

Indeed, the filed comments reflect a broad consensus that low-income persons residing in homeless shelters and other group living facilities should be allowed to obtain Lifeline-supported service.³ Importantly, a variety of commenters who advocate on behalf of the homeless supported that notion that residents in a homeless shelter or other low-income housing facility should be allowed to obtain Lifeline benefits, but that many of their constituents were precluded from doing so by mechanistic application of the one-per-household rule.⁴ The views of these groups were all well-expressed, but can best be summarized by the following statement in the comments of the National Consumer Law Center, on behalf of Greater Boston Legal Services: “Lifeline-eligible households should not be precluded from Lifeline service due to the nature of their housing situation.”⁵

The above statement of Greater Boston Legal Services articulately and concisely describes the issue which underlies TracFone’s July 17 letter and what this proceeding is about. Lifeline was established as a program which makes affordable telecommunications service available to low-income people. All too many low-income people lack permanent housing of their own. Their homelessness is a result of their poverty. The development of mobile wireless telecommunications now makes it possible for people without their own permanent residences to

³ In the Public Notice, the Commission wisely broadened the scope of the clarification requested by TracFone to include other group living facilities, such as nursing homes, assisted-living facilities, apartment buildings, trailer home communities, halfway houses, and group homes. TracFone commends the Commission for broadening the inquiry since low income persons residing in all such group living facilities should be entitled to Lifeline benefits if they are otherwise qualified.

⁴ See, e.g., comments of Part of the Solution, Inc., Manhattan Legal Services, Washington Legal Clinic for the Homeless, Inc. (“We are thrilled that SafeLink Wireless is testing a process in the District of Columbia for certifying shelters for the homeless as a physical location for residents to apply for participation in the SafeLink Wireless program.”), and Greater Boston Legal Services (“... telecommunications connectivity is essential for those in group living facilities, who are among the most vulnerable and fragile households in society.”).

⁵ Comments of Greater Boston Legal Services, at 2.

have Lifeline-supported telecommunications service. They should not be denied Lifeline assistance based on an overly narrow interpretation of a non-codified rule which was not established with wireless technology in mind.

Similarly, rate payer advocates acknowledged the importance of interpreting the one-per-household rule, and even modifying it, if necessary, to ensure low-income persons be allowed to obtain Lifeline benefits, without regard to the character of their residence. For example, the National Association of State Utility Consumer Advocates states that “[m]odification of the [one-per-household] rule is both reasonable and appropriate to advance universal service and allow low income consumers without a unique, private residence to still obtain telecommunications service with Lifeline support.”⁶

Of those filing comments on the TracFone letter, only the Public Utilities Commission of Ohio (“PUCO”) expressed any reservations about the proposal to clarify that the one-per-household rule is not intended to preclude residents of homeless shelters and other group living facilities from obtaining Lifeline benefits if they are otherwise qualified. PUCO’s objections seem to reflect certain concerns it may still have regarding TracFone’s operations in Ohio, and the growth of the Universal Service Fund (“USF”) rather than any real objection to homeless persons receiving Lifeline support. While PUCO’s concerns about growth of the Universal Service Fund are indeed legitimate concerns, attributing much of that growth on TracFone’s late 2008 introduction of SafeLink Wireless® in three states, and its 2009 expansion to approximately 17 other states is disingenuous. Its concerns about TracFone’s success in enrolling low-income households (including residents of homeless shelters) in its Lifeline

⁶ Comments of the National Association of State Utility Consumer Advocates at 3.

program seems especially unfortunate in light of PUCO's own acknowledgement that as many as two-thirds of Lifeline-eligible Ohio households are not receiving Lifeline support.⁷

PUCO advocates imposing special and burdensome conditions on TracFone alone as a condition of being allowed to provide Lifeline service to homeless shelter residents. For example, it suggests that the Commission impose a quarterly reporting obligation on TracFone specifically applicable to reports on TracFone's homeless customers.⁸ In short, PUCO is asking the Commission to impose on those ETCs who want to provide Lifeline service to the neediest, most vulnerable members of society -- those without permanent residences -- additional requirements and costs in order to provide Lifeline benefits to such persons. It is difficult to imagine any idea more antithetical to the principles of universal service as codified in the Communications Act⁹ than to impose additional burdens on those ETCs who want to provide service to the homeless. When Congress chose to specifically include low-income consumers among those who should be entitled to affordable telecommunications service, it meant **all** low-income consumers, not just those who reside permanently in single-family residences with unique addresses.

Yet, PUCO now proposes to subject ETCs who choose to serve that segment of the population (specifically, TracFone) with additional reporting requirements and other obligations. This is discriminatory, contrary to the intent of the universal service provisions of the Communications Act, and unnecessary. The Commission's Lifeline eligibility certification and

⁷ PUCO Comments at 7.

⁸ *Id.* at 9-10.

⁹ *See, e.g.*, 47 U.S.C. § 254(b)(3) which includes among the statutory universal service principles, the following: "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 for similar services in urban areas." (emphasis added).

verification rules were carefully crafted to strike a reasonable balance between preventing waste, fraud and abuse of the Universal Service Fund resources, on the one hand, while making the Lifeline enrollment process relatively simple for those low-income persons who qualify for Lifeline assistance, on the other hand. That is why the Commission established a self-certification under penalty of perjury requirement for applicants for Lifeline benefits.¹⁰ There is no reason why low-income persons seeking Lifeline benefits who happen to reside in homeless shelters or other group living facilities should be subject to more burdensome enrollment requirements than other applicants for Lifeline benefits. Neither is there any valid public interest reason why those ETCs who have the ability and the desire to deliver Lifeline services to such persons should be subject to regulatory obligations and costs not borne by other ETCs providing Lifeline services who do not seek to serve those segments of the low-income population.

That said, TracFone agrees that reasonable conditions to protect against improper utilization of Universal Service Fund resources are appropriate. In this regard, the Commission's attention is directed to the comments of the Florida Public Service Commission and the Florida Office of Public Counsel ("Joint Florida Commenters"). The Joint Florida Commenters offer the following six-pronged proposal:

1. Expand the definition of "household" to include residents of group living facilities.
2. Put appropriate safeguards in place if the definition of "household" is expanded in order to protect the universal service program from waste, fraud, and abuse.
3. Keep the burden of validating Lifeline customer eligibility for reimbursement from the universal service fund with the ETC providing Lifeline service to residents of the group living facility.

¹⁰ 47 C.F.R. § 54.410(b).

4. Require ETCs to maintain Lifeline eligibility documentation of all Lifeline customers (including residents of group living facilities) as required by 47 C.F.R. § 54.417.
5. Require TracFone to implement a 60 day inactivity check of Lifeline customers to ensure the USF Fund is only reimbursing TracFone for active Lifeline customers.
6. Define the terms homeless, homeless shelters, and other group living facilities.¹¹

The Joint Florida Commenters' six recommendations are reasonable and make a lot of sense. The burden of proper validation of customer eligibility should be borne by the ETC seeking to enroll the customer and to receive USF support. That is no less -- and no more -- so with respect to customers who reside in homeless shelters or other group living facilities than for other low-income customers. Requiring ETCs to maintain eligibility documentation records is necessary. Moreover, any ETC which fails to comply with the document retention requirements does so at its own peril since ETCs are subject to audits. Finally, the Florida Joint Commenters' proposal that TracFone implement a 60 day inactivity check is reasonable. The Commission should be aware that TracFone currently has in place such a 60 day non-usage process. TracFone attempts to contact any SafeLink Wireless® customer who has not used the service for 60 consecutive days. Customers are asked whether they intend to remain in the program. Those who do not respond or who cannot be reached have their service terminated and TracFone no longer seeks USF reimbursement for serving those customers.

In addition to the six-prong proposal of the Florida Joint Commenters, TracFone reiterates the suggestion made in its July 17 letter that applicants for Lifeline programs such as SafeLink Wireless® who reside in homeless shelters or other group living facilities be required to certify under penalty of perjury on their enrollment applications that the address listed is a

¹¹ Comments of Joint Florida Commenters at 2-3.

shelter or other group living facility. While this is one additional certification requirement for such applicants, TracFone does not believe that it would be unreasonably burdensome and would not dissuade otherwise qualified persons from applying for Lifeline benefits. Indeed, TracFone already has begun working with homeless shelters and is testing some additional processes which are beyond those required by any federal or state regulatory agency. Specifically, it is having operators of homeless shelters ratify that the facilities are, in fact, being operated as shelters, it is working with those shelters to establish maximum numbers of permissible Lifeline enrollments at the shelter address based upon shelter capacity, and having the shelter operators assist in verifying that shelter residents applying for Lifeline benefits are not receiving Lifeline-supported service from any other carrier.

In summary, the Commission should clarify that the one-per-household rule was not intended to preclude otherwise Lifeline-eligible low-income persons from enrolling in Lifeline solely because they reside in homeless shelters or other group living facilities. Further, it should implement reasonable safeguards to allow for Lifeline enrollment by such consumers without subjecting the USF to waste, fraud, and abuse. The safeguards recommended by the Florida Joint Commenters and by TracFone are appropriate for this purpose.

Respectfully submitted,

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