minutes, and blithely ignores the fact that many low-income consumers will continue to want voice-only mobile Lifeline service that is fully subsidized.

In light of these facts, the companies believe that while increasing broadband adoption among Lifeline customers rightfully should be an important public policy objective of the Commission, it simply would be utterly wasteful, counterproductive and indeed foolhardy for the Commission to phase out Lifeline support for mobile voice-only Lifeline services and, in practical effect, "force" all Lifeline customers to accept a broadband service, or regress to only receiving a wireline voice-only service. There is no justification or record support for the significant out-of-pocket co-pay that would now have to be paid by virtually *all* Lifeline customers—including particularly vulnerable low income populations that do not even *want* a broadband Lifeline service and will not be able to afford the additional charge to receive it.

For these reasons, the Commission should preserve full Lifeline support for stand-alone voice service, without imposing a mandatory "unlimited" requirement, at least until it has solicited and considered further evidence on the real cost of providing such service, as well as the likely impact of prospective out-of- pocket monthly payments on Lifeline program participation. In the meantime, a 500-minute monthly stand-alone mobile voice standard may be justifiable. The Commission should also (1) promptly act on long-pending compliance plans and streamline the process for ETC eligibility; and (2) ensure that any new process to establish customer eligibility allows real-time verification. Contrary Commission action not only would be arbitrary and capricious, but also would undermine the Commission's stated goals of promoting robust competition among Lifeline providers and promoting broadband adoption by

the low-income individuals whom the revamped Lifeline program is intended to serve.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

___<s> *James M. Smith*_____
James M. Smith
Counsel for True Wireless, LLC, and
TerraCom, Inc.

Enclosure

cc: Trent Harkrader
Ryan Palmer
Rebekah Goodheart
Matt DelNero

Davis Wright Tremaine LLP

Suite 800
1919 Pennsylvania Avenue N.W.
Washington, D.C. 20006-3401

James M. Smith
202.973.4288 tel
202.973.4499 fax
jamesmsmith@dwt.com

Danielle Frappier
202.973.4242 tel
202.973.4499 fax
DanielleFrappier@dwt.com

Peter Karanjia
202.973.4256 tel
202.973.4499 fax
peterkaranjia@dwt.com

March 17, 2016

VIA ECFS
Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Submission, Lifeline and Link Up Reform and Modernization
WC Docket Nos. 11-42, 09-197, 10-90

Dear Ms. Dortch:

On behalf of True Wireless, LLC and TerraCom, Inc. (the "companies"), both of which are wireless service providers focused on the Low Income ("Lifeline") universal service program, we hereby submit this *ex parte* submission regarding the Commission's pending *Second Further Notice of Proposed Rulemaking* ("FNPRM") in the above-captioned proceedings. Specifically, we wish to address the following critical issues that the Commission has raised in the FNPRM and/or the draft order announced by Chairman Wheeler and Commissioner Clyburn in a March 8, 2016 "fact sheet" that summarizes a draft order being circulated:[1]

1. ***Maintaining the subsidy for voice-only mobile Lifeline services.*** The companies strongly support the Commission's core proposal to extend federal Lifeline support to broadband services. However, the March 8 fact sheet ignores the fact that many—indeed, possibly a significant majority—of current Lifeline subscribers neither desire nor need a broadband or bundled voice-and-broadband Lifeline service, and this will predictably continue to be the case indefinitely. It is an unfortunate but undeniable fact that many elderly and other low income recipients will continue to be slow to adopt broadband services, and will continue to rely primarily or entirely on voice service as their "Lifeline" to job opportunities, family and friends, caregivers, health care and emergency services, and the world at large, for the foreseeable future.

[1] Fact Sheet, "Chairman Wheeler and Commissioner Clyburn Propose Rules to Modernize Lifeline Program to Provide Affordable Broadband for Low-Income Americans" (rel. Mar. 8, 2016).

In the companies' experience, many low-income individuals—especially elderly consumers—prefer to use wireless voice service to perform important daily tasks such as making appointments for health care. ***But adoption of the draft order as summarized in the fact sheet would effectively cut off Lifeline service to these particularly vulnerable populations, by requiring them for the first time to forego the significant benefits that mobile voice services bring because they will be unable to pay significant "co-pays" for an unwanted bundled service with equally unwanted, costly, mandatory minimum service standards.*** By immediately depriving millions of vulnerable Americans of the only telephone service they can afford, this action would directly contradict the key objective of Section 254,[2] which is to ensure that all Americans have access to telephone service.[3] As a result, taking this action would be contrary to the Communications Act and arbitrary and capricious under the Administrative Procedure Act. At a minimum, before taking such an action, the Commission would have to explicitly recognize that it would deprive millions of Americans of the only phone service they have, and explain why that considerable human cost is worth incurring in light of other overriding statutory objectives.[4] Nothing in the materials the Commission has made available about its proposal even recognizes the existence of this problem, much less provides a reasoned explanation of why this aspect of the proposal makes sense in light of it.

Moreover, the retention of the subsidy for unbundled voice services only when provided via wireline technology is problematic in other important ways: it unduly favors one technology over another, and ignores the fact that low income Americans are more likely to "cut the cord" than other segments of the population. Indeed, nearly 60 percent of poor Americans live in households with only wireless telephones.[5] The current proposal relegates the most vulnerable low income Americans seeking a basic voice service to a wireline service tethered to their home,

---

[2] 47 U.S.C. § 254.

[3] The overall goal of Section 254 is "the preservation and advancement of universal service." *Id.*, § 254(b). Moreover, Section 254 provides that the FCC "shall" base its policies on the principle that "[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service." *Id.* § 254(b)(5); *see also id.* § 254(e) (support "should be explicit and sufficient to achieve the purposes of this section"); *id.* § 254(b)(3) (rural consumers should have access to affordable services that are reasonably comparable to those available to urban consumers); *see also Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001) (*Qwest I*). In light of these statutory directives, at a minimum, the Commission must "cogently explain why it has exercised its discretion in a given manner." *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 48 (1983).

[4] *See, e.g.*, Qwest I, 258 F.3d at 1205; Qwest Commc'ns Int'l, Inc. v. FCC, 398 F.3d 1222, 1239 (10th Cir. 2005); Texas Office of Pub. Util. Counsel v. FCC, 265 F.3d 313, 327 (5th Cir. 2001).

[5] *See* U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2015" (released December 2015), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201512.pdf.

which, of course, is a non-starter for the homeless or even those with transient housing situations. ***There is no reason—in fact or in the record underlying the FNPRM proceeding—to abolish or phase out support for voice-only mobile Lifeline service.***

2. ***Minimum service standards and out-of-pocket payments.*** The March 8 fact sheet reflects an effort to "push the edge of the envelope" by thrusting a robust broadband service offering onto Lifeline service providers and customers alike. Despite its high ambitions—which would be a virtue if properly funded and implemented—the proposed order fails to understand the challenges of serving the very poorest. At a stagnant monthly subsidy of $9.25 that was intended and designed to support only voice service (and freezes in place 2011 subsidy levels), the proposal will almost certainly require Lifeline customers to pay an out-of-pocket monthly fee to receive the bundled or broadband-only Lifeline service and the smartphones necessary to access the service, **even if they do not want, need, or even know how to use** the broadband service, or be limited to a wireline voice-only line in their homes, if they even have a home.

As several commenters have noted, there is no reliable evidence in the record to support the FNPRM's bare assumption that wireless service costs have continued to decline significantly, such that the standard 250 monthly voice minute plans offered by most prepaid wireless Lifeline providers, with no out-of-pocket charge to Lifeline customer, had become inadequate under the $9.25 monthly Lifeline subsidy. Yet the March 8 draft order apparently doubles and triples down on that assumption by (1) requiring mobile voice Lifeline plans to include *unlimited* monthly minutes, before phasing out mobile voice-only plans entirely, and (2) requiring robust and escalating mobile and fixed broadband minimum standards and service levels and, necessarily, expensive smartphones—all, magically, at an unchanged $9.25 monthly subsidy level that was set based on the average subsidy available five years ago in 2011. The Commission is clearly "betting" that one of two things will occur:

1. that service providers will be able to meet these wholly new minimum service standards through a combination of a $9.25 subsidy and internal cross-subsidization, which could only be done by the largest providers, ***undercutting the Commission's stated goal of increasing competition in the Lifeline program***; or

2. that implicitly imposing out-of-pocket payments on all Lifeline subscribers to make up the difference will succeed, even though such a payment obligation was ***shown very clearly in the Commission's own Lifeline broadband pilot program to have disastrous effects on broadband adoption by low income consumers***.[6]

---

[6] *See Wireline Competition Bureau, Low-Income Broadband Pilot Program Staff Report,* DA 15-624 (rel. May 22, 2015). *See also* Sprint Corporation *ex parte* notice (filed Mar. 2, 2016); Comments of CompTel (filed Aug. 31, 2015) at p. 35.

Neither of these alternative assumptions/policy prescriptions is justified by the record in this proceeding. More importantly, these proposals threaten to devastate the Lifeline program and displace scores of thousands of participants who neither want nor can afford the extra cost of these lofty standards.

Accordingly, while increasing broadband adoption among Lifeline customers rightfully should be an important public policy objective of the Commission, it simply would be utterly wasteful, counterproductive and indeed foolhardy, as well as arbitrary and capricious,[7] for the Commission to phase out Lifeline support for mobile voice-only Lifeline services and, in practical effect, "force" all Lifeline customers to accept a broadband service, or regress to only receiving a wireline voice-only service. There is no record to support a *compulsory* broadband Lifeline offering. Nor is there any justification or record support for the likely significant out-of-pocket co-pay that would now have to be paid by virtually *all* Lifeline customers—including particularly vulnerable low income populations that do not even *want* a broadband Lifeline service and will not be able to afford the additional charge to receive it.

3. ***Failure to abolish or meaningfully streamline the ETC compliance plan process and act on long-pending compliance plans.*** Although the fact sheet describing the March 8 draft order promises "streamlined, nationwide entry for a new category of providers, called Lifeline Broadband Providers,"[8] there is no indication that the Commission will make any changes to its utterly broken Lifeline compliance plan approval requirement for non-facilities based wireless voice service providers. If that is the case, such inaction is grossly unfair and inequitable to the scores of Lifeline ETCs, including True Wireless, that have been awaiting action on their compliance plans for more than three years. As several commenters have noted, the Commission has not granted a single compliance plan since December 2012.[9] It also runs counter to the Commission's stated objective to increase entry and competition among service providers.

4. ***Undermining or abolishing the ability to perform real-time eligibility verification.*** The March 8 summary of the draft order also announces the advent of a "third-party National Eligibility Verifier," but is oddly silent on whether this regime will continue to support real-time, one-stop eligibility verification. If it does not, a delayed process would burden Lifeline applicants, such as by involving the mailing of documents and/or handsets to this typically itinerant population; would serve to discourage Lifeline adoption by increasing processing times and possibly requiring multiple trips to the provider's place of business and multiple

---

[7] *See, e.g., Motor Vehicle Manufacturers Ass'n*, 463 U.S. at 43 (agency action is arbitrary and capricious if it "runs counter to the evidence before the agency").

[8] March 8 fact sheet at p. 2

[9] *See* FCC, *Lifeline Compliance Plans & ETC Petitions, available at* https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions; Comments of CompTel at p. 21.

communications with the national verifier and/or the carrier; and would unduly advantage certain service provider business models over others.

For these reasons, the Commission should (1) preserve Lifeline support for stand-alone mobile voice service (which, as the FCC has long recognized, can be critical in emergency situations); (2) reject proposals to impose minimum service requirements that increase the number of minutes of service ETCs must provide while freezing the monthly subsidy they receive on behalf of their customers; (3) promptly act on long-pending compliance plans and streamline the process for ETC eligibility; and (4) ensure that any new process to establish customer eligibility allows real-time verification. At a minimum, the Commission should maintain full Lifeline support for stand-alone voice service without an "unlimited" requirement at least until it has solicited and considered further evidence on the real cost of providing such service, as well as the likely impact of prospective out-of- pocket monthly payments on Lifeline program participation. The record and sound policy support these proposals; and contrary Commission action not only would be arbitrary and capricious, but also would undermine the Commission's stated goals of promoting robust competition among Lifeline providers and promoting broadband adoption by the low-income individuals whom the revamped Lifeline program is intended to serve.

Respectfully submitted,

Danielle Frappier
James M. Smith
Peter Karanjia
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006-3401
(202) 973-4200

Counsel for True Wireless, LLC, and
TerraCom, Inc.