

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109

**REPLY COMMENTS OF TRACFONE WIRELESS, INC.
ON SECTIONS IV, V(A), VII (B AND D)**

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SUMMARY

TracFone offers the following suggestions to reform low-income programs supported by the Universal Service Fund so as to promote participation by qualifying low-income consumers while providing means for detecting waste, fraud, and abuse of USF resources while the Commission, the industry and other stakeholders develop and implement long-term solutions such as a national data base.

The Commission should implement a policy requiring de-enrollment from Lifeline of customers who do not use their service for 60 days in the case of free Lifeline programs, and who do not pay for their service for 60 days in the case of discounted, billed Lifeline programs.

In order to detect instances of duplicate enrollment and de-enrollment of Lifeline customers from multiple programs, the Commission should promptly promulgate rules to implement the industry coalition joint proposal on duplicate enrollments which was submitted to the Commission on April 15, 2011.

The Commission should repeal the requirement that ETCs verify annually their Lifeline customers' continuing eligibility for Lifeline support based on surveying a statistically-valid sample of customers. Instead, it should require all ETCs to require that they have their Lifeline customers re-certify annually that the customers i) remain eligible for Lifeline support; ii) remain head of household; and iii) receive Lifeline-supported service only from one ETC.

The Commission should reject proposals which would require Lifeline providers to impose mandatory charges on their Lifeline customers. Such mandatory charges would do nothing to prevent waste, fraud, and abuse. However, those charges would make Lifeline service unaffordable to millions of low-income households who are intended to benefit from the

program. If such charges were imposed, many existing Lifeline customers would be forced to de-enroll and potential customers would choose not to enroll.

The low income program should not be capped. Capping Lifeline would deprive otherwise qualified low-income consumers of a benefit to which they are entitled for no reason other than that they sought the benefits after the annual cap was reached. With the nation still in the throes of a major recession, low-income consumers should not be excluded from the Lifeline program based on when they applied for benefits.

The Commission should not require Lifeline applicants seeking to enroll based on participation in a qualifying program to provide documentation of program participation. There has been no showing that the current system based on self-certification under penalty of perjury has led to enrollment by unqualified persons. Mandatory documentation would preclude low-income consumers from completing the enrollment process since most such consumers do not have access to copying machines, scanners, Internet-access computers or telecopy machines necessary to transmit proof of enrollment.

Link Up support should only be available to ETCs who impose customary service commencement charges on all customers within a state. Also TracFone questions whether Link Up support is necessary and appropriate for any wireless ETC, especially those ETCs who do not themselves incur mandatory service commencement charges.

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**REPLY COMMENTS OF TRACFONE WIRELESS, INC.
ON SECTIONS IV, V(A), VII (B AND D)**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply comments on the issues set forth at Sections IV, V (subsection A), and VII (subsections B and D) of the Commission’s notice of proposed rulemaking in this proceeding.¹

In these reply comments, TracFone will address those proposals for immediate (short-term) reform of the Lifeline program. Specifically, it reiterates its earlier proposals and its suggestions for steps which can -- and should -- be taken now. These recommended actions will enable the Commission to detect and prevent waste, fraud and abuse of Universal Service Fund resources without unnecessarily and inappropriately impeding the Lifeline program while the Commission, the telecommunications industry and other stakeholders work together to develop and implement long-term solutions. Those long-term solutions would include development of a national data base which would be available to all ETCs to determine whether applicants for Lifeline-supported services are enrolled in qualifying programs, and to determine whether such applicants are receiving Lifeline-supported services from other ETCs. TracFone, like most

¹ Lifeline and Link Up Reform and Modernization, et al, FCC 11-32, released March 4, 2011 (“NPRM” or “Notice”).

commenters, supports a data base solution and encourages its prompt adoption and implementation.

I. The Commission Should Establish a 60 Day Non-Usage/Non-Payment Policy for Lifeline Programs

The Commission has proposed to establish a requirement that Eligible Telecommunications Carriers (“ETCs”) terminate Lifeline customer enrollment following 60 days of consecutive non-usage by the consumer. As TracFone noted in its initial comments, that non-usage policy proposal is based on the 60 day non-usage policy developed by TracFone in consultation with several state commissions and implemented by TracFone in every jurisdiction where it provides Lifeline service as a designated ETC. Accordingly, TracFone supports a mandatory 60 day non-usage policy.

The comments filed indicate near unanimity of opinion in favor of a non-usage policy. One area of disagreement among commenters involves whether the non-usage policy should be applicable to all ETCs or only to wireless ETCs offering free -- rather than discounted -- Lifeline services. TracFone recommended that a non-usage policy be applied on a competitively neutral basis to all ETCs’ Lifeline programs. Other commenters asserted that such a policy only should be applicable to free Lifeline services, but not to those Lifeline services which are provided as a USF-funded discount below standard rates. Those parties argued that a non-usage policy is not necessary for billed services since customers of such services must pay their monthly bills whether or not they use the service.

In response to that concern, TracFone herein proposes a modest adjustment to the non-usage policy proposal. It proposes that all ETCs be required to de-enroll Lifeline customers following 60 days of non-usage in the case of free Lifeline services, and following 60 days of non-payment of billed charges in the case of discounted billed Lifeline services. In the absence

of a non-usage policy based on non-payment, ETCs providing discounted billed services would have no incentive to require their customers to pay discounted bills and to terminate non-paying Lifeline customers since those ETCs would continue to receive the monthly Lifeline support from the USF whether or not the customers paid their billed charges. A provider of Lifeline-supported service to customers of billed Lifeline services who neither use the service nor pay the bills should not be permitted to receive USF support for such customers indefinitely. A non-using customer imposes no recurring costs on the ETC, and continued receipt of USF support for non-using customers would constitute a windfall to such ETCs and would constitute waste, fraud, and abuse of USF resources. For that reason, TracFone urges the Commission to establish a policy requiring de-enrollment for Lifeline following 60 days of non-usage in the case of non-billed services, and following 60 days of non-payment in the case of billed services.

II. To Reduce and Eliminate Instances of Duplicate Enrollment, The Commission Should Immediately Adopt the Interim Duplicate Enrollment Process Submitted Jointly by a Broad-based Industry Coalition

The initial comments revealed a consensus that procedures should be implemented to de-enroll consumers who are enrolled in multiple ETCs' Lifeline programs. While there is general agreement that such procedures should be implemented, there is also broad agreement that ETCs who have enrolled Lifeline subscribers in conformance with the current rules governing Lifeline enrollment certification of eligibility should not be required to refund USF support received by those ETCs for Lifeline services provided to enrolled Lifeline customers who have been enrolled in accordance with the applicable rules.

Immediately prior to the submission of initial comments, a broad-based industry coalition submitted to the Commission a proposal for an interim duplicate enrollment process.² That joint submission describes a plan under which customers identified as being enrolled in multiple ETCs' Lifeline programs would be assigned to one of those ETCs' programs and afforded a twenty-one day period to negate that assignment by notifying a third party that they wish to be enrolled in another ETC's program. Currently, this proposal is under review by the Commission staff and the industry is soliciting proposals to operate the third party interactive voice response system. TracFone respectfully urges the Commission to promptly approve this interim plan and promulgate the proposed rules -- on an interim basis, if necessary -- so that duplicate enrollment situations may be readily identified and resolved.

III. All ETCs Should be Required to Recertify Annually Their Customers' Continuing Eligibility for Lifeline Support

The comments revealed some disagreement among parties regarding the requirement that ETCs verify their customers' continued eligibility for Lifeline support based on surveying a statistically-valid sample of those customers. The Commission should not quibble with such issues as appropriate sample size and whether ETCs whose verification of their customers continued eligibility falls below a specified, inherently arbitrary percentage should be required to survey a larger portion of its customer base, or even its entire base of enrolled Lifeline customers. Rather, the time has come for the Commission to abandon the annual verification sampling requirement and, instead, require all ETCs to have all of their Lifeline customers

² Letter from the United States Telecom Association, AT&T, Cox Communications, Inc., Nexus Communications, Inc., TracFone Wireless, Inc., CTIA - The Wireless Association[®], CenturyLink, General Communication, Inc., Sprint Nextel Corp., and Verizon Communications, Inc. filed April 15, 2011 and accompanying Interim Lifeline Duplicate Resolution Process and proposed rules.

recertify annually that they remain eligible for Lifeline support; that they remain head of household; and that they only receive Lifeline-supported service from that ETC.

Stated simply, random sampling does not work. Assume, for example, that an ETC with one million Lifeline customers surveys a statistically-valid sample of 1,000 of those customers, and that 42 percent of those sampled customers either do not respond to the survey or respond by indicating that they are no longer eligible. In that situation, 420 customers (out of one million) will be de-enrolled. The remaining 999,580 customers will remain enrolled in the ETC's Lifeline program and the ETC will continue to receive USF support for all of those remaining customers, notwithstanding the fact that forty-two percent of the sample surveyed had to be de-enrolled.

There is a better approach. In its 2005 order granting TracFone's petition for forbearance from Section 214(e)(1)(A) of the Communications Act and Section 54.201(i) of the Commission's rules, the Commission required TracFone -- as a condition of forbearance -- to verify annually that each of its Lifeline customers 1) remains head of household; and 2) only receives Lifeline-supported service from TracFone.³ Since becoming designated as an ETC in 2008, TracFone has verified annually that each of its Lifeline customers continues to meet those two requirements. To date, TracFone has de-enrolled many Lifeline customers who either did not or could not verify their continued compliance with those two requirements. Presumably, many of those de-enrolled customers remained Lifeline-eligible but failed to respond.

If the Commission is seriously committed to reducing continued receipt of Lifeline benefits by enrolled customers who fail to verify their continued eligibility, TracFone respectfully suggests that an expanded version of the aforementioned condition imposed upon

³ Federal-State Joint Board on Universal Service; TracFone Wireless, Inc., et al, 20 FCC Rcd 15095 (2005), at ¶ 18.

TracFone as part of the forbearance approval be codified in the Commission's rules and made applicable to all ETCs, irrespective of technology (wireline or wireless) and irrespective of business model (post-paid discounted service or free service). In addition to requiring all ETCs to obtain from each of their Lifeline customers annual certifications that they remain head of household and receive Lifeline-supported service only from that ETC, TracFone recommends that the customers also be required to certify under penalty of perjury that the customer remains eligible for Lifeline service, either based on income or based on participation in a qualifying program, depending on the applicable eligibility criteria in the jurisdictions where the customers are enrolled.

IV. Low-Income Consumers Should Not be Required to Pay Minimum Charges in Order to Receive Lifeline Benefits

While several commenters, for apparent self-serving reasons, favored the Commission's proposal to require that all Lifeline customers be required to pay some amount -- either in the form of mandatory monthly charges or as "up front" enrollment fees, the more responsible, prevailing view is that such mandatory charges would be facially inconsistent with the purposes for Lifeline -- to ensure that **all** consumers, including low-income consumers, have access to affordable telecommunications service.

Conspicuously absent from any of the filed comments is any factual support for the wholly-speculative and inherently illogical proposition that the availability of free Lifeline services such as that provided by TracFone through its SafeLink Wireless® Lifeline program in any way causes waste, fraud and abuse of USF resources, or that the free nature of such services provides incentives to consumers to unscrupulously enroll in multiple Lifeline programs and to intentionally misrepresent their enrollment status to ETCs.

What the initial comments do demonstrate is that the availability of free Lifeline services is important to those intended to benefit from the program -- low income consumers. For example, the Minority Media and Telecommunications Council (MMTC) -- a well-respected advocate before the Commission for interests of minorities and other economically-disadvantaged groups -- states that mandatory Lifeline fees “would create additional barriers for low income consumers to become first class participants in the digital society.”⁴ Similarly, the Keep USF Fair Coalition notes that mandatory Lifeline fees “will make Lifeline unavailable to and unused by many low-income consumers” and that “payment of even a few dollars is more than they can afford.”⁵ The National Association of State Utility Consumer Advocates (NASUCA) insightfully and accurately describes the Commission’s suggestion that mandatory payments are needed “to ensure that low income consumers genuinely want phone service” as “an unreasonably paternalistic attitude.”⁶

One of the most compelling reasons against mandatory fees was provided by a coalition of low-income advocacy groups led by Open Access Connections (f/k/a Twin Cities Voice Mail). Noting that many low-income consumers do not have access to checking or savings accounts, Open Access Connections visited the website of Western Union -- a leading provider of money transfer services. According to Open Access Connections, it would cost such consumers \$12.99 in fees to send a minimum Lifeline payment of \$1.00.⁷ For such “unbanked” Lifeline customers, the cost of paying even a \$1.00 monthly fee would make Lifeline service

⁴ MMTC Comments at 1.

⁵ Keep USF Fair Coalition Comments at 2.

⁶ NASUCA Comments at 15.

⁷ Comments of Open Access Connections, *et al*, at 3. As TracFone explained in its initial comments, approximately 60 percent of TracFone’s Lifeline customers do not have checking accounts or credit or debit cards. Those customers would have no alternative other than to use money transfer services or purchase money orders in order to make minimum payments for Lifeline service.

unaffordable. Such a cost burden would deter many low-income consumers from enrolling in Lifeline programs and would cause many enrolled customers to de-enroll. It is difficult to imagine any proposal which would detract from the goal of affordable telecommunications service for low-income consumers than to impose monthly cost burdens which would render the service unaffordable.

Not only are many Lifeline-eligible customers “unbanked,” they are also often unemployed. As TracFone indicated in a recent *ex parte* letter filed in this proceeding, only thirteen percent of its SafeLink Wireless® Lifeline customers are employed full-time, and only eleven percent are employed part-time.⁸ Also, it is important to recognize that without free Lifeline programs like that pioneered by TracFone and now provided by other ETCs, wireless telecommunications service would be economically unavailable to millions of low-income consumers. According to data compiled by TracFone, only about twenty percent of households which are enrolled in the SafeLink Wireless® Lifeline program have any family members who have wireless service other than the SafeLink Wireless® service. Despite that fact that the national wireless service penetration rate is high and is growing, TracFone’s data indicate that the wireless penetration rate among low-income households remains low. Imposition of mandatory charges on free wireless Lifeline programs would cause a rapid reversal of the recent increases in wireless usage among low-income households.

All ETCs receive the same amount of Lifeline support based on the support mechanisms codified at Section 54.403 of the Commission’s rules.⁹ As the Lifeline services market evolves from one based on wireline incumbent local exchange carriers offering Lifeline on a *de facto*

⁸ Letter from Mitchell F. Brecher, counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed May 9, 2011.

⁹ 47 C.F.R. § 54.403.

sole source basis to a market based on emerging competition, it is inevitable that competing ETCs will search for new and innovative ways to utilize the amount of Lifeline support available in order to package services in a manner likely to be attractive to Lifeline-eligible low-income households. Consumer choice has been a hallmark goal of the Commission's pro-competitive telecommunications policies for more than three decades. Consumer choice was a fundamental goal of Congress in enacting the Telecommunications Act of 1996. At long last, the nation's most vulnerable consumers -- low-income households eligible for Lifeline -- are availing themselves of choices in the marketplace. There is no public interest reason to deprive those consumers of those choices through imposition of unnecessary mandatory minimum charges, especially when reasonable alternatives exist to ensure that USF support is provided only for services actually used, such as the non-usage policy proposed by the Commission and supported by TracFone and most other commenters.

V. Lifeline Support Should Not be Capped

The Commission should not impose a cap on Lifeline support. No commenter questioned or disputed the most important reason why a cap should not be imposed: that it would deny Lifeline benefits to qualified low-income households for no reason other than that they sought those benefits after the cap had been reached. With the nation still in the throes of a major recession, with unemployment still high and not being significantly reduced, with home values continuing to fall, and with savings rapidly eroding, this is no time to impose limits on public support programs based on criteria as arbitrary as when someone applies for that support.

The comments provided many reasons why it would be unwise to impose a cap on Lifeline support. Perhaps the most compelling reason why there should not be a cap is contained in the comments of the Indiana Utility Regulatory Commission (IURC) which ironically supports a cap. The IURC favors a cap but says that a cap should not "penalize states, that have a large

number of remaining unserved Lifeline-eligible citizens.”¹⁰ In other words, the IURC says that Lifeline support should be capped, but that the cap should be higher for states like Indiana! As noted in the Lifeline Participation Rates compiled by the Universal Service Administrative Company and as referenced in TracFone’s initial comments, Indiana has the distinction of being one of only five states in the nation with a participation rate among eligible households of less than ten percent. The fact that Indiana has one of the lowest Lifeline participation rates in the nation is hardly surprising in light of the IURC’s non-receptivity to non-traditional Lifeline programs. TracFone’s ETC application filed with the IURC in July 2009 remains pending nearly two years later. Although TracFone has been designated as an ETC in 37 states, Indiana is not one of them. As a result, low-income Indiana households -- including the more than ninety percent not enrolled in Lifeline -- do not have available SafeLink Wireless® Lifeline service. The fact that the IURC asks for a higher cap based on its prolonged and continuing failure to designate alternative Lifeline providers and to engage in successful Lifeline outreach efforts demonstrates why there is no valid basis for imposition of a cap on the Lifeline program. States like Indiana with long histories of failure to promote enrollment in Lifeline should be encouraged to increase Lifeline participation rather than be encumbered from increasing Lifeline participation by imposition of a cap on enrollment.

VI. Documentation of Program-Based Eligibility Should Not be Required

TracFone reiterates its opposition to the Commission’s proposal to require applicants for Lifeline service to provide documentation of their program-based eligibility. TracFone understands the surface appeal of requiring such applicants to “prove” that they are entitled to Lifeline benefits. However, the proposal disregards the realities of the enrollment process. TracFone has been providing Lifeline service as an ETC for several years. Most of the states

¹⁰ IURC Comments at 8.

where it offers Lifeline follow the current federal rule which requires applicants to self-certify under penalty of perjury that they are enrolled in qualifying programs. Several states require TracFone and other ETCs to provide such documentation or proof of enrollment in Lifeline-qualifying programs.

In TracFone's experience, the percentage of applicants who actually complete the enrollment process and participate in Lifeline in those so-called "full certification" states is much lower than in the states which follow the federal self-certification under penalty of perjury rule. While some commenters have suggested that requiring proof of eligibility might not be unduly burdensome, not a single Lifeline provider shares that view. The reality is that Lifeline applicants are, by definition, low income consumers. They often do not have readily available the required documentation of eligibility. Of those who do have available such documentation as Medicaid cards, proof of enrollment in the Supplemental Nutrition Assistance Program, etc., most do not have access to copiers, scanners, computers with Internet access, and telecopy machines -- all necessary to provide the documentation.

As a result, many consumers do not pursue their Lifeline enrollment applications. In the absence of any evidence that mandatory proof of program-based eligibility would have any impact on preventing waste, fraud and abuse, such a requirement would do nothing other than preclude millions of low-income households from obtaining Lifeline benefits.¹¹

VII. Link Up Support Should be Limited to Those Service Commencement Charges which are Customarily Imposed and Should be Eliminated Entirely for Wireless ETCs

If the Commission is seriously committed to preserving USF resources and preventing waste, fraud and abuse in the low-income program, one fertile area for reform involves Link Up.

¹¹ No commenter has even suggested that mandatory proof of program-based eligibility would have any impact on duplicate enrollment by Lifeline consumers in multiple ETCs' programs -- a far greater source of potential waste of USF resources.

As TracFone described in detail in a petition filed in December 2010, some ETCs are claiming large amounts of Link Up support for what are, in actuality, bogus service commencement charges, *i.e.*, activation fees which those carriers nominally impose on some customers but which often are not paid by customers beyond the amount covered by Link Up. No commenters credibly dispute the notion that Link Up support should be available only for those charges which are actually imposed on all customers within a state, as the Commission proposed in the NPRM.

Having reviewed the comments, it is questionable whether wireless ETCs, especially those who provide service by reselling other providers' services, should be allowed to get Link Up support. One commenter -- Conexions, LLC d/b/a Conexion Wireless -- claims that Link Up support is necessary because "facilities-based wireless carriers impose significant per-customer service-initiation charges on MVNOs [mobile virtual network operators], often exceeding the \$30 threshold for Link-Up reimbursement."¹² TracFone has no firsthand knowledge of Conexions' arrangements with its underlying vendors. However, TracFone has been providing wireless service as a MVNO for over fourteen years. It is the largest MVNO in the country and obtains wholesale service from multiple wireless network operators, including three of the four largest wireless carriers in the country. Not one of those underlying carriers requires TracFone to pay service initiation charges, let alone charges in excess of \$30.

As for the asserted necessity of charging service commencement or activation fees, TracFone has more than eighteen million customers enrolled in its various offerings -- TracFone, NET10, Straight Talk, and SafeLink Wireless.® Not one of those customers ever has been charged a service commencement or activation fee by TracFone. If other wireless providers --

¹² Conexions, LLC Comments at 4-5.

facilities-based or MVNOs -- deem it necessary or desirable to require customers to pay activation charges, that is their business and it is not TracFone's nor the Commission's role to judge the wisdom of such charges. Whether such charges should be subsidized by the federal Universal Service Fund through Link Up support IS the Commission's business. Unless a carrier can demonstrate that such charges are imposed on all customers and are necessary to recover actual costs incurred in commencing service, Link Up support for such charges is a waste of USF resources and should be prohibited.

Conclusion

For the reasons stated herein, TracFone respectfully urges the Commission to promulgate rules as necessary appropriate to implement short-term reforms to the low-income Universal Service programs, including Lifeline and Link Up, in accordance with the positions articulated in these reply comments and in TracFone's initial comments in this proceeding.

Respectfully submitted,

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