Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	:	
	:	
Lifeline and Link Up Reform	:	
Federal-State Joint Board on Universal Service	:	**WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45**
	:	
TracFone Wireless, Inc. Petition for Declaratory Ruling	:	

COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

I. INTRODUCTION

By Public Notice released February 27, 2012, the Federal Communications Commission ("FCC" or "Commission") put out for public comment TracFone Wireless, Inc.'s ("TracFone's") petition for declaratory ruling regarding action taken by the Puerto Rico Telecommunications Regulatory Board ("Puerto Rico Board"). As described by TracFone, the Puerto Rico Board conducted an investigation of Puerto Rican consumers who have received Lifeline supported telephone service from TracFone and other Eligible Telecommunications Carriers ("ETCs") in Puerto Rico, identified some consumers who were receiving more than one telephone service with Lifeline support

(duplicate service),[1] and has directed TracFone and other ETCs to de-enroll those consumers with duplicate service and bar those consumers from Lifeline service from any provider for four months or one year. TracFone requests that the FCC "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."[2]

The National Association of State Utility Consumer Advocates ("NASUCA")[3] agrees with TracFone that the FCC should issue a declaratory ruling.[4] NASUCA recommends that the FCC: 1) rule that Puerto Rico consumers who are eligible for Lifeline be allowed to maintain one Lifeline service per household, even if the consumer had received duplicate Lifeline service previously, and 2) clarify that states that might operate their own systems to identify duplicate service must incorporate safeguards to allow eligible consumers to receive one Lifeline service per household going forward as a condition of opting out of the federal duplicate resolution and accountability process.

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[1] TracFone Wireless, Inc. Petition for Declaratory Ruling at 2-3(filed Feb. 22, 2012). TracFone states that Puerto Rico Board identified consumers receiving Lifeline service from more than one ETC and some households receiving more than one Lifeline service.

[2] Id., at 1.

[3] NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[4] NASUCA represents the interests of both consumers who receive Lifeline telephone service and all other consumers who contribute to support the federal universal service fund. NASUCA's support for TracFone's request for emergency relief should be considered as support for consumers.

II. COMMENTS

A. Introduction

NASUCA acknowledges that the Puerto Rico Board's position has yet not been presented directly to the FCC and public. The letter sent by the Puerto Rico Board to TracFone cites to a "Provisional Amendment of the Universal Service Regulation (Regulation #8093)" as the basis for the Puerto Rico Board's action.[5] NASUCA is concerned, however, that the Puerto Rico Board's barring consumers identified as having had duplicate service is contrary to federal universal service policy. In particular, the Puerto Rico Board's approach denies otherwise eligible Lifeline consumers the federal benefit of one Lifeline service per household by barring the consumer all Lifeline support, contrary to the FCC's new regulatory framework established by the Lifeline Reform Order.[6] NASUCA submits that clarification by the FCC is needed to assure that measures taken by the Puerto Rico Board, or other state commissions, to prevent fraud, waste and abuse of the federal Universal Service Fund ("USF") do not improperly result in the complete loss of federal support for Lifeline eligible consumers.

B. The Puerto Rico Board's Resolution Of Duplicate Service Issues Is Contrary To Universal Service Policy

When an ETC provides an eligible consumer with Lifeline telephone service the consumer is the direct beneficiary, by receiving telephone service made more affordable

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[5] See TracFone Petition, Att. 1, 2. Section 254(f) of the 1996 Telecommunications Act provides in part that "[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." 47 U.S.C. § 254(f).

[6] In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Report and Order and FNPRM (rel. Feb. 6, 2012)(Lifeline Reform Order), 76 Fed.Reg. 12952 (Mar. 2, 2012) effective 30 days after publication or as otherwise specified.

with federal USF support. Federal universal service policy recognizes, however, that the benefits of Lifeline telephone service are broader. As the FCC explained in May 1997:

> Universal service support mechanisms that are designed to increase subscribership by keeping rates affordable will benefit everyone in the country, including those who can afford basic telephone service. At the simplest level, increasing the number of people connected to the telecommunications network makes the network more valuable to all of its users by increasing its usefulness to them. Increasing subscribership also benefits society in ways unrelated to the value of the network per se. For example, all of us benefit from the widespread availability of basic public safety services, such as 911.[7]

The Puerto Rico Board's action of barring certain consumers from receipt of Lifeline telephone service will impact more than just those consumers and their households. The impact is undoubtedly broader, as the low income consumers may lose all telephone service or have more limited access to telephone service. Lower telephone subscription reduces the value of the Nation's communication network to other consumers. Further, the ability of the public safety responders to provide service and respond to a consumer in need is also impaired. The Puerto Rico Board's determination that a household that has received duplicate Lifeline service should be barred from receipt of any Lifeline telephone service for a period of time conflicts with the core goals of federal universal service policy.

C. The Puerto Rico Board's Resolution Of Duplicate Service Issues Conflicts With The Federal Framework Which Allows Consumers To Maintain A Single Lifeline Service

In balancing the goals of federal universal service policy with the need to protect the federal USF from fraud, abuse and waste, the FCC has developed a policy to screen

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[7] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 8 (rel. May 8, 1997).

Lifeline subscriber lists for duplicates and then inform the identified consumer of the need to select only one Lifeline service. The Universal Service Administrative Company ("USAC") plays a key role in this process for identification and resolution of such duplicate service matters. In June 2011, the FCC released its Duplicative Program Payments Order, which established procedures for USAC to identify consumers in receipt of duplicative Lifeline service, to provide notice to the consumer of the need to select only one Lifeline service, and in the absence of an affirmative choice by the consumer to select one Lifeline service to allow service for the consumer to continue. USAC would then provide notice to the ETC(s) not selected by the consumer of the need to de-enroll the consumer from Lifeline service. As the FCC explained, "we do not require a total termination of Lifeline discounts to the consumer in this situation, as the consumer will be permitted to maintain a single Lifeline service with one of the ETCs."[8] In this way, the Lifeline consumer would continue to receive Lifeline support, which is sufficient to promote universal service, but not more.

Through the Lifeline Reform Order, the FCC has committed to implement "a National Accountability Database to detect and prevent duplicative support" in the Lifeline program.[9] Once the database is operational, the FCC has directed "USAC to identify those subscribers currently receiving duplicative support and resolve those claims for duplicative support pursuant to a 'scrubbing process.'"[10] The FCC has further directed "USAC to implement a process to mitigate the risk that consumers are improperly denied access to Lifeline benefits" as well as "a dispute resolution process for

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[8] Lifeline and Link Up Reform and Modernization, Report and Order, ¶¶ 7, 13,WC Docket No. 11-42, et al., 26 FCC Rcd 9022 (rel. June 21, 2011) ("2011 Duplicative Program Payments Order").
[9] Id., ¶ 179.
[10] Id., ¶ 185.

managing duplicative claims."[11] While the FCC seeks to implement automated processes to screen and guard against waste, the FCC has recognized the need for an exceptions process administered by USAC "so that consumers are not improperly denied access to Lifeline benefits," as in the case of a household address not recognized by the U.S. Postal service.[12] The FCC has also directed USAC to implement a "scrubbing process" modeled on the June 2011 duplicative support resolution process. Thus, the process for resolving duplicate service will include "notice to the subscriber that they will be de-enrolled from all Lifeline support except for support from their default provider unless they override their default selection, and provide the subscribers the means to do so."[13] Finally, the FCC has recognized that despite best efforts, "it is possible that some subscribers and prospective subscribers may be improperly identified as receiving or applying for duplicative support."[14] A Lifeline consumer switching from one ETC to another might appear to have duplicate service if data is not timely entered.[15] USAC is directed to implement a dispute resolution process to manage and resolve such disputes.

Based on the information available, the Puerto Rico Board's duplicate Lifeline service resolution process does not include these necessary protections to assure that the Lifeline eligible consumer receives one Lifeline service with federal support. NASUCA submits that even if the duplicative review process identifies a consumer with duplicate service, it is not possible to determine whether the Lifeline consumer has more than one

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[11] Id., ¶ 210.
[12] Id., ¶¶ 213, 214.
[13] Id., ¶ 216.
[14] Id., ¶ 217.
[15] Id.

Lifeline service due to mistake or intent.[16] Thus, the FCC has developed a process that requires de-enrollment of all duplicative Lifeline service but allows one Lifeline service to remain, either chosen by the consumer or through a default process administered by USAC.

NASUCA is also concerned that the Puerto Rico Board has directed TracFone, and possibly other ETCs, to bar certain consumers from receipt of Lifeline service for four months or a year based solely on the results of a comparison of Lifeline subscriber lists.[17] Through the Lifeline Reform Order, the FCC has strengthened outreach and consumer education and the process for determining consumer eligibility for Lifeline to "more effectively reduce both inadvertent and purposeful instances of waste, fraud and abuse."[18] The FCC has reserved the possibility of debarment from receipt of Lifeline as a potential consequence for false, sworn statements made as part of the revised Lifeline eligibility certification process.[19] The willful, unlawful conduct that might merit suspension or debarment cannot be discerned based solely on a comparison of the subscriber lists of ETCs offering Lifeline.[20]

A ruling by the FCC on whether the Puerto Rico Board's treatment of consumers identified as receiving duplicative Lifeline service is in conflict with federal universal service policy and the new federal framework established by the Lifeline Reform Order is

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[16] Id., ¶ 115. For example, the FCC has expressed concern "about messages ETCs use when marketing Lifeline supported services that may mislead consumers and increase waste, fraud, and abuse." Id., ¶ 271.
[17] TracFone Petition at 3, 9.
[18] Lifeline Reform Order, ¶ 115, see also ¶¶113-119, 271-282.
[19] Id., ¶¶ 115, 275, see also fn. 314; revised 47 C.F.R. § 54.410(d)(1)(i) (eff. Apr. 2, 2012). Section 54.8 of the FCC's universal service regulations allows for suspension or debarment from receipt of universal support for cause, such as fraud, embezzlement, false statements, and other criminal actions, subject to a process which includes notice. 47 C.F.R. § 54.8(b), (c), (e).
[20] 47 C.F.R. § 54.8. Section 54.8 describes the causes and procedure for federal suspension or debarment, which includes notice.

needed. NASUCA submits that an FCC ruling is needed to protect the interests of Puerto Rico low income consumers who should be allowed to receive one Lifeline service per household, regardless of past duplicate service, in the absence of an affirmative showing of willful, unlawful conduct.

D. The FCC Should Clarify That Any State Which Seeks To Opt Out Of The Federal Framework For Identification And Resolution Of Duplicate Service Must Employ Equivalent Safeguards To Assure Access To One Lifeline Service Per Household

An FCC ruling is also needed to provide guidance to all state commissions. While the FCC has mapped out the development of a National Accountability Database and specific safeguards to assure that consumers are able to obtain and keep only one Lifeline service per household, the FCC will "allow states to opt-out of the duplicates database requirements outlined in this Order" based on a state certification that the state's comprehensive system is "at least as robust as" the FCC's process for identifying and reducing duplicate support.[21] The FCC should clarify that those state systems must mirror not only the functional capabilities of the national database system but also incorporate safeguards equivalent to those to be administered by USAC, as summarized above. Consumers should not be at greater risk for denial of Lifeline service or at risk of the loss of Lifeline service entirely under a state's system for screening consumer eligibility and resolving duplicate support cases, than under the FCC's system.

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[21] Lifeline Reform Order, ¶ 221. State certifications "must itemize with particularity each functionality of the state system that corresponds to the federal rule we adopt today and must be approved by the [Wireline Competition] Bureau." Id.

III. CONCLUSION

NASUCA recommends that the FCC enter a declaratory ruling as requested by TracFone that the directives to ETCs set forth by the Puerto Rico Board are unlawful and that the Puerto Rico Board may not implement the mandatory de-enrollment and deprivation of Lifeline benefits. NASUCA supports the grant of other relief as appropriate to assist Puerto Rico consumers impacted by the Puerto Rico Board's duplicate resolution process.

Respectfully submitted,

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