

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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
PR WIRELESS, INC. d/b/a OPEN MOBILE**

PR WIRELESS, INC. d/b/a OPEN MOBILE



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Summary

PR Wireless is supportive of efforts by the Commission, states, and the industry to develop mechanisms to ensure Lifeline is provided in accordance with applicable rules, including the prohibition against consumers receiving discounted services from multiple providers. However, the TRB's process for de-enrolling customers receiving support from multiple ETCs deprives many consumers of any Lifeline service, inappropriately punishes both consumers and ETCs, and it is utterly irreconcilable with the federal duplicate resolution process. Despite a series of 11th-hour fixes the TRB made after the Commission placed TracFone's filing on public notice, the damage has already been done: at the TRB's direction, hundreds or perhaps thousands of low-income consumers who would have kept one Lifeline discount under the federal process have already been deprived of any Lifeline discounts at all. Meanwhile, the TRB continues to withhold millions of dollars in state Lifeline reimbursements from PR Wireless (and from all other ETCs) – even though PR Wireless has consistently cooperated with the TRB and has fully complied with TRB rules by relying on signed certifications from consumers stating that they only received one Lifeline discount. It is worth noting that the TRB has for more than one year withheld *all* state Lifeline support, not just support associated with subscribers receiving Lifeline service from multiple providers.

The TRB has not demonstrated any unique circumstances in Puerto Rico that would justify substantially harsher treatment of consumers and ETCs than is provided under the FCC's rules and orders. For all of its references to "misconduct" by ETCs, the TRB provides no examples of carrier misconduct. Nor does the TRB even allege that a greater percentage of Lifeline subscribers in Puerto Rico receive multiple Lifeline discounts than in other states. Rather, there is every indication that the situation in Puerto Rico is substantially identical to that in other states – and can be addressed by application of the federal duplicate resolution process that was developed last year to be used in all states, including Puerto Rico.

Although the TRB's recent attempts to harmonize its procedures with federal law are welcome, much more is needed. For example, the TRB's recent orders still require customers to be de-enrolled in

the event multiple discounts are discovered in a household, contrary to the interim federal duplicate resolution process, which results in no such de-enrollment. Also, for cases where a customer receives Lifeline from multiple ETCs, the TRB's recent changes confusingly allow the customer to keep the discount that was applied first, "if so desired." It is unclear whether the consumer may choose the discount that was applied second, or if the choice is between one discounted service and no discounted service. Finally – inexplicably – the TRB continues to withhold all state Lifeline funding and has made no enforceable commitment to pay such reimbursements.

PR Wireless therefore submits that the FCC should meet with the TRB to discuss the need for further harmonization. This harmonization should include, without limitation, allowing customers to remain with the Lifeline provider of their choice, instead of being forced to "choose" the first discount that was provided or go without Lifeline service altogether. In addition, the TRB should commit to pay 100% of withheld state funding to ETCs and apply its Interim Rules on a prospective basis only, in keeping with time-honored legal principles. If the TRB does not commit to taking such steps, the FCC should issue a ruling that the federal duplicate resolution process will be applied in Puerto Rico. Application of the federal process, or a TRB process that is fully harmonized with the federal process, would serve the interests of consumers by ensuring that no consumer is deprived of all Lifeline service. Such a process would also serve the stated objectives of the TRB by ensuring the prompt and orderly de-enrollment of subscribers receiving more than one Lifeline discount in violation of program rules.

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PR Wireless Inc. d/b/a Open Mobile (“PR Wireless”), by counsel, and pursuant to the Federal Communication Commission’s (“FCC” or “Commission”) *Notice* released March 9, 2012,¹ hereby submits its reply to comments regarding the Emergency Petition for Declaratory Ruling and for Interim Relief (“Emergency Petition”) filed by TracFone Wireless, Inc. (“TracFone”). Initial comments were filed by the National Association of State Utility Consumer Advocates (“NASUCA”), the National Consumer Law Center (on behalf of several consumer groups) (“Consumer Groups”), Sprint Nextel Corporation (“Sprint”), T-Mobile USA, Inc. (“T-Mobile”), the Telecommunications Regulatory Board of Puerto Rico (“TRB”), and TracFone.

PR Wireless is strongly supportive of efforts by the Commission, states, and the industry to reduce the incidence of duplicate Lifeline subscribers. However the TRB, in implementing its new Lifeline policies, has failed to recognize certain complexities of the duplicate Lifeline problem – complexities which have been recognized at the federal level. For example, the causes for duplicate Lifeline subscriptions are many and include subscriber confusion regarding Lifeline rules and whether

¹ *Comment Sought on TracFone Wireless, Inc. Emergency Petition for Declaratory Ruling and Interim Relief*, Public Notice, WC Docket Nos. 11-42, 03-109; CC Docket No. 96-45 (rel. March 9, 2012)(“*Notice*”).

the services obtained are in fact supported by the Lifeline program.² For carriers, in the absence of a unified Lifeline subscriber database, it is impossible to know whether new or existing subscribers are receiving Lifeline supported services from other carriers.

Notwithstanding these recognized and widespread causes of duplicity which do not necessarily involve wrongdoing by either subscribers or carriers – the TRB’s Lifeline policies are largely based on a presumption of wrongdoing. As a result, the TRB’s solutions have tended to be punitive and to attack duplicity without providing safeguards that avoid unjustifiably cutting off service to customers. Accordingly, PR Wireless strongly urges a resolution to this matter whereby TRB would modify its Lifeline policies to more fully track federal policies. In the alternative, PR Wireless favors implementation of the federal Lifeline duplicate resolution process that has been successfully implemented in more than a dozen other states to date.

I. BACKGROUND AND INTRODUCTION

Since 2009, PR Wireless has been actively engaged with the TRB and supportive of reasonable efforts to prevent and resolve duplicate Lifeline discounts. PR Wireless has shared with the TRB the company’s policies and procedures for ensuring duplicate benefits are not provided to the same household or to the same subscriber and has described how its application and certification forms require customers to certify that they understand the one-per-household rule and that neither they nor another member of their household receives another Lifeline discount. Throughout 2010, PR Wireless fully cooperated with the TRB by responding to requests that it made to all Puerto Rico ETCs for information about compliance with the TRB’s rules restricting customers to one discount per household,

² See *Lifeline and Link Up Reform and Modernization et al.* Report and Order, WC Dkt. No. 11-42 *et al.*, 26 FCC Rcd 9022, ¶ 9 (2011) (“*Lifeline Duplicate Order*”) (“Some consumers may not adequately understand eligibility qualifications for Lifeline services, and may not understand that if they already subscribe to a Lifeline supported offering they may not subscribe to another such service. It may be important that potential subscribers be made aware of the fact that not all Lifeline services are currently marketed under the name ‘Lifeline.’”).

and by providing customer data to enable the TRB to check for inter-carrier duplicates. PR Wireless had several discussions with the TRB in which PR Wireless noted the importance of recognizing scenarios where multiple households have the same mailing address, and explained that without access to a centralized database, an ETC cannot possibly know whether a Lifeline customer is also receiving a subsidy from another provider. PR Wireless also requested guidance from the TRB on appropriate safeguards that should be implemented, and on ways to confirm whether a shared address meant multiple discounts within the same household.

In January 2011, the TRB issued a Resolution and Order (“January 2011 TRB Order”) announcing a comprehensive Lifeline monitoring plan that included audits of all ETCs to determine compliance with Lifeline rules. Although PR Wireless and other ETCs had explained to the TRB that they were in compliance with the TRB’s existing rules, the January 2011 TRB Order also announced that all Lifeline reimbursements – *even valid reimbursements for non-duplicates* – would be withheld pending determination of the extent to which support had been paid for duplicates. The TRB also provided subscriber listings to each ETC, identifying duplicate address listings and required that ETCs give the customers 60 days to present evidence that they were not duplicates or lose the benefit of Lifeline permanently.

In July 2011, the TRB adopted a set of interim rules providing that all customers found to be receiving multiple Lifeline discounts would be de-enrolled and barred from the program for one year, and barred permanently if they attempted to sign up within that period. Multiple ETCs filed motions for reconsideration on several grounds, including lack of administrative rulemaking procedures. PR Wireless argued, among other things, that the TRB’s interim rules violated the FCC’s June 2011 *Lifeline Duplicate Order*, which established an Interim Duplicate Resolution Process (“IDRP”) – with important

consumer safeguards, including the critical assurance that each consumer would retain one Lifeline discount – to be applied in all states.

In late 2011, several ETCs, including PR Wireless, appealed the TRB’s Lifeline duplicate orders in state court. Although the court initially suspended the TRB’s duplicate de-enrollment actions, the TRB responded by submitting to the court a set of “emergency interim rules” virtually identical to those adopted in July 2011 after obtaining the Governor’s signature providing emergency authorization. Finding that the interim rules were valid, the state court dismissed the appeals as academic.

Finally, in January, February, and March, 2012, the TRB sent a series of letters to ETCs, including PR Wireless, with instructions to de-enroll customers who were found to be receiving duplicative Lifeline service in violation of the restrictions against more than one discount per individual and one discount per household. The letters were accompanied by CDs with lists of customers identified as duplicates as well as a template de-enrollment notification letter the ETCs were required to send to the identified customers.

The TRB has continued to withhold millions of dollars in state Lifeline reimbursements. As of February 29, 2012, approximately \$7.7 million has been withheld from PR Wireless. In the meantime, to ensure continued service to its Lifeline customers, PR Wireless has continued to provide service at the same discounted levels.

II. DISCUSSION

A. The TRB Has Not Demonstrated a Need for Duplicate Resolution Measures That Are Significantly Harsher Than Federal Procedures.

In sharp contrast to the federal IDRPs, the TRB’s measures against Lifeline duplicates have effectively criminalized the provision of Lifeline by multiple ETCs to the same subscriber. Rather than ensure that a customer can continue to receive one discount, the TRB’s interim rules bar the customer

from receiving Lifeline for a year, and in some cases for life. Although PR Wireless and other ETCs have explained that an ETC cannot know whether another ETC is already providing a discount to the same subscriber, the TRB has indicated that it is referring the issue to “appropriate state and federal authorities” and that it is planning to issue an order to show cause, which could lead to a number of possible sanctions including revocation of ETC status and the imposition of fines up to \$25,000 per violation.

The TRB makes no attempt to explain how the incidence of Lifeline duplicates in Puerto Rico is so different from the situation in the rest of the country that it justifies the draconian approach described above. On the contrary, the circumstances surrounding Lifeline duplicates in Puerto Rico are similar to those in other states. According to the Commission’s recent Lifeline Report and Order, “[t]here is currently no mechanism for an ETC to verify, on its own, whether a prospective subscriber is receiving Lifeline benefits from another ETC because ETCs cannot view each other’s subscriber lists.”³ And as Commissioner Clyburn explained in her separate statement, duplicate Lifeline discounts arise from a multiplicity of causes:

This is primarily a result of more competition and the lack of a nationwide database to ensure that individual low-income consumers aren’t signed up twice. In addition, there has been some confusion about the program’s requirements, and not just among the consumers, but also with the service providers. Consumers haven’t been properly educated about the program’s rules, or even understood which services are Lifeline-subsidized, as evidenced by the consumer reaction during last year’s duplicate resolution process, when many were surprised and dismayed by the letters they received from USAC.

Although the TRB makes broad allegations of carrier “misconduct,” it does not describe the specific conduct it alleges or explain how it would differ from the overall difficulties described by the Commission in its *Lifeline Reform Order* and Commissioner Clyburn in her separate statement.

³ *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45, FCC 12-11 (rel. Feb. 6, 2012) (“*Lifeline Reform Order*”) at ¶ 180.

While the orders attached to the TRB’s comments refer to an “alarming” incidence of Lifeline duplicates, the TRB does not quantify the duplicate rate or even suggest that it is substantially different from the incidence nationwide.⁴ Moreover, there is no evidence that the state Lifeline program has been disproportionately burdened by Lifeline duplicates compared to other states. As the TRB notes in the Resolution and Order attached as Exhibit B to its Comments, the TRB launched its inquiry into duplicates “after noticing a rapid rise from 2010 in the number of subscribers to the Fund[.]” However, it is notable that PAN – one of the assistance programs under which consumers may qualify for Lifeline in Puerto Rico – experienced a nearly 20% increase in eligible families, from 544,387 families in 2009 to 643,491 in 2011.⁵ This was due in part to the worsening economy, but another reason was that in 2009 the PAN eligibility criteria were significantly broadened: a family of four could qualify with a net income of \$1,100 per month, whereas the previous threshold was \$500.⁶

There is no suggestion, in the TRB’s comments or orders, that the reasons for Lifeline duplicates in Puerto Rico are different from what has occurred on the U.S. mainland. Accordingly, there is no evidence that the federal duplicate resolution process would not sufficiently address the issue of duplicates in Puerto Rico, as it has elsewhere.

B. The TRB’s De-enrollment Process Is Inconsistent with Federal Procedures.

In several important respects, the TRB’s de-enrollment procedures are inconsistent with applicable federal rules and orders. While the TRB has partially addressed those inconsistencies by adopting changes to those procedures after TracFone filed its Emergency Petition, additional measures are needed in order to harmonize those procedures with federal law.

⁴ See Letter dated Jan. 10, 2012 from Karen Majcher, Vice President, USAC High Cost and Low Income Division, to Sharon Gillett, Chief, Wireline Competition Bureau (finding, among other things, that of more than 3.6 million subscribers reviewed, approximately 269,000, or 7%, received Lifeline discounts from more than one ETC).

⁵ “PAN Users Up 20%, Economy Blamed,” PUERTO RICO DAILY SUN, May 24, 2011, at p. 5.

⁶ *Id.*

As TracFone correctly notes in its initial comments, the resolution of Lifeline duplicates is currently governed by the interim procedures that the Commission established in its *Lifeline Duplicate Order* of June 21, 2011.⁷ That *Order* set forth a process to be used “in any state” to resolve duplicates both between carriers and within a carrier’s own subscriber base. The *Order* adopted a rule that only one Lifeline discount may be provided per subscriber. The rule is enforced through a two-track process: Track 1 for instances where the same subscriber receives discounts from multiple providers, and Track 2 for instances where different individuals at the same address receive a discount.⁸ For Track 1, USAC sends a letter informing the subscriber that he or she has 35 days to choose one provider or have one assigned by random selection. The ETC that is not chosen by the customer or by default is then informed by USAC that it must de-enroll the customer. After de-enrollment, the ETC is no longer entitled to receive reimbursement for that subscriber. Key to the federal process is the Commission’s ruling that “unlike the process of de-enrollment for reasons of ineligibility that is currently in place under section 54.405(c), the rule we adopt today is not an ultimate termination of all Lifeline support.”⁹

The TRB’s duplicate de-enrollment process is not consistent with the federal procedures. Some of the more glaring inconsistencies are set forth in Table 1 below:

⁷ See *Lifeline Duplicate Order*, *supra*.

⁸ See Letter from Sharon Gillett, Chief, Wireline Competition Bureau, to D. Scott Barash, Acting C.E.O., USAC, DA 11-1082 (June 21, 2011).

⁹ See *Lifeline Duplicate Order*, *supra*, 26 FCC Rcd at 9031.

Table 1: Inconsistencies Between TRB process and Federal Interim Process

Federal Process	TRB Process
For inter-carrier duplicates, customer can choose provider or be assigned one by default.	Customer must be de-enrolled by both providers and may be subject to a fine up to \$1,000.
For household duplicates, no de-enrollment; USAC is directed to provide data to the FCC.	Customers must be de-enrolled and may be subject to a fine up to \$1,000.
Customer is permitted to retain one subsidy.	Customer barred from receiving Lifeline for 1 year; if customer attempts to re-apply, then barred for life.
Company receives funds up to date of de-enrollment.	All company disbursements for a given month are withheld pending resolution of duplicates, putting continued provision of Lifeline service at risk.

Although the new rules concerning the nationwide Lifeline Accountability Database and associated procedures are not yet effective, the TRB’s process is not consistent with those rules, either. As explained in NASUCA’s comments, the TRB’s procedures lack several critical safeguards that were adopted as a result of the Commission’s Lifeline Reform and Modernization proceeding.¹⁰

C. The Recent Changes to the TRB’s Procedures Are Welcome, but Not Sufficient.

The TRB’s recent changes to its process are a step in the right direction. At the February 17 Meeting, the TRB determined that the period of debarment would be reduced from one year to four months. The TRB’s Comments also hint that it is considering doing away with the debarment rule altogether. In addition, in the Resolution and Order attached as Exhibit C to its Comments, the TRB

¹⁰ See NASUCA Comments at 5-7. The Commission’s recently adopted rules provide that the federal duplicate database and associated procedures will not apply in a state that successfully requests an “opt out” exemption that makes certain demonstrations. Since neither the new Lifeline database procedures nor the “opt out” rule is yet effective, we will not comment on the inconsistencies between the TRB’s procedures and the new federal procedures at this time. Such inconsistencies will be addressed in the event the TRB files an “opt out” request.

ruled that in the case of a duplicate, the subscriber may keep the earlier of the two discounts if they so choose.

These are positive changes. Four months is less severe than a one-year debarment, and if the TRB ends up eliminating debarment altogether (or maintaining it for certain exceptional cases where intent to defraud is proven), then a major punitive measure for consumers would be removed. In addition, the decision to permit subscribers to keep one Lifeline-discounted phone is similar to the FCC's interim process as well as the rules that are soon to take effect.

However, more is needed in order to harmonize the process in Puerto Rico with that employed at the federal level. For example, the TRB's procedures continue to require the de-enrollment of customers where Lifeline discounts are provided multiple subscribers at the same address. This is contrary to the Commission's *Lifeline Duplicate Order*, which only allows de-enrollment when multiple discounts are provided to the same subscriber. The TRB should refrain from requiring de-enrollment in such cases until the national Lifeline Accountability Database is implemented or the TRB makes a successful "opt out" request.

Moreover, the current procedures are highly confusing for consumers. For example, the TRB's recent decision states that in the event an inter-carrier duplicate is discovered, "the customer can remain with the service to which the subsidy was first applied, if so desired."¹¹ It is unclear whether "if so desired" means that the consumer is allowed to choose between the first provider and the later provider, or if the choice is between the first provider and receiving no discount at all. To minimize customer confusion, the TRB should conform to the federal procedures by, among other things, sending correspondence to such customers informing them that they must choose a provider within 35 days or be assigned one through a random process.

¹¹ See TRB Comments at Appendix C.

Lastly, the TRB's recent changes do nothing to alleviate the unjustified criminalization of Lifeline duplicates, notwithstanding the complex causes of various forms of duplicates. As discussed above, PR Wireless has been supportive of efforts to eliminate duplicate discounts and complied in good faith with the TRB's interim rules. Carriers have no way to determine during the intake process whether an applicant is already receiving discounted service from another provider. There is no indication that the incidence of duplicates in Puerto Rico has been caused by factors other than those that gave rise to the FCC's IDRPs or the recently adopted duplicate database rules. Accordingly, the TRB should conform its process to the federal IDRPs and refrain from referring cases for criminal investigation or initiating proceedings targeting ETCs for revocation of ETC status or other penalties.

D. If the TRB Process Cannot Be Harmonized With Federal Rules, the Commission Should Rule that the Federal Procedures Apply to Puerto Rico.

Absent further changes to the TRB's duplicate de-enrollment procedures, those procedures will place ETCs and consumers in Puerto Rico in an untenable position. The continued policy of debarment for at least four months will deprive many eligible low-income consumers of the ability to legitimately receive discounted telephone service. Customers will be, and indeed have already been, confused by the ambiguous de-enrollment communications mandated by the TRB. And the continued provision of both federal and state Lifeline service will be jeopardized if the TRB continues to withhold all funds and proceeds with its stated plans to investigate and potentially punish ETCs.

PR Wireless submits that the FCC should reach out to the TRB and discuss ways to harmonize the TRB's process with the federal process. If the TRB does not agree to remedy the defects in its current process and harmonize it with the federal procedures, PR Wireless submits that the FCC should make a declaratory ruling, as requested by TracFone, that the TRB's process is inconsistent with federal procedures. Upon such a ruling, PR Wireless suggests that the FCC direct USAC to initiate an IDV in Puerto Rico aimed at eliminating duplicates from the ETCs' current subscriber bases.

This does not rule out the TRB applying a Puerto Rico-specific process in the future. If the TRB submits an “opt out” certification that incorporates the safeguards set forth in the FCC’s recently adopted rules, then PR Wireless would be supportive of this approach.

III. CONCLUSION

Virtually all of the initial commenters agree that the TRB’s duplicate de-entrollment process does not fulfill the FCC’s universal service objectives. The TRB process deprives many consumers of any Lifeline service, inappropriately punishes both consumers and ETCs, and it is simply not consistent with the federal duplicate resolution process. The TRB has not has not demonstrated any unique circumstances in Puerto Rico that would justify substantially harsher treatment of consumers and ETCs than is provided under the FCC’s rules and orders. PR Wireless supports the TRB’s recent moves to harmonize its procedures with federal law, but more is needed. PR Wireless therefore suggests that the FCC discuss the need for further harmonization steps with the TRB, and if the TRB does not commit to taking such steps, grant the relief requested in TracFone’s Emergency Petition as set forth above.

Respectfully submitted,

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