

March 24, 2016

VIA ELECTRONIC FILING

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

**Re: WC Docket No. 11-42 - Lifeline Reform and Modernization
EX PARTE PRESENTATION**

Dear Ms. Dortch:

This letter is submitted on behalf of my client, TracFone Wireless, Inc. (“TracFone”). The purpose of this letter is to respond to a proposal put forth by Sprint Corporation in a March 23, 2016 letter, and to respond to a March 21, 2016 blog posting by Jon Wilkins, Chief, Wireless Telecommunications Bureau and Matt DelNero, Chief, Wireline Competition Bureau.

Sprint

In its letter, Sprint offers its proposal for a Lifeline plan to encompass broadband, as an alternative to that described in Chairman Wheeler’s and Commissioner Clyburn’s March 8 Fact Sheet. As noted below, TracFone also submitted an alternative on March 23. A comparison of the Sprint proposal with the TracFone proposal reveals that there are differences. For example:

- All Sprint Lifeline programs commencing December 1, 2016 will include a broadband component, whereas TracFone’s proposal would retain a mobile voice-only option;
- TracFone’s proposal includes both co-pay and no charge options for voice-only, broadband-only, and bundled voice and broadband, whereas Sprint’s does not specify whether its plan will be no charge to the consumer or will require a co-pay;
- Sprint’s proposed voice/broadband bundles would provide 350 minutes of voice and 500 Mb of data, whereas TracFone’s no charge voice/broadband bundled proposal would provide 150 minutes of voice and 150 Mb of data.
- TracFone’s proposal would provide at no charge to the consumer use of a suitable device (*i.e.*, a cell phone for voice; a Wi-Fi-enabled tablet for data; a Wi-Fi-enabled smartphone for the bundled plan), whereas Sprint’s proposal “likely” would require consumer payments (of unspecified amounts) for Wi-Fi-enabled smartphones.

The point of this letter is not to compare the plans or to suggest that one is superior to the other. Each plan reflects its proponent's judgment as to what Lifeline consumers want, how best to deliver to those consumers maximum value for the Lifeline support amount (currently, \$9.25), and how to modify its current Lifeline program to advance the Commission's objective of modernizing the Lifeline program to support broadband in addition to voice service. Lifeline consumers will decide which of these plans – or perhaps others – best meet their needs and preferences. Chairman Wheeler often has extolled the virtues of “competition, competition, competition.” This is what “competition, competition, competition” is about. The two largest Lifeline providers have presented to the Commission different plans for Lifeline reform. Both plans are proposed as alternatives to that contained in the March 8 Fact Statement. Other Lifeline providers may propose their own plans. Both plans presented in the March 23 letters put forth innovative and creative ways to make available broadband to Lifeline consumers starting on December 1, 2016. The Commission is encouraged to promulgate rules that afford providers reasonable flexibility to offer Lifeline programs that reflect each provider's perception of consumer demands and preferences, so long as those programs are consistent with the Commission's goal of modernizing the program to include broadband. As Commissioner Clyburn stated during a Congressional hearing this week, the Commission's effort to update the Lifeline program should continue to enable Lifeline subscribers the options to pay “little, none, or more” for voice and/or data services depending on their ability to pay and their own perceived needs, and that Lifeline providers may continue to offer plans with “all price points, starting at zero.”

The Wilkins/DelNero Blog

Like Messrs. Wilkins and DelNero, TracFone is committed to the Commission's goal of modernizing the Lifeline program to support broadband so that all Americans regardless of income, regardless of where they reside, are able to access the Internet and avail themselves of on-line services. However, TracFone urges the Commission to view the broadband initiative as an **expansion** of the current Lifeline program – a program which, for more than three decades, has kept low-income households connected and enabled consumers, including economically-disadvantaged consumers, to be connected with family and friends, to reach and be reached by employers and prospective employers, to contact health care providers and providers of essential government services (such as N11 government hotlines) and, perhaps most importantly, to access 911 and E911 emergency services. The inclusion of mobile services in the Lifeline program in 2008 was an important modernization of the program and produced significant benefits and opportunities. TracFone respectfully urges the Commission to appreciate the importance of these advancements as it continues its deliberations in this proceeding.

Messrs. Wilkins and DelNero begin their blog discussion of minimum service standards by quoting from Commissioner Clyburn's speech to the American Enterprise Institute. That November 2014 speech by Commissioner Clyburn is perhaps the most eloquent and most important statement by any Commissioner on the subject of the Lifeline program. In that speech, she discussed the history of the Lifeline program since its birth in the 1980s during the Reagan Administration. She quoted approvingly from the 1985 Commission order establishing Lifeline: “[a]ccess to telephone service has become crucial to full participation in our society and

economy, which are increasingly dependent on rapid exchange of information.” That statement was true then; it remains true today, even as the Commission modernizes the program to support broadband.

The blog also references that portion of Commissioner Clyburn’s speech where she criticized the program for stagnating, noting that providers had not improved their offerings. TracFone, the nation’s leading provider of Lifeline service (wireline or wireless) heard Commissioner Clyburn and responded. Subsequent to that speech, TracFone increased its monthly no charge wireless minute allotment from 250 to 350. It also added the important Lifeline benefit of **unlimited** text messages (sent and received). Just yesterday, TracFone filed in this proceeding a proposal in which it would again increase its monthly allotment of no charge wireless voice minutes from 350 to 500, plus it would offer broadband and bundled voice/broadband services, each of which would include no charge and co-pay options. Lifeline consumers would select from those options based on their needs and financial circumstances (determinations which could be changed from month to month). In short, TracFone heard Commissioner Clyburn loud and clear and has responded accordingly. Other Lifeline providers followed that lead and also have improved their service offerings.

Several other aspects of the Wilkins/DelNero blog warrant response. The blog states that under the rules to be considered by the Commission on March 31, Lifeline providers would have “plenty of time” to adjust their business models.” Contrary to that assertion, the December 1, 2016 unlimited service deadline proposed in the Fact Sheet would not afford providers “plenty of time” to adjust. Those rules, if adopted, would require every provider of mobile Lifeline service to offer unlimited calling by December 1, 2016 – eight months after the order’s adoption. The record in this proceeding contains abundant evidence provided by TracFone and others that the costs of providing one month of unlimited voice and text service exceed \$9.25. In order to comply with the December 1, 2016 requirement, Lifeline providers either would have to self-fund their services or impose co-payments upon their Lifeline customers. The record is replete with submissions by credible consumer and low-income advocacy groups who have confirmed what TracFone’s research (also on the record) has shown – that millions of Lifeline consumers cannot and will not pay even modest monthly charges and will de-enroll from Lifeline if that were to become a requirement. Reforms that drive millions of low-income households who have long relied on Lifeline-supported service out of the program are neither modernization nor improvement.¹

¹ The Blog’s mischaracterization of TracFone’s March 2 letter warrants brief response. The assertion that a \$10 per Gb (\$0.01 per Mb) “top-up” price somehow demonstrates that 500 Mb can today be provided for \$7.50 per month is simply wrong. That misinterpretation disregards the fact that the top-up purchases are made after the \$9.25 Lifeline support has been applied. It also disregards all of the other costs incurred by the provider in providing service, including device costs and the other costs listed in TracFone’s March 23 ex parte letter.

Next, the blog speculates that having a national verifier take over the Lifeline eligibility verification process will decrease administrative burdens on providers and result in cost savings. TracFone supports a third party verifier and has advocated that such a system be implemented. However, it knows from experience that this will not happen quickly. It will take at least several years for a third party to be selected, for systems to be developed, and for the third party verification process to be implemented.² During that multiyear period prior to implementation of the third party verification process, Lifeline providers will continue to bear the costs of eligibility verification. Furthermore, whoever is chosen to perform those verification responsibilities will not do so for free. Presumably those costs will be borne by Lifeline providers. Nowhere does the blog explain the basis for its conclusion that a third party verifier will result in cost savings to providers.

Technology is changing. It is possible that in the coming years new ways of providing voice and broadband data service such as Voice over LTE (VoLTE) will emerge and drive down costs as the Wilkins/DelNero blog suggests. However, this has not happened and it is not known when it will occur, how broadly such technologies will be deployed, or when – or whether – such technologies will be suitable for Lifeline. VoLTE is still in the testing stage by certain wireless carriers. Whether, when and in what form and with what functionalities VoLTE will be deployed is unknown. It is not known whether VoLTE, if and when broadly deployed, will allow for 911 calling – an essential aspect of any Lifeline service. Aside from a generalized mention of **potential** future costs of broadband data and VoLTE, the Blog post provides no explanation as to how the Commission may have arrived at the unlimited voice minutes minimum service standard for mobile voice-only Lifeline services announced for the first time in the March 8 Fact Sheet. Neither does it offer any explanation for reducing the Lifeline support level for mobile voice-only Lifeline services by \$2.00 per year for the next two years, and eliminating the entire subsidy by December 1, 2019. The Commission's goal of transitioning Lifeline to support broadband can and should be achieved without reducing and ultimately eliminating support for mobile voice services – services which are relied upon by millions of Lifeline consumers.

The blog contains speculation, some of which may, in the future, be borne out. However, today, it is only speculation. The Commission's public interest responsibilities compel it to base its regulatory policies and promulgation of rules on record evidence in its proceedings, not on opinions as to what might occur in the future. Respectfully, regulation by speculation has no place in the Commission's rulemaking process.

² The National Lifeline Accountability Database (NLAD) required by the Commission's February 2012 report and order did not become operational until 2014. There is no reason to expect that a third party eligibility verifier could be implemented in less time.

Ms. Ms. Marlene H. Dortch

March 24, 2016

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Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MFB', with a long horizontal flourish extending to the right.

Mitchell F. Brecher

Cc: Mr. Jon Wilkins
Mr. Matt DelNero
Ms. Gigi Sohn
Mr. Trent Harkrader
Jay Schwarz, Ph.D
Ms. Stephanie Weiner
Mr. Ryan Palmer