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SUMMARY

Smith Bagley, Inc. (“SBI”), supports a request for clarification filed by TracFone Wireless Inc. (“TracFone”), in which TracFone identifies problems regarding the Commission’s application of the “one-per-household” rule used to establish eligibility for Lifeline assistance pursuant to the federal universal service program. SBI is extensively involved in bringing telephone service to low-income participants in the Lifeline program in the Navajo Nation and on other tribal lands, and SBI has a direct interest in ensuring that the Lifeline rules are not applied in a manner that could unfairly affect Native Americans or other citizens.

TracFone is concerned that the one-per-household rule, which authorizes Lifeline eligibility for only one consumer at a particular street address, could prevent residents of homeless shelters from participating in the Lifeline program if they are all treated as members of one “family” or “household” under the one-per-household rule. A similar problem has developed regarding nursing homes and other extended care facilities, where individual residents are denied Lifeline eligibility because the rule limits eligibility to one “household” at a street address, and all the residents of the nursing home or other extended care facility are treated as members of a single household.

SBI agrees with TracFone that the Commission could not have intended its one-per-household rule to bar low-income residents of homeless shelters and other group living facilities from benefiting from the Lifeline program, and SBI urges the Commission to clarify that these consumers are eligible for Lifeline support.

Many Navajo families reside in traditional dwellings, called “hogans,” that have been subdivided for use as multi-family housing units. SBI believes that these families are separately

eligible for Lifeline assistance under the one-per-household rule, because each family residing in a separate living space in the hogan constitutes a separate household for purposes of the rule. In many cases, however, hogans are located in such remote areas that they do not have any street address and do not receive U.S. Postal Service mail delivery, as residents must pick up mail at the nearest post office. SBI requests the Commission to clarify that the fact that the separate households residing in a subdivided hogan do not have mailing addresses does not in any way affect their eligibility for Lifeline assistance.

The clarifications sought by TracFone and SBI are intended to ensure that the most disadvantaged members of American society—the people the Lifeline program is designed to help—are not inadvertently left out of Lifeline because of the application of the one-per-household rule. The Commission has often recognized the economic plight of Native Americans, and Senator Tom Udall of New Mexico, in a recent letter to Chairman Genachowski, has drawn attention to the real-life problems caused by limited availability of telephone service in Indian Country. The Commission should ensure that its administration of the Lifeline program always works to help alleviate these problems.

Finally, the TracFone request provides the Commission with an opportunity to re-examine the relevance and utility of the one-per-household rule in a rapidly changing communications marketplace. American families are increasingly choosing to rely on more than one wireless telephone subscription to meet the diverse needs of individual members of the family. SBI believes that, as this trend continues, the one-per-household limitation is becoming less and less tenable.

I. INTRODUCTION.

SBI will focus primarily in these Comments on the request for comment in the *Public Notice* “on the effects of the one-per-household rule for Lifeline support in the context of group living facilities.”³ SBI supports the request made by TracFone Wireless, Inc. (“TracFone”) that the Commission should clarify its Lifeline support rules⁴ by indicating that the Lifeline “one-per-household” rule is not intended to limit the availability of telecommunications services supported by the Lifeline program to residents of homeless shelters.⁵

SBI’s support of TracFone’s request is prompted in part by the fact that SBI has worked aggressively and effectively to help increase telephone subscribership in the Navajo Nation and on other tribal lands through its participation in the Commission’s Lifeline program. SBI has an interest in ensuring that the Commission develops reasonable interpretations of its one-per-household rule that do not inadvertently hinder the ability of low-income Native American consumers to fully participate in society.

In particular, many Navajo families live in dwellings known as “hogans,” that are subdivided into separate living quarters for separate households, or that are configured to include common areas with separate living quarters attached to, or situated next to, the hogan. As SBI will explain, Navajo households living in subdivided hogans are each eligible for Lifeline assistance under the Commission’s current rules, although there may be one aspect of the one-per-household rule that should be clarified by the Commission with regard to its application to these subdivided hogans. In addition, as SBI will discuss, there are a limited number of hogan living arrangements that may raise issues similar to those presented by TracFone.

³ *Public Notice* at 1.

⁴ 47 C.F.R. §§ 54.400-54.418.

II. DISCUSSION.

SBI discusses in this section the objectives that lie behind the one-per-household rule, how an overly narrow application of the rule may lead to unintended results that would hinder these objectives and the overall purposes of the Lifeline program, and why a clarification of the rule to address TracFone's concerns, and other similar concerns, will enhance the achievement of Lifeline goals and will thus serve the public interest. SBI also suggests that the Commission should consider revisiting and modifying the one-per-household rule to reflect changes in the way in which consumers are now using and relying upon their telecommunications services.

A. The One-Per-Household Lifeline Rule Should Not Be Applied in an Inadvertently Restrictive Manner.

The Commission's one-per-household Lifeline rule indicates that "qualifying subscribers may receive assistance for a single telephone line in their principal residence."⁶ The purpose of the rule is to prevent families or households from receiving an undue amount of Lifeline benefits as a result of multiple members of a family or household enrolling separately in the Lifeline program.⁷ In most cases, the "single telephone line per principal residence" rule is not problematic, but, as TracFone has explained (and as SBI will further describe in these Comments), there are

⁵ Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-109 (filed July 17, 2009) ("TracFone Letter").

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957 (para. 341) (1997) ("*First Report and Order*") (subsequent history omitted). See *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306 (para. 4) (2004) ("*Lifeline and Link Up Order*"). The rules prescribed by the Commission implementing its Lifeline program do not specifically codify the one-per-household limitation adopted in the *First Report and Order*, although the Commission's Link Up rules specify that Link Up assistance involves "[a] reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence." 47 C.F.R. § 54.411(a)(1).

⁷ See TracFone Letter at 1 ("The rule is intended to prevent so-called 'double dipping' whereby families or households obtain multiple Lifeline benefits.").

situations in which application of the rule results in unfairly disqualifying otherwise eligible low-income consumers from receiving Lifeline assistance.

TracFone focuses on the case of homeless shelters, pointing out that housing at these shelters often involves numerous unrelated persons (who cannot be considered to be members of a shelter “family” or “household”) living together in dormitory-style accommodations.⁸ Because homeless persons living at the same shelter are being treated as members of a single family or household residing at the same address, for purposes of the Lifeline rules, no more than one person at a homeless shelter can establish eligibility for Lifeline assistance.

A similar problem arises with respect to nursing homes and other extended care facilities. U.S. Senator Charles Schumer of New York, for example, has observed that, because Lifeline assistance is available for only one consumer per household address, nursing home residents are being denied Lifeline assistance. According to Senator Schumer, “[d]espite the fact that [nursing homes have] multiple residencies, the nursing home residents have been shut out of the [Lifeline] telephone service because the nursing home has been mistakenly classified as one address.”⁹

In addition to the need to clarify the application of the one-per-household rule in the case of homeless shelters, nursing homes, and other extended care facilities, SBI also has some concerns regarding how the Commission’s application of the rule may affect Navajo families residing in hogans.¹⁰

⁸ *Id.*

⁹ Press Release, “Schumer Urges FCC To Review Decision and Clarify Rule That Prevents Extended Care Center Residents from Accessing Discounted Phone Service,” released July 28, 2009, accessed at http://schumer.senate.gov/new_website/record.cfm?id=316316. See Letter from Sen. Charles E. Schumer to Julius Genachowski, Chairman, FCC, July 28, 2009.

¹⁰ The *Public Notice* seeks comment on the effects of the one-per-household rule on group living facilities, and indicates that the clarification and guidance sought by TracFone could be applicable to various types of group living facilities (listing several examples). *Public Notice* at 1. While SBI focuses its Comments on three types of housing—homeless shelters, nursing homes and other extended care facilities,

Hogans are the primary traditional homes of the Navajo people. Today, the design of a hogan may be a round, hexagonal, or octagonal shape, typically subdivided with separate living and sleeping spaces (although the hogans may have shared lavatory and cooking facilities). Hogans are built with modern structural and composition materials, and may include walls “framed in traditional modern style,” bay windows, skylights, and sliding glass doors.¹¹ In some cases hogans are used primarily for ceremonial activities,¹² but, in remote areas of the Navajo Nation, they can serve as the principal mode of housing.¹³ Most Navajo hogans are located in areas where the United States Postal Service does not deliver mail. That is, residents of the hogans typically receive mail at post office boxes located in the nearest town.

The traditional Navajo hogans centered around the family unit.¹⁴ Today, hogans may be clustered with other residential buildings or trailers, with this clustering “usually represent[ing] an extended-family living arrangement, which may include an elderly couple” and the couple’s children with their spouses and children.¹⁵ Typically, the residential building or trailer serves as a primary living quarter with the hogan providing additional communal living space.

ties, and certain types of Navajo hogan living arrangements—SBI also supports action by the Commission to ensure that the one-per-household rule does not inadvertently or unreasonably deprive residents of any type of group living facility from qualifying for Lifeline benefits.

¹¹ ROBERT L. CASEY, *JOURNEY TO THE HIGH SOUTHWEST* 152 (8th ed. 2007) (“CASEY”), accessed at http://books.google.com/books?id=fXjVe2fDkQ0C&dq=%22journey+to+the+high+southwest%22&printsec=frontcover&source=bl&ots=41M9MMC5-d&sig=U3GJCrLOdfJLiTftgcqFuu6x3Sk&hl=en&ei=VvL7SuzhNMSInQe034GcBQ&sa=X&oi=book_result&ct=result&resnum=3&ved=0CA8Q6AEwAg#v=onepage&q=&f=false.

¹² *Id.* at 153 (the hogan, in addition to being a residence, is “a social place, a religious symbol, and a sanctuary where many Navajo ceremonies and rites are performed.”).

¹³ See Native American Indian Resources, “Hogan: Diné (Navajo) Traditional House,” accessed at <http://www.kstrom.net/isk/maps/houses/hogan.html>.

¹⁴ See “FAQs About Life on the Navajo Nation and Among the Navajo People,” accessed at <http://www.navajocentral.org/faq2.htm> (“Culturally, the single room of the hogan reinforces the idea of the family group. The lack of internal walls also emphasizes that everyone is part of the family.”).

¹⁵ CASEY at 153.

Hogans that are used as dwellings in this fashion do not raise issues concerning group living facilities that are the subject of the TracFone Letter. Treating subdivided hogans as separate households is a reasonable way to interpret and apply the one-per-household rule. Such an approach is consistent with the definition of “household” developed by the U.S. Census in connection with its Current Population Survey.¹⁶ Hogans that have been subdivided consist of separate housing units that are intended to be occupied as separate living quarters. In these cases, application of the one-per-household Lifeline rule permits a telephone subscription for each separate dwelling unit, because each unit is treated as a separate household, consistent with the U.S. Census definition.

SBI also notes that there may be a few cases where more than one Navajo family shares a single-room hogan. Although these cases are rare (as SBI has discussed, most hogans used by Navajo families today are either subdivided, or are used as communal living spaces with each family having detached sleeping quarters), SBI suggests that the Commission’s clarification of the one-per-household rule in the case of homeless shelters, nursing homes, and other extended care facilities, should also ensure that separate Navajo households living in a single-room hogan are each separately eligible for Lifeline assistance.

¹⁶ See “Current Population Survey (CPS)–Definitions and Explanations,” accessed at <http://www.census.gov/population/www/cps/cpsdef.html>. The term “household” is defined as follows:

A household consists of all the people who occupy a housing unit. A house, an apartment or other group of rooms, or a single room, is regarded as a housing unit when it is occupied or intended for occupancy as separate living quarters; that is, when the occupants do not live and eat with any other persons in the structure and there is direct access from the outside or through a common hall.

Id.

B. The Commission Should Clarify the One-Per-Household Rule To Ensure That Eligibility for Lifeline Support Is Not Unreasonably Limited.

SBI believes that the cases described in the previous section call for a clarification to ensure that the Lifeline rules do not unfairly or unreasonably bar eligibility for otherwise qualified low-income subscribers.

When the Commission modified its Lifeline and Link Up rules five years ago to improve the low-income support mechanism, it observed that:

Section 254(b) [of the Act] establishes principles upon which the Commission shall base policies for the preservation and advancement of universal service. Among other things, these principles state that consumers in all regions of the Nation, *including low-income consumers*, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas. These principles also recognize that *ensuring rates are affordable is a national priority*.¹⁷

The Lifeline program, of course, is intended to pursue this national priority by enabling low-income consumers to obtain telecommunications services, including wireless services. Eligibility criteria that are inadvertently exclusionary threaten to undercut achievement of this national goal.

To the extent that the current application of the one-per-household rule may limit eligibility in the ways described in the preceding section, this result is particularly troubling because of the characteristics of the otherwise eligible low-income consumers who are affected by the limiting application. For example, SBI agrees with TracFone that “there can be little doubt that homeless shelter residents are among America’s most needy and should be entitled to Lifeline benefits.”¹⁸ In the case of low-income consumers residing in nursing homes and other extended

¹⁷ *Lifeline and Link Up Order*, 19 FCC Rcd at 8306 (para. 3) (emphasis added). Section 254(b)(1) provides that “[q]uality services should be available at just, reasonable, and affordable rates.” 47 U.S.C. § 254(b)(1).

¹⁸ TracFone Letter at 1.

care facilities, restricting Lifeline eligibility has an impact on consumers who have a pressing need for telephone services to keep in touch with their families and with their doctors and other health care providers, and who also need access to affordable telephone service to maintain a connection with the outside world in general.

The economic and other challenges faced by many Navajo and other tribal members are well documented and underscore the importance of ensuring that Native Americans have access to Lifeline assistance that is not unduly restrictive.¹⁹ As a general matter, according to the National Congress of American Indians (“NCAI”), “the reality is that Indian reservations have . . . the highest poverty rate of any ethnic grouping in America. . . . [T]he vast majority of tribes continue to be mired in a severe economic depression caused by decades of marginalization.”²⁰ Moreover, according to estimates for 2005-2007, “approximately 39 percent of the people in Navajo Nation lived below the poverty level. Approximately 46 percent of children were below the poverty line. Among those aged 65 and older, 43 percent lived below the poverty line.”²¹

¹⁹ The Commission has recognized the unique needs and characteristics of tribal communities by establishing enhanced Lifeline and Link-Up support that provides qualifying low-income individuals living on tribal lands with up to \$25.00 in additional discounts off the monthly cost of telephone service, and up to \$70.00 off the initial costs of installing telephone service. *See* 47 C.F.R. §§ 54.403, 54.411.

²⁰ NCAI, Economic Development, accessed at http://www.ncai.org/Economic_Development.45.0.html, cited in SBI, Petition for Rulemaking Regarding the Expansion of Support Available Pursuant to the Fourth Tier of the Universal Service Lifeline Program, RM-11529, filed Mar. 27, 2009 (“SBI Petition”). President Obama recently described Native Americans as a “marginalized community” and has called upon every cabinet agency to produce a plan to improve the relationship between the federal government and tribal communities. Ben Feller, “Obama: US Must Reverse Course with Indians,” Associated Press, Nov. 5, 2009, accessed at <http://www.google.com/hostednews/ap/article/ALeqM5hr0j0YL8Xrnq47TgF24NEX3dRliQD9BPL4V00>. President Obama has committed “to make sure that the first Americans get the best possible chances in life in a way that’s consistent with [their] extraordinary traditions and culture and values.” President Barack Obama, Remarks at the Closing of the Tribal Nations Conference (Nov. 5, 2009), accessed at <http://www.whitehouse.gov/the-press-office/remarks-president-closing-tribal-nations-conference>.

²¹ SBI Petition at 12 (citing U.S. Census, 2005-2007 American Community Survey 3-Year Estimates, Table S1703, “Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months.”).

With respect to telephone subscribership, SBI has previously observed that, according to 2000 Census figures, even the more populous Indian reservations had telephone subscribership levels significantly below the national average. Based on the 2000 census:

Nine of [the] 25 [most populous] tribal lands, representing about 44 percent of Native American households on tribal lands in the lower 48 states, had telephone subscribership rates at a level below 78 percent—which is about what the national rate was *over 40 years ago* when the 1960 decennial census was taken. *The subscribership rate for the most populous tribal land—the Navajo—was only 38 percent.*²²

U.S. Senator Tom Udall of New Mexico recently expressed concerns in a letter to Chairman Genachowski regarding telephone subscribership levels in Indian Country, pointing out that statistics reflecting low levels of subscribership are troubling, and that these statistics:

still do not adequately convey the hardships created by this lack of telephone service. In addition to the daily inconveniences, not having a landline or cell phone reception can mean the difference between life and death. Imagine not being able to call an ambulance when you or your loved one is in medical danger. Or consider the heartbreak of a man outside Gallup, New Mexico, who missed two opportunities for a life-saving kidney transplant because he lacked telephone service at home and could not be contacted in time.²³

The concerns expressed by Senator Udall underscore the fact that the Commission's Lifeline eligibility rules should not be applied in a manner that restricts the ability of Navajo families and other Native American families to qualify for, and take full advantage of, the Commission's Lifeline assistance program.

The objective of the Lifeline program is to maximize participation by eligible low-income consumers while also limiting the eligibility of a single family or household to one tele-

²² GAO, Report to Congressional Requesters, "Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands," GAO-06-189, rel. Jan. 2006 at 13 (emphasis added), *cited in* SBI Petition at 9-10. While SBI expressed the belief that subscribership on Navajo lands has substantially increased since the 2000 Census (in part because of SBI's efforts to enroll Lifeline-eligible subscribers), it noted that Navajo subscribership likely remains well below the national average of 94.6 percent reflected in the most recent American Community Survey figures. SBI Petition at 10.

²³ Letter from Sen. Tom Udall, to Julius Genachowski, Chairman, FCC, Oct. 30, 2009, at 1.

phone subscription. With this goal in mind, the Commission should clarify that, in the case of homeless shelters, the one-per-household rule does not restrict eligibility to only one person at a shelter address, because homeless persons residing at the shelter cannot reasonably be classified as members of a single family or household.

The same approach should be taken in the case of persons residing in nursing homes or other extended care facilities. The fact that these persons reside at the same nursing home or extended care facility address should not result in their being treated as members of a single family or household. The Commission's "double dipping" concerns are not implicated in the case of homeless shelters, nursing homes, or other extended care facilities, because any resident of any such facility is not a member of any family or household residing at the same address.

In the case of subdivided hogans used by Navajo families, as SBI has noted, the hogans are likely to have no street address at all, and the households residing in the hogan must pick up their mail at the post office box in the nearest town. TracFone has pointed out that, in the case of homeless shelters, the one-per-household rule risks a restriction of Lifeline eligibility to only one resident at a shelter because the residents do not have mailing addresses and all the residents are treated as one "household" with one street address (*i.e.*, the shelter's address).²⁴ In the case of subdivided hogans, the Commission should confirm that, under its one-per-household rule, each separate household is eligible to receive Lifeline assistance.

The Commission has also sought comment on "ways that ETCs may offer Lifeline service to qualified residents of group living facilities while continuing to comply with the one-per-household rule."²⁵ SBI agrees with TracFone's suggestion that one way to achieve compliance,

²⁴ TracFone Letter at 1-2.

²⁵ *Public Notice* at 1.

in the context of homeless shelters, would be to require Lifeline applicants to “certify on their enrollment forms under penalty of perjury that the address listed is a shelter.”²⁶

A similar approach could be taken in the case of Navajo hogans. The Commission’s rules currently require consumers qualifying for Lifeline support to self-certify the number of individuals in their households.²⁷ Enrollment forms used by carriers providing service to residents of Navajo hogans could provide for self-certification by the qualifying consumer that the consumer resides in a hogan, and that the consumer is the only member of his or her household seeking Lifeline assistance.

Such a self-certification mechanism would not be cumbersome or administratively burdensome, and would not run the risk of leading to “double dipping” because it would be given under penalty of perjury and would be enforceable by audits. In contrast, asking a carrier to conduct site visits over sometimes vast geographic areas would be prohibitively expensive and overly intrusive. SBI believes that self-certification, coupled with the avoidance of any inadvertent or unreasonable interpretations of the one-per-household rule that would disserve Native Americans and interfere with efforts to increase subscribership on tribal lands, is the best means of accomplishing the Commission’s Lifeline goals as well as its commitment to improve telephone services for Native Americans.

C. The Commission Should Consider Clarifying Its One-Per-Household Rule To Reflect Changes in the Way Consumers Are Now Utilizing Telephone Services.

The TracFone Letter provides the Commission with an opportunity to re-examine the underlying premises of the one-per-household rule, and to consider modifications to the rule in light of changes that are occurring with respect to consumers’ utilization of telephone services.

²⁶ TracFone Letter at 2.

Many American households are increasingly viewing their subscription to more than one wireless telephone line as a necessity rather than a luxury, because individual members of the household need a mobile phone in connection with seeking employment, in the workplace, for participation in school activities, and for numerous other uses, including relying on their wireless phones in emergency situations.

As SBI noted earlier, the Commission is committed to ensuring that low-income consumers have access to affordable telecommunications and information services that are reasonably comparable to those available in urban areas.²⁸ The Commission should examine whether the one-per-household rule has become too restrictive to serve as an effective vehicle for pursuing the agency's commitment to low-income consumers. Concerns about such restrictiveness are particularly relevant with respect to the Navajo Nation and other tribal communities, in light of the economic and other deprivations faced by many Native Americans and the woefully inadequate levels of telephone service being provided on Indian lands.

Replacing the one-per-household rule with eligibility standards that permit a single household to receive Lifeline assistance for more than one telephone, subject to appropriate certification requirements, would be more in keeping with the Commission's commitment and more reflective of the choices and opportunities that consumers expect in today's telecommunications marketplace.

III. CONCLUSION.

For the reasons discussed above, SBI urges the Commission to clarify its one-per-household Lifeline rule to enable residents of homeless shelters, nursing homes, and other extended living facilities to be eligible to receive the full benefits of the Lifeline program. The

²⁷ 47 C.F.R. §§ 54.410(b)(3), 410(c)(2).

Commission should also confirm that each Navajo household residing in a subdivided hogan is eligible for Lifeline support. Doing so will help to ensure achievement of the Commission's goal to making telephone rates affordable for low-income consumers.

Respectfully submitted,

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²⁸ *Lifeline and Link Up Order*, 19 FCC Rcd at 8306 (para. 3).