

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

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

**EMERGENCY PETITION FOR DECLARATORY
RULING AND FOR INTERIM RELIEF**

TracFone Wireless, Inc. (“TracFone”) hereby petitions the Commission for a declaratory ruling that a recent directive issued to TracFone and to other Eligible Telecommunications Carriers (“ETCs”) by the Puerto Rico Telecommunications Regulatory Board (“Board”) violates the Communications Act of 1934, as amended, is inconsistent with Commission-established procedures governing de-enrollment of Lifeline-eligible low-income consumers enrolled in multiple ETCs’ Lifeline programs, and therefore is preempted. Given the imminent nature of the Board’s directive to ETCs to de-enroll otherwise qualified low-income Puerto Rico consumers and thereby deprive those consumers of an important federal benefit to which they are entitled and which they need in order to have access to essential telecommunications services at affordable prices, TracFone respectfully asks the Commission consider this petition on an emergency basis and order such interim relief as necessary and appropriate to ensure that qualified Lifeline customers in Puerto Rico not be suddenly deprived of those benefits and the resulting loss of access to essential telecommunications services.

I. Facts

With an average per capita income of only \$17,280 per year according to the U.S. Department of Labor Bureau of Labor Statistics (as compared with a national average per capita

income of \$47,140), Puerto Rico trails most states in average income and leads most states in percentage of households living in poverty. Similarly, Puerto Rico's unemployment rate for December 2011 (the most recent month for which statistics are available) was 14.7 percent -- well above the national rate of 8.5 percent. While the effects of the current economic recession have been felt nationwide, few states have suffered as much as Puerto Rico. For this reason, low-income federal benefit programs, including the federally-mandated Lifeline program, are critically important to enabling Puerto Rico residents to enjoy a standard of living comparable to that of other states.¹

TracFone was designated as an ETC by the Board in 2010. Since then, it has enrolled more than 193,000 low-income Puerto Rico consumers in its SafeLink Wireless® Lifeline program. It also has de-enrolled approximately 78,000 Puerto Rico Lifeline customers based upon non-usage of the Lifeline service and failure to verify continuing Lifeline eligibility in accordance with its normal practices and with Commission requirements. At all times, TracFone has complied fully with all conditions imposed on it in obtaining ETC designation from the Board. In addition, TracFone's Lifeline program is funded entirely by the federal Universal Service Fund ("USF") and by TracFone. TracFone receives no support from the Puerto Rico Universal Service Fund. Thus, TracFone's operation in Puerto Rico as a Lifeline-only ETC has had no impact on the Puerto Rico Universal Service Fund.

On January 30, 2012, the Board, by Angel M. Oquendo, Director, Office of Finance, sent a letter to Janet Morejon, Director, SafeLink Compliance and Accounting, TracFone, transmitting a compact disk containing a list of TracFone Lifeline customers which the Board identifies as "duplicates," *i.e.*, persons who are enrolled in another ETC's Lifeline program as

¹ Pursuant to Section 3(40) of the Communications Act of 1934, as amended (47 U.S.C. § 153(40)), Puerto Rico is classified as a "State" for purposes of the Act ("The term 'State' shall include the District of Columbia and the Territories and possessions.").

well as TracFone's. That list was compiled based on Social Security Number data. The Board's letter instructed TracFone to send each such "duplicate" consumer a notice of de-enrollment and to de-enroll the customer from TracFone's Lifeline program, and that all such de-enrolled Lifeline customers cease receipt of any Lifeline benefits as of March 1, 2012. A copy of Mr. Oquendo's January 30 letter to TracFone is attached hereto as Attachment 1.

On February 7, 2012, Mr. Oquendo sent another letter to TracFone transmitting another compact disk -- this one containing a list of "duplicates" based on residential address. Like Mr. Oquendo's January 30 letter, his February 7 letter directed TracFone to send de-enrollment notices to all such listed customers and to de-enroll those customers from Lifeline effective April 1, 2012. A copy of Mr. Oquendo's February 7 letter is attached hereto as Attachment 2.

TracFone has learned that other ETCs in Puerto Rico including, but not limited to, Claro, T-Mobile, Sprint, Open Mobile and AT&T, have received virtually identical letters. By these letters, the Board is directing that all "duplicates" (*i.e.*, customers who have been determined to have been enrolled in multiple Lifeline programs, either based upon Social Security Number or residential address) lose **all** Lifeline benefits and be precluded from re-applying for Lifeline support from **any** ETC for at least one year. In short, the Board's directives as communicated to ETCs in Mr. Oquendo's letters would penalize low-income Lifeline-eligible Puerto Rico consumers by depriving them of any Lifeline benefits for having committed the "crime" of being enrolled in multiple ETCs' Lifeline programs. Any consumer enrolled in multiple Lifeline programs will be de-enrolled (as soon as March 1) and will be deprived of any Lifeline support for a year without there being any finding that such duplicate enrollment was the result of fraudulent or otherwise unlawful action by any such consumer.

On February 17, 2012, the Board conducted a meeting at which ETCs attempted to explain why the Board's mandatory de-enrollment of "duplicates" from all Lifeline programs

was unlawful and inappropriate. In addition, they presented alternatives. Specifically, TracFone proposed that the Board and the ETCs jointly request that the Commission promptly direct USAC to implement the Interim Duplicate Resolution Process (“IDRP”) for Puerto Rico as the Commission similarly has agreed to do for Mississippi at the request of that state’s public service commission. As the Commission noted in its recent Lifeline Reform Order,² the IDRP process was implemented successfully in twelve states resulting in the de-enrollment of 270,000 duplicates saving the Universal Service Fund \$33 million

The Board rejected that proposal and maintained its requirement as communicated in Mr. Oquendo’s January 30, 2012 letter that all “duplicates” be de-enrolled from all Lifeline programs effective March 1.³ As a result of the Board’s directives, more than 100,000 Lifeline-eligible low-income Puerto Rico consumers will lose all Lifeline support to which they are entitled within a few days. As required by the Board’s decision, ETCs have notified their “duplicates” that they will be losing Lifeline service on March 1. While it may unfortunately be too late to prevent those de-enrollments from occurring, it is not too late to prevent further harm to additional Puerto Rico consumers by preventing de-enrollment of the “duplicates” covered by Mr. Oquendo’s February 7 letter as well as any such subsequent de-enrollment orders.

II. The Board’s Directive Violates the Communications Act And the Rules and Policies Embodied in the FCC’s Lifeline Reform Order

Ironically, the Board’s first letters to TracFone and other ETCs were sent January 30, 2012 -- just one day prior to adoption of the Commission’s Lifeline Reform Order. As will be explained herein, the Board’s action is contrary to the statutory goals of the federal Universal Service policy as codified in the Communications Act, and is in disregard of pronouncements of

² In the Matter of Lifeline Reform and Modernization (Report and Order and Further Notice of Proposed Rulemaking), FCC 12-11, released February 6, 2012 (“Lifeline Reform Order”).

³ The Board agreed to reduce the period during which such de-enrolled customers were barred from all Lifeline-supported programs from one year to four months.

policy and specific requirements established by the Commission and set forth in the Lifeline Reform Order.

Section 254(b)(3) of the Act codifies as a core universal service principle that consumers in all regions of the Nation, **“including low-income consumers”** have access to affordable telecommunications services. The Commission’s Lifeline program was created and expanded to fulfill that statutory mandate. It is difficult to imagine any action which could be taken by any state commission that would be more antithetical to that Congressional mandate than an outright prohibition against such low-income consumers receiving any Lifeline benefits for no reason other than that they may have been enrolled for a period in more than one Lifeline program. Indeed, it would not be overstatement to conclude that the Board’s de-enrollment letters, if implemented, would effectively write the words “including low-income consumers” out of the Act, at least with respect to thousands of low-income consumers residing in Puerto Rico.

Puerto Rico is not the only jurisdiction which has experienced duplicate enrollment in Lifeline. It IS the only jurisdiction which has sought to penalize such “duplicates” by depriving those consumers of all Lifeline-supported service. For some time, the Commission has been aware that consumers were receiving Lifeline-supported service from multiple ETCs and that such multiple support was causing waste, fraud and abuse of limited Universal Service Fund resources. With that awareness, the Commission in March 2011 convened meetings with various ETCs and with the Universal Service Administrative Company (“USAC”). Those meetings resulted in the IDR process for identifying such duplicate-enrolled Lifeline customers and limiting those customers to one -- and only one -- Lifeline-supported service. That process is described in the Commission’s June 21, 2011 order establishing the de-enrollment process. See Lifeline and Link Up Reform and Modernization, 26 FCC Rcd 9022 (2011).

Unlike the mandatory de-enrollment of “duplicates” from all Lifeline programs, as mandated by the Board’s letters, under the Commission’s highly successful IDR process, consumers enrolled in multiple ETCs’ Lifeline programs receive letters from USAC assigning them to one of the ETCs’ Lifeline programs and affording the consumers 35 days to notify USAC whether they would prefer to remain enrolled in the other ETC’s program. The consumer is then de-enrolled from the Lifeline program not chosen, and the ETC not chosen no longer receives Universal Service Fund support for that de-enrolled customer.

As the Commission noted in the Lifeline Reform Order, this process has worked well. In the twelve states where that process was implemented, nearly 270,000 duplicate-enrolled customers were de-enrolled from all but their preferred Lifeline provider’s program, and those de-enrollments resulted in a savings to the Universal Service Fund of \$33 million. Importantly, duplicate enrollment in those twelve states was identified and eliminated without qualified low-income customers losing their Lifeline benefits. As Commissioner Clyburn noted in her Statement Approving in Part and Concurring in Part, “[n]o qualifying customer will be cut off or unable to obtain benefits of the Lifeline programs as a result of our reforms today.” The Commission’s duplicate de-enrollment process has worked so well that the Commission has elected to extend it to additional states. On February 14, 2012, a “kick off” conference call meeting was held among representatives of the Commission, ETCs, and USAC to discuss the imminent expansion of the process to other states. Based upon the success of the IDR process established through the cooperative efforts of the Commission, USAC, and ETCs, duplicate enrollment has been eliminated in the states where it has been implemented. It is for that reason that TracFone proposed to the Board that the same IDR process be implemented for Puerto Rico “duplicates” -- a proposal which was summarily and without explanation rejected by the Board on February 17.

With issuance of the Lifeline Reform Order, the Commission has clarified the requirements governing the Lifeline program in general and resolution of duplicate enrollment situations in particular. The Commission has adopted a one-per-household rule. Pursuant to that rule, each household may receive only one Lifeline-supported service. That rule assures that qualified low-income households will not receive more than one Lifeline service. However, it also assures that every Lifeline-eligible household is entitled to receive one Lifeline-supported service, even those households which may have previously been receiving Lifeline benefits from two ETCs. The process mandated by the Board's January 30 and February 7 letters would violate the one-per-household rule by depriving qualified low-income Puerto Rico households which had been enrolled in multiple Lifeline programs (often inadvertently) of **any** Lifeline-supported service. In short, the Board's mandatory de-enrollment process will convert the Commission's one-per-household rule into a none-per-household rule for Puerto Rico!

In addition to violating the one-per-household rule, the Board's directives would contravene the Commission's explicit requirements governing resolution of duplicate enrollment situations. At paragraph 216 of the Lifeline Reform Order, the Commission provided specific direction regarding duplicate enrollments:

As part of the scrubbing process, USAC should identify those subscribers receiving duplicative support, establish a process to select a default Lifeline provider for each subscriber, provide notice to the subscriber that they will be de-enrolled from all Lifeline support **except for support from their default provider unless they override the default selection and provide subscribers a means to do so.** (emphasis added).

As reflected in the underscored language above, the Commission has articulated a requirement that Lifeline customers enrolled in duplicate Lifeline programs be de-enrolled from duplicative programs but that they may continue to receive Lifeline benefits either from the default provider or from the provider chosen by the customer -- but not both. The Board's

directive that such customers be de-enrolled from both programs and prevented from obtaining Lifeline support for a year would violate that explicit Commission requirement. Commissioner Clyburn's observation that no qualifying customer would be cut off from or unable to obtain Lifeline benefits would not be true for thousands of qualifying consumers residing in Puerto Rico.

Neither has the Board attempted to conform with the opt-out process established by the Commission. At paragraph 221 of the Lifeline Reform Order, the Commission acknowledged that some states may wish to use their own procedures for resolving duplicate enrollment situations. There, the Commission indicated that it would allow states to opt out of the Commission's duplicates data base requirements if they certify to the Commission that they have a comprehensive system in place that is at least as robust as the processes adopted by the Commission and that covers all ETCs operating in the state. Such state certifications must itemize with particularity each functionality of the state system that corresponds with the Commission rule. States wishing to avail themselves of the opt-out process must submit their one time certification within six months of the effective date of the Lifeline Reform Order. If the Commission's Wireline Competition Bureau does not disapprove the state certification within ninety days of its filing, the certification will be deemed approved.

If the Board chooses to establish a duplicate de-enrollment process which deviates from that established by the Commission, it may avail itself of the opt-out certification process set forth at paragraph 221 once the Lifeline Reform Order becomes effective. Instead of utilizing that process, the Board has taken the law into its own hands by establishing its own process calling for the mandatory de-enrollment of all "duplicates" without providing a certification to the Commission and without describing the functionalities of its system or how its process complies with the federal rule. Even worse, it did so through the device of letters sent by the

Board's Director of Finance. There was no opportunity for public comment and no opportunity for full Commission review prior to those letters being sent to the ETCs. Instead, based on letters to ETCs sent by a Board staff member, many thousands of Lifeline-eligible low-income Puerto Rico customers will lose their Lifeline benefits on March 1 and April 1 and will be barred from any Lifeline-supported service for four months for no reason other than that those customers were found to be enrolled in duplicate Lifeline programs.

Finally, the Board's mandatory de-enrollment directives will undermine public safety. In the Lifeline Reform Order and elsewhere, the Commission has noted that one of the important benefits of Lifeline support is that it assures that consumers, including low-income consumers to whom telecommunications service might not otherwise be affordable, will have access through their supported Lifeline service to E911 emergency services.⁴ If the Board is permitted to implement the de-enrollments required by its January 30 and February 7 letters, thousands of low-income Puerto Rico households will lose their Lifeline-supported services, and with those de-enrollments, will lose their only access to E911 emergency services. Just as low-income consumers in every other state are entitled to Lifeline support from one provider of their choice, so too are low-income consumers in Puerto Rico. Puerto Rico residents have no less right to access E911 service and no less need to access E911 service than do residents of every other state. While the Board has reduced the no Lifeline service penalty period from one year to four months, that reduced penalty will be of little benefit to any Puerto Rico consumer who needs to call 911 during that period and has no service.⁵

⁴ See, e.g., Lifeline Reform Order at ¶ 48.

⁵ Wireless providers are required to allow 911 calling even when the handset is not active or has no remaining minutes. However, once consumers are notified that they no longer have Lifeline-supported service, it is highly improbable that they will keep their inactive wireless handsets readily accessible and charged.

Conclusion

For the reasons described in this emergency petition, the recent letters sent to ETCs providing Lifeline service in Puerto Rico and the Board's action of February 17 violate the universal service goals and policies as codified at 254 of the Communications Act, as well as the rules and procedures governing de-enrollment of "duplicates" first established on an interim basis in the Commission's June 21 order and later refined, expanded and made permanent in the Lifeline Reform Order.

Accordingly, TracFone respectfully requests the Commission to consider this matter expeditiously and to issue an order concluding that the directives to ETCs set forth in the Board's January 30 and February 7 letters are unlawful, and preempting the Board from implementing the mandatory de-enrollments and deprivation of Lifeline benefits directed by those letters.

Respectfully submitted,

TRACFONE WIRELESS, INC.



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Its Attorneys

February 22, 2012

Attachment 1



Estado Libre Asociado de Puerto Rico
Junta Reglamentadora de Telecomunicaciones de
Puerto Rico

Oficina del Director de
Finanzas

January 30, 2012

Ms. Janet Morejon
Director, Safelink
Compliance & Accounting
TracFone
9700 NW 112th St.
Miami, FL 33178

Dear Ms. Morejon:

As established in the Provisional Amendment to the Universal Service Regulation (Regulation 8093), with this letter we accompany a compac disc (CD) which contains the beneficiaries information of the "Lifeline" subsidy, identified as duplicates by their social security number; according to the data corresponding to December 2011 sent by the eligible telecommunications companies (ETC).

Additionally, we are sending the format and content of the *Notification for Duplicates by Social Security* to be used by each ETC, in order to advise clients identified as duplicates of the ceasing of their benefit; which is established as March 1st, 2012.

This withdrawal date of the "Lifeline" benefit only applies to those beneficiaries identified on this CD.

Please feel free to contact me, should you have any question or additional information that you may require.

We expect full compliance with these instructions and appreciate your cooperation.

Cordially,

Angel M. Oquendo Figueroa
Director

Attachment 2



Estado Libre Asociado de Puerto Rico
Junta Reglamentadora de Telecomunicaciones de
Puerto Rico

Oficina del Director de
Finanzas

February 7, 2012

Ms. Janet Morejon
Director, Safelink
Compliance & Accounting
TracFone
9700 NW 112th St.
Miami, FL 33178

Dear Mr. Ferreira:

As established in the Provisional Amendment of the Universal Service Regulation (Regulation #8093), along with this letter is a compac disc (CD) containing the beneficiaries information of the Lifeline subsidy, identified as duplicates based on physical address (family unit), according to the data corresponding to December 2011, furnished by the Eligible Telecommunications Companies (ETCs).

Additionally, as stated in the above referenced Provisional Amendment, we are sending you the format and content of the *Notification for Duplicates per Family Unit* to be used by each ETC, in order to inform the subscribers identified as duplicates of the ceasing of their benefit; which has been established as April 1, 2012.

This withdrawal date of the Lifeline benefit solely applies to those beneficiaries identified in this CD.

Please feel free to contact me, should you have any question or require additional information.

We expect full compliance with these instructions and appreciate your cooperation.

Cordially,

Ángel M. Oquendo Figueroa
Director