

**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)	

**COMMENTS OF TRACFONE WIRELESS, INC.
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

The Commission, as part of its continued effort to reform and modernize the Lifeline program funded by the Universal Service Fund (“USF”), issued a Further Notice of Proposed Rulemaking (“Notice”) seeking comment on various issues and proposals to revise the rules governing that program. The Commission directed the Wireline Competition Bureau and the Universal Service Administrative Company to establish an automated means to determine Lifeline eligibility for the three most common programs through which consumers qualify for Lifeline. TracFone supports the use of funds from the USF to assist states in implementing eligibility databases because providing ETCs with access to such databases will facilitate enrollment and thereby provide low-income consumers with access to affordable telecommunications service, a primary goal of universal service. TracFone opposes conditioning receipt of Lifeline funds on state implementation of an eligibility database because it could result in loss of Lifeline benefits to low-income consumers. TracFone also requests the Commission not to allow full certification to remain in place any longer than necessary.

TracFone encourages the Commission to implement a uniform flat rate Lifeline support amount that will allow ETCs to provide a meaningful benefit to low-income households and to allow a household to split the Lifeline discount across two lines or between a wireless and wireline Lifeline service. TracFone supports the Commission’s proposal to allow ETCs to receive Lifeline support from the USF only when they provide Lifeline service directly to subscribers. The Commission wisely seeks to place responsibility for compliance with Lifeline requirements on the entity that provides the Lifeline service and that has the most contact with, and knowledge about, the end users. TracFone also agrees with the Commission’s proposal to limit ILECs’ resale obligation to offering their retail services at a wholesale rate that does not

already incorporate a Lifeline discount as a means to ensure that non-ETCs do not indirectly receive Lifeline support. TracFone commends the Commission's efforts to ensure that the Lifeline program reaches those households that can benefit the most from the Lifeline program and supports the expansion of Lifeline eligible groups to include participants in the Supplemental Nutrition Assistance Program for Women, Infants, and Children and homeless veterans programs.

Given that the market for Lifeline service is highly competitive ETCs should be permitted to develop Lifeline plans that contain features that they believe will meet the needs of Lifeline-eligible consumers. ETCs should not be required to offer Lifeline plans that include bundled service or certain calling features. TracFone stresses that for purposes of meeting the facilities requirement in 47 U.S.C. § 241(e)(1)(A), the facilities must be used to provide USF-supported service in the state where ETC designation is sought. Moreover, the requirement for an ETC to use facilities to provide USF-supported services (absent forbearance) should continue throughout the time that the ETC is offering USF-supported services. TracFone asks the Commission to reconsider its position that a carrier's reliance on unbundled network elements is sufficient to meet the facilities requirement in 47 U.S.C. § 214(e)(1)(A).

TracFone supports AT&T's proposal that incumbent wireline ETCs be allowed to choose whether to participate in the Lifeline program. The Commission and the state commissions have authority to designate carriers as ETCs for Lifeline only, as well as authority to designate carriers as ETCs only for purposes of receiving high cost support. Finally, TracFone supports the Commission's proposal to increase the time period for which ETCs must retain records so long as any new requirement is imposed solely on a prospective basis.

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TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its comments in response to the further notice of proposed rulemaking issued in the above-captioned proceedings.¹ In the Report and Order issued concurrently with the Notice, the Commission adopted a series of reforms related to the Lifeline program funded by the Universal Service Fund (“USF”). In the Notice, the Commission seeks comment on various issues and proposals to continue its goal of further reforming and modernizing the Lifeline program. TracFone, as the nation’s leading provider of wireless Lifeline service, has substantial experience meeting the needs of low-income individuals through its SafeLink Wireless® Lifeline service, now serving low-income households in 37 states. As a result, TracFone has a significant interest in many of the proposals set forth in the Commission’s Notice.

¹ Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“Lifeline Reform Order” or “Notice”).

I. The FCC Should Promptly Establish a Database to Enable Eligible Telecommunications Carriers to Verify Consumers' Initial and Ongoing Eligibility for Lifeline on a Real Time Basis.

In the Lifeline Reform Order, the Commission directed the Wireline Competition Bureau (“Bureau”) and the Universal Service Administrative Company (“USAC”) to “take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline.”² In the Notice, the Commission seeks comment on various issues to provide the Commission with sufficient information to implement an eligibility database. TracFone fully agrees with the Commission’s decision to adopt a widespread automated means of verifying Lifeline program eligibility. In addition, TracFone supports the Commission’s goal of accelerated deployment of state databases that can be used to streamline Lifeline eligibility determinations and encourages the Commission to adopt a means to require states to promptly implement eligibility databases.

The Commission seeks comment on whether funds from the USF can be used to assist states in implementing their own eligibility databases or facilitating the transfer of data to a national database. Some state social services agencies that administer the primary public assistance programs that qualify low-income consumers for Lifeline benefits (i.e., Medicaid, Supplemental Nutritional Assistance Program (“SNAP”), and Supplemental Security Income (“SSI”)) already maintain data regarding which individuals currently participate in those programs. Therefore, those social services agencies should only need to develop a means whereby ETCs can query the data that is currently maintained. The costs associated with developing an interface for ETCs to access existing databases should be minimal. One option for

² Lifeline Reform Order, ¶ 223.

funding is for ETCs to pay the social services agencies a small fee for each query. Some social services agencies do not have existing databases that can interface with ETCs' systems. In those situations, significant funding will be necessary to create or modify databases. Similarly, the creation of a centralized national database will entail substantial costs. An eligibility database, in addition to ensuring that only Lifeline-eligible consumers are approved for Lifeline benefits, will streamline the enrollment process for consumers. Consumers will be able to learn more quickly, preferably on a real time basis, whether their application for Lifeline is approved, and therefore, can commence receiving valuable Lifeline benefits without delay. Providing funds from the USF to assist states with making databases accessible to ETCs or with transferring data to a national database so that the enrollment process can become more accurate and efficient, is consistent with the principles of universal service which include providing low-income consumers with access to affordable telecommunications service.³ The Commission may decide to assist states with establishing a means for ETCs to access social services agencies' databases to check eligibility or a means for such agencies to transfer data to a national database.

The Commission also asks whether it should condition receipt of federal Lifeline funds on state implementation of an eligibility database. TracFone agrees with the Commission that a widespread eligibility database would ensure that only eligible consumers receive Lifeline benefits and supports efforts by the Commission to encourage states to take all actions necessary to implement eligibility databases that are accessible to ETCs. However, TracFone cautions the Commission against imposing any conditions on states that would result in loss of Lifeline benefits to low-income consumers. Conditioning receipt of federal Lifeline funds on state implementation of an eligibility database will cause states to either fund the Lifeline program

³ 47 U.S.C. § 254(b)(3).

solely through state funds or terminate state Lifeline programs, thereby denying low-income residents of the states benefits to which they are entitled by statute.⁴

The Commission asks for comment on several aspects of an eligibility database, including whether there should be one national database or separate state databases, privacy concerns, and the content of the database. A single national database is more efficient in that ETCs would only need to be trained to use one database. In contrast, if each state has its own eligibility database or a separate database for each program that qualifies a consumer for Lifeline benefits, then ETCs would need to learn how to access each of those databases. While a centralized database containing information from all social services agencies would be most efficient, TracFone also supports the maintenance of separate databases by the relevant social services agencies as long as each such database enables ETCs to quickly and accurately check applicants' eligibility.

Privacy concerns associated with allowing ETCs to access eligibility databases could be allayed by limiting database access to indicating to ETCs whether applicants are Lifeline-eligible with a yes or no response, and requiring ETCs to maintain the confidentiality of that response. ETCs can certify whether an individual applicant is eligible for Lifeline by querying the relevant database; ETCs do not need to have access to an entire database. For example, in Washington, the Department of Social and Health Services ("DSHS") provides wireless ETCs, including TracFone, with access to its Beneficiary Verification System ("BVS"), an online interactive interface with DSHS's system. Authorized users provide an applicant's 9-digit DSHS client ID or the combination of the applicant's full name and Social Security number, and then the BVS confirms whether the customer is receiving one of the nine qualifying public assistance programs

⁴ See id.

administered by DSHS. Thus, authorized ETC users are able to query the BVS with information provided by the applicant, but only receive a limited response from BVS indicating whether or not the applicant participates in a qualifying program. The Washington model is administratively efficient and limits ETCs' access to the minimum information necessary for ensuring that Lifeline applicants are eligible to receive Lifeline benefits.

In certain jurisdictions that already allow ETCs to access eligibility databases, such as Maryland, ETCs are required to execute confidentiality agreements as a condition of accessing state databases to confirm Lifeline enrollment eligibility. TracFone believes that is an appropriate and reasonable requirement for access to a state database. In addition, Lifeline application forms should advise Lifeline applicants that the ETCs will use information provided on the form to verify Lifeline eligibility by checking whether the applicants receive benefits from the Lifeline-qualifying programs they identify on their applications.

Although privacy concerns associated with eligibility databases can be resolved through restricted access to eligibility databases, confidentiality agreements between ETCs and relevant social service agencies, and by providing notice to Lifeline applicants, Lifeline applicants do have legitimate privacy concerns regarding disclosure of full Social Security numbers on Lifeline applications. The Lifeline Reform Order requires each Lifeline applicant to provide his or her name, address, telephone number, date of birth, and last four digits of the Social Security number on the Lifeline application form. As part of the national accountability database, established by the Commission in the Lifeline Reform Order to ensure that each household only receives one Lifeline benefit, the Commission required the accountability database to have the capability of performing an identification verification check when an ETC or third party submits a query to the database about a potential consumer. In TracFone's experience, the last four digits of the

Social Security number, together with the name, address, and date of birth, provide sufficient information to enable an ETC or a third party to verify the identity of an applicant. The same information should also be sufficient to query an eligibility database to confirm an applicant's participation in a Lifeline-qualifying program. Requiring Lifeline applicants to disclose full Social Security numbers would needlessly compromise applicants' privacy rights and expectations and is not necessary to accurately verify eligibility. In addition, in the interest of administrative efficiency, TracFone recommends that all eligibility databases be based on the same data points (i.e., name, address, date of birth, and last four digits of the Social Security number).

TracFone agrees with the Commission's recommendation that eligibility databases initially focus on the three programs through which most consumers qualify for Lifeline (i.e., Medicaid, SNAP, and SSI). The ability to verify eligibility for the majority of Lifeline applicants by accessing a database will vastly increase the accuracy and efficiency of the enrollment process, thereby allowing qualified low-income consumers to receive Lifeline benefits without delay. TracFone's only concern with the Commission's decision to establish an eligibility database or databases is the timing of the implementation and the eligibility verification process when a Lifeline applicant relies on a program other than Medicaid, SNAP or SSI for Lifeline qualification.

In the Notice the Commission directs the Bureau and USAC to take actions to ensure that there is an automated database to determine Lifeline eligibility for the three most common programs by no later than the end of 2013. Commencing June 1, 2012, and until such time that an eligibility database is available, ETCs must use full certification to verify the eligibility of all

applicants.⁵ Moreover, even after an eligibility database is available, ETCs will need to use full certification to verify the eligibility of applicants who rely on Lifeline-qualifying programs that are not included in an eligibility database.

In its Petition for Reconsideration filed with the Commission on April 2, 2012, TracFone explains in detail why the Commission should reconsider full certification of initial Lifeline eligibility for all situations in which an eligibility database is unavailable. TracFone will not repeat those arguments here, but notes that in its experience, full certification is extremely burdensome to applicants who often do not have the required documentation of program-based eligibility readily available, and when available, many applicants lack any effective means to deliver such documentation to their chosen ETC in a timely manner. Such consumers rarely have access to facsimile machines, scanners or copiers, as well as to computers connected to the Internet. TracFone has found that full certification of initial eligibility discourages enrollment. For example, in Louisiana, a self-certification state, 71 percent of customers who contact TracFone about Lifeline complete the enrollment process. In Missouri, a full certification state, that number is 32 percent. TracFone has learned from experience that mandatory full certification profoundly reduces Lifeline enrollment by those low-income consumers who benefit from the free or discounted service offered through the Lifeline program. Moreover, there is no correlation between full certification and a reduction in fraudulent enrollment.

⁵ As used herein, full certification refers to the requirement that Lifeline applicants seeking to demonstrate their eligibility for Lifeline support based on enrollment in qualifying programs must provide to their ETCs documentation that that they are enrolled in the qualifying programs. Simultaneously with the filing of these comments, TracFone has petitioned for reconsideration or clarification of certain aspects of the Lifeline Reform Order. In that reconsideration petition, TracFone has asked the Commission to reconsider its decision to require full certification commencing June 1, 2012 in states where ETCs do not have access to state eligibility databases.

The case of Wisconsin is particularly instructive. On August 5, 2011, the state validation database, Wisconsin CARES, was taken down for maintenance issues. The Wisconsin Public Service Commission authorized ETCs to use self-certification during the period CARES was unavailable on the condition that all customers enrolled were checked when CARES access was restored. When full CARES access was restored in February 2012, TracFone began the review of the interim self-certifications and validated 86.5 percent the self-certifications through the CARES database. In addition, many of the applications that were not validated may have been from eligible customers who qualified under programs not included in CARES or who qualified based on income. Therefore, the actual level of eligible subscribership was likely even higher. Full certification imposes a significant obstacle to consumers seeking to enroll in the Lifeline program and to ETCs that want to serve those consumers, while not addressing any tangible problem with self-certification.

For purposes of these comments, TracFone requests the Commission to consider the impact on low-income consumers of a full certification requirement. In particular, if the Commission does not reconsider its decision to adopt full certification, then the Commission should not require full certification, which is an impediment to qualified low-income consumers' ability to enroll in Lifeline, any longer than necessary. Therefore, it is extremely important that eligibility databases for all Lifeline-qualifying programs be in place as soon as possible. To the extent that full certification is required, TracFone opposes the suggestion of AT&T and Verizon that a third party administrator examine income and program documentation submitted by consumers and make a determination of eligibility. Using a third party administrator would unnecessarily compromise the privacy of Lifeline applicants.

II. Only Carriers Designated as ETCs by the Commission or a State Commission Should Be Permitted to Offer Lifeline Service.

The Commission proposes to allow ETCs to receive Lifeline support from the USF only when they provide Lifeline service directly to subscribers. TracFone supports this proposal because it ensures that the success of the substantial reforms established in this proceeding is not jeopardized. In this proceeding, the Commission expended significant effort to adopt reforms that “substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; [and] improve enrollment and consumer disclosures.”⁶ Those reforms cover various requirements, including Lifeline enrollment, certification of eligibility, and termination of Lifeline benefits for non-usage. A Lifeline service provider with a direct relationship with the Lifeline consumer is in the best position to ensure compliance with the rules governing Lifeline and is in the best position to know how many customers are receiving Lifeline. In contrast, an ETC that allows another carrier to resell its Lifeline service has no way to ensure that only qualified households are receiving Lifeline benefits or to track usage by Lifeline customers. Limiting Lifeline support to ETCs that have direct relationships with end users places responsibility for compliance with Lifeline requirements on the entity that provides the Lifeline service and that has the most contact with, and knowledge about, the end users. Given that the amount of Lifeline support is based on the number of Lifeline customers each month, the entity with responsibility for ensuring that those customers are initially qualified to receive Lifeline benefits, and continue to be qualified to receive those benefits, should be the only entity entitled to receive Lifeline support.

The Commission also proposes to re-examine its interpretation of Section 251(c)(4) of the Communications Act of 1934, as amended (“Communications Act”) (47 U.S.C. § 251(c)(4)),

⁶ Lifeline Reform Order, ¶ 1.

which provides that each incumbent local exchange carrier (“ILEC”) must “offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers,” Lifeline service is considered a retail service that ILECs must offer for resale at wholesale rates.⁷ In the Notice, the Commission acknowledges the problems inherent in allowing non-ETCs to resell ILECs’ Lifeline service. First, the Commission notes its concern that where both the wholesaler and reseller are ETCs there is a risk that both could seek reimbursement from the USF for the same subscriber. Second, the Commission states that non-ETC resellers of Lifeline service pose a risk because they are subject to less oversight by the Commission, state commissions, and USAC, than ETCs.⁸ The Commission raises valid concerns.⁹ The Commission proposes two possibilities for addressing its concerns with ILECs’ resale of Lifeline services. The Commission suggests reinterpreting 47 U.S.C. § 251(c)(4) to not require ILECs to resell their voice telephony services at a wholesale discount based on a retail rate that already has been further discounted by the amount of the Lifeline subsidy. Instead, ILECs’ resale obligation would be limited to offering their retail services at a wholesale rate. As a result, ETC-resellers can rely on ILECs’ service to provide Lifeline service and ETC-resellers, which have a direct relationship with Lifeline consumers,

⁷ See State-Federal Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, ¶ 370 (1997).

⁸ See Notice, ¶¶ 449-50.

⁹ Many of the state commissions which have designated TracFone as an ETC pursuant to 47 U.S.C. § 214(e)(2) have imposed various requirements and conditions on those ETC designations. Those state commissions imposed those requirements and conditions pursuant to their authority to make public interest determinations regarding ETC designation. Allowing resellers to avoid the state designation process and the imposition of conditions deemed necessary and appropriate by state commissions would result in some ETCs in a state being subject to state commission-imposed conditions while competing ETCs operating in the same state could avoid those state-imposed conditions.

could obtain support from the USF. As an alternative solution, the Commission proposes forbearing from applying ILECs' resale obligation to Lifeline services sold to non-ETCs.

TracFone supports both of the Commission's proposed means for resolving the problems associated with ILECs' resale of Lifeline service. The Commission's proposals are consistent with the Section 254(e) of the Communications Act (47 U.S.C. § 254(e)), which provides that "only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support." A system that allows non-ETCs to indirectly receive Lifeline support by paying a wholesale rate to ILECs that is based on a retail rate that has already been discounted to reflect the Lifeline subsidy is inconsistent with the statutory mandate that only ETCs shall receive support from the USF. Moreover, non-ETCs, because they are not subject to strict oversight, lack any incentive to comply with Lifeline requirements. Indeed, as noted by the Commission, if non-ETCs are permitted to offer Lifeline service, carriers that have applied for and been denied designation as an ETC, can still reap the benefits of the Lifeline support received by the ILEC wholesaler. This sets up an untenable situation in which a non-ETC approves Lifeline applicants and monitors Lifeline subscribers' usage and continued eligibility while the ILEC wholesaler takes no part in compliance with the Lifeline requirements, but is the direct recipient of Lifeline support. TracFone fully supports the Commission's proposal to eliminate this opportunity for waste, fraud, and abuse of the USF.

III. The Lifeline Support Amount Should Be Sufficient to Fund a Meaningful Service and Uniform for All ETCs.

In the Lifeline Reform Order, the Commission established a uniform interim amount of \$9.25 in monthly Lifeline support.¹⁰ In the Notice, the Commission seeks to further develop the record regarding the appropriate amount and structure of Lifeline support.

Notwithstanding its concerns about the interim \$9.25 support amount, TracFone supports the Commission's adoption of a uniform flat rate for Lifeline support. A uniform rate would facilitate administrative efficiency. Moreover, a uniform flat Lifeline support amount that is available to all ETCs would be competitively neutral. All ETCs, whether wireline or wireless, postpaid or prepaid, billed or non-billed, are subject to the same USF contribution obligation based on each carrier's revenues derived from interstate telecommunications services. A Lifeline support rate that differs from ETC to ETC based on the ETC's business model or technology used by an ETC would violate the statutory principle of competitive neutrality.¹¹

The Commission asks whether USF support should be provided for non-recurring upfront charges associated with the provision of service. TracFone opposes any such support because it would essentially be a replacement for Link Up support, which the Commission eliminated for non-tribal ETCs in the Lifeline Reform Order. Link Up support, when available, reimbursed ETCs for their customary charges for commencing services.¹² A charge for commencing service, often called an activation or service initiation fee, is a non-recurring charge associated

¹⁰ In its petition for reconsideration of the Lifeline Reform Order, TracFone has sought reconsideration of the interim \$9.25 reimbursement level established in that order. As explained in TracFone's petition, the \$9.25 amount is not supported by the record. Moreover, for some ETCs, it will result in a decrease in support while, for other ETCs, it will significantly increase their Lifeline support level in contravention of the Commission's objective of limiting the size of the USF.

¹¹ 47 U.S.C. § 253.

¹² 47 C.F.R. § 54.411(a).

with the provision of service. The Commission wisely eliminated Link Up support because it found that few ETCs charge such fees and because Link Up had become a major source of waste and abuse of USF resources. The Commission should not allow the use of USF funds for non-recurring upfront charges unless it has specific mechanisms in place to minimize the risk of waste and abuse that may be caused by ETCs (which may not otherwise charge such costs) deciding to implement such a fee so that they can recover additional USF support. In the event that the Commission determines that there are non-recurring charges for which USF support should be provided, then it should make that support available to all ETCs. However, the rapid growth in the Lifeline programs of ETCs like TracFone and others who do not receive Link Up support demonstrates that subsidizing alleged upfront costs is not necessary to deploy an efficient and effective Lifeline program.

The Commission asks for comment regarding whether ETCs should be required to provide the Commission or USAC with data regarding low-income customers' demand for their Lifeline service. ETCs should conduct their own analyses regarding customers' response to different terms and prices for their Lifeline service and develop Lifeline plans that meet customers' needs. The Commission should not be involved in this process. Instead, TracFone recommends that the Commission analyze whether a certain amount of Lifeline support is appropriate by looking at the number of customers who receive Lifeline service from ETCs that are entitled to that amount of Lifeline support. In 2010, TracFone conducted a series of market tests to evaluate consumer demand for Lifeline service options with varying benefits. Based on those tests, in August 2010, TracFone announced major enhancements to its Lifeline offering. Those enhancements included increasing the number of free minutes per month from 68 to 250 and offering consumers a choice of three different plans. The point is that TracFone conducted

these tests and revised its offerings in response to marketplace developments and its perceptions of consumer demand. It did so without being directed to do so by the Commission or by any state regulatory agency.

TracFone encourages the Commission to implement a Lifeline support amount that will allow ETCs to provide a meaningful benefit to low-income households. Under the Lifeline support rules that existed prior to the Lifeline Reform Order, TracFone received on average, approximately \$9.58 per customer per month. TracFone has found that \$9.58 per customer per month is a reasonable level of support that enables it to provide a valuable service to low-income consumers at no charge. TracFone believes that reducing the level of support would limit the Lifeline benefits which ETCs could provide to Lifeline customers. Moreover, TracFone agrees with Commissioner Clyburn's concern that "[f]or those families with two adults ... a \$9.25 subsidy for service may not stretch far enough for them to each have access to a phone when they need it."¹³ Therefore, TracFone supports a rule that would allow a household to split the Lifeline discount across two lines or between a wireless and wireline Lifeline service.

IV. The Commission Should Expand the Lifeline Eligibility Criteria Eligible Criteria to Include the Supplemental Nutrition Assistance Program for Women, Infants, and Children and Homeless Veterans Program.

The Commission has asked for comment on whether it should add the Supplemental Nutrition Assistance Program for Women, Infants, and Children ("WIC") to the list of qualifying federal assistance programs for Lifeline. TracFone supports the expansion of Lifeline eligible groups to include WIC participants. As noted by the Commission, WIC complements the National School Lunch Program's Free Lunch Program, a qualifying program for Lifeline and over 35 percent of WIC participants do not participate in another federal assistance program.

¹³ Lifeline Reform Order, Statement of Commissioner Mignon L. Clyburn Approving in Part, Concurring in Part.

Inclusion of WIC as a Lifeline-qualifying program, especially if ETCs partner with WIC clinics to educate WIC participants about their eligibility for Lifeline, will enable low-income households, that may not otherwise have been aware of the Lifeline program, to receive discounted or free telephone service.

TracFone also supports the Commission's proposal to include homeless veterans programs as Lifeline qualifying programs. As TracFone has previously advised the Commission, it supports the inclusion of low-income persons with no permanent residences, including persons residing at homeless shelters, as Lifeline-eligible. The Commission seeks comment on measures that would enable veterans who lack income and are not enrolled in a qualifying program to demonstrate that they are eligible for Lifeline. TracFone agrees that homeless veterans are among those who most need and who most deserve access to affordable telecommunications service. TracFone, in consultation with Commission staff, has implemented a limited program to provide Lifeline benefits to residents of homeless shelters. Under this interim program, residents of homeless shelters may enroll in Lifeline if their applications are signed by the manager of the shelter who indicates that no other member of the applicant's family is receiving benefits while a resident of the center. TracFone believes that a similar system can be used for homeless veterans who are not residents of shelters. However, instead of having a shelter manager sign the application, a Department of Veterans Affairs official could sign the Lifeline application and submit it on behalf of the veteran. TracFone commends the Commission's efforts to ensure that the Lifeline program reaches those households that can benefit the most from the discounted or free telecommunications services available through the program.

V. ETCs Should be Permitted, But Not Required, to Apply the Lifeline Discount to Bundled Service Offerings.

In the Lifeline Reform Order, the Commission amended its rules “to adopt a federal policy providing all ETCs (whether designated by a state or this Commission) the flexibility to permit Lifeline subscribers to apply their Lifeline discount to bundled service packages or packages containing optional calling features available to Lifeline consumers.”¹⁴ Commission Rule 54.401(b) (47 C.F.R. § 54.401(b)) clarifies that bundled service packages include bundled packages of voice and data services and that optional calling features include vertical features such as caller identification, call waiting, voicemail, and three-way calling. In the Notice, the Commission seeks comment on whether it should mandate that all ETCs permit Lifeline subscribers to apply their Lifeline discount to any service offering containing a voice component. TracFone opposes such a requirement for the following reasons.

ETCs should have discretion to develop a Lifeline service plan or plans that provide the functions required by Section 54.101(a), as well as additional features that they choose to offer, so long as they pass through 100 percent of the Lifeline support to the Lifeline subscribers.¹⁵ The market for Lifeline services is highly competitive. As competition in the fast-growing Lifeline segment of the telecommunications service market continues to grow, ETCs should be permitted to develop Lifeline plans that contain features that they believe will meet the needs of Lifeline-eligible consumers. ETCs should not be required to offer a certain type of Lifeline offering other than one that meets the requirements of Section 54.101(a). While an ETC may decide to offer a Lifeline product that includes services that must be provided as part of Lifeline

¹⁴ Lifeline Reform Order, ¶ 53.

¹⁵ See 47 C.F.R. § 54.403(a).

service and other services that are not required as part of Lifeline service, such as data services, it should not be required to do so.

A requirement that ETCs allow Lifeline customers to apply their Lifeline discount to plans including optional calling features is especially unnecessary for wireless service providers such as TracFone. Most wireless service providers, including TracFone, provide vertical features, including voice mail, call waiting, and caller ID, to their customers at no additional charge. These wireless ETCs also provide the same vertical features to non-Lifeline customers as part of their wireless service. In short, all of the calling functions and features (including nationwide calling and no roaming charges as well as the vertical features -- voice mail, caller ID, call waiting) available to TracFone's non-Lifeline consumers are provided with each of TracFone's Lifeline plans. Therefore, whether to require ETCs to allow their Lifeline customers to apply a Lifeline discount to service plans with vertical calling features is more applicable to wireline carriers, which usually charge separately for vertical features.

VI. Carriers Relying on Their Own Facilities to Provide Lifeline Service Must Use Those Facilities to Provide USF-Supported Services in the Relevant State.

In the Lifeline Reform Order, the Commission adopted blanket forbearance of the requirement in Section 214(e)(1)(A) of the Communications Act (47 U.S.C. § 214(e)(1)(A)) that ETCs provide at least some portion of USF-supported services using its own facilities, subject to certain conditions. In addition, under the Commission's recently revised rules, only the following functions are considered part of USF-supported services: (1) voice grade access to the public switched network; (2) minutes of use for local service provided at no additional charge to end users; (3) access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911; and (4) toll limitation services to qualifying

low-income consumers.¹⁶ Therefore, to qualify as an ETC with its own facilities a carrier must provide at least one of these functions using its own facilities or comply with the conditions for blanket forbearance.

The Commission seeks comment on whether it needs to provide further clarification on the Section 214(e)(1)(A) requirement that an ETC offer USF-supported services “either using its own facilities or a combination of its own facilities and resale of another carrier's services.” As noted by the Commission, TracFone previously filed a Petition for Declaratory Ruling seeking clarification on what constitutes “own facilities” for purposes of meeting the facilities requirement in Section 214(e)(1)(A).¹⁷ In that petition, TracFone sought a declaratory ruling that the facilities-based service requirement for ETCs means a carrier must use at least some of its own facilities to provide USF-supported service in a state where ETC designation is sought in order to be designated as an ETC in that state. In addition, TracFone requested that the Commission clarify that a carrier may not rely on the fact that it has wireline facilities to meet the facilities requirement for purposes of offering wireless USF-supported services, unless those wireline facilities are being used to transmit or route the USF-supported wireless services in the state for which the carrier seeks ETC designation. A carrier that has its own wireline facilities, but that provides its wireless services solely through resale of another carrier’s service does not qualify as a facilities-based wireless ETC and must comply with the blanket forbearance requirements if it wishes to be designated as an ETC to provide wireless services. TracFone also requested that the Commission require proof from an ETC applicant that it has facilities and that it will be using its own facilities at least in part to transmit or route the USF-supported services to

¹⁶ See Connect America Fund et al., Docket No. WC 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (November 18, 2011), ¶¶ 77-78 and Appendix A.

¹⁷ TracFone Wireless, Inc. Petition for Declaratory Ruling, WC Dkt. No. 96-45 et al., filed December 1, 2010.

be provided in the state for which the carrier seeks ETC designation. TracFone maintains its position that the Commission should issue the requested rulings to ensure that disbursements from the federal USF are only received by properly-designated ETCs and are only used to support services as allowed by the Commission's rules.

The Commission also seeks comment on whether a carrier's continued use of facilities is relevant to the ETC designation process for Lifeline-only ETCs. Section 214(e)(1)(A) of the Communications Act unequivocally provides that a carrier designated as an ETC "shall ... offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services." (emphasis added) Thus, the requirement for an ETC to use facilities to provide USF-supported services (absent forbearance) continues throughout the time that the ETC is offering USF-supported services. The facilities requirement would be meaningless if it did not apply to the entire time that an ETC offers services. TracFone recommends that facilities-based ETCs be required to notify the Commission and relevant state commissions if they will no longer be using their own facilities to provide USF-supported services, including Lifeline. The Commission should further require such ETCs to either relinquish their ETC designations or seek approval as a reseller through the blanket forbearance procedures established in the Lifeline Reform Order.

The Commission seeks comment on whether it should revise its requirements regarding the ownership of facilities. Commission Rule 54.201(f) (47 C.F.R. § 54.201(f)) provides that the term "own facilities" includes, facilities obtained as unbundled network elements. The Commission has explained that when a carrier has exclusive use of a facility, such as an

unbundled loop, that facility is considered the carrier's "own facility."¹⁸ TracFone asks the Commission to reconsider its position that a carrier's reliance on unbundled network elements is sufficient to meet the facilities requirement in 47 U.S.C. § 214(e)(1)(A).

First, when the Commission determined that a carrier relying on unbundled network elements meets the facilities requirement for ETCs, it did so in the context of providing service in high cost areas, not in the context of providing affordable service to low-income households. The Commission stated: "[W]e conclude that Congress did not intend to deny designation as eligible to a carrier that relies exclusively on unbundled network elements to provide service in a high cost area, given that the Act contemplates the use of unbundled network elements as one of the three primary paths of entry into local markets."¹⁹ Thus, the Commission's rationale for treating unbundled network elements as facilities was based on ETCs receiving high cost support to build out and maintain networks in high cost areas. For purposes of designating a carrier as an ETC to provide Lifeline-only service, there is no meaningful difference between a carrier that resells another carrier's services to provide service and a carrier that relies on another carrier's facilities to provide service. Both are relying on another carrier's facilities to provide Lifeline service, and as such, both are engaged in resale. Therefore, a carrier that relies on another carrier's network elements to provide Lifeline service should be treated in the same manner as a reseller, not as a facilities-based carrier. Moreover, the fact that resellers are subject to additional regulatory requirements through the blanket forbearance process, while a carrier that leases a network element is considered to have its own facilities, creates an incentive for carriers to mischaracterize themselves as facilities-based carriers to avoid forbearance conditions.

¹⁸ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 158 (1997).

¹⁹ Id., ¶¶ 156.

Second, when the Commission initially determined that a carrier's reliance on unbundled network elements leased from another carrier counted as the first carrier's "own facilities" it was relying on a scenario that the Commission proposes to eliminate. To support its conclusion that facilities obtained as unbundled network elements are a carrier's "own facilities" the Commission explained:

In addition, we conclude that our interpretation of the term "own facilities" is consistent with the goals of universal service and that any contrary interpretation would frustrate the goals of the Act and lead to absurd results. For example, it is appropriate for Congress to deny pure resellers universal service support because pure resellers receive the benefit of universal service support by purchasing wholesale services at a price based on the retail price of a service -- a price that already includes the universal service support payment received by the incumbent provider. Unlike a pure reseller, a carrier that provides service using unbundled network elements bears the full cost of providing that element, even in high cost areas. Section 252(d)(1)(A)(i) requires that the price of an unbundled network element be based on cost; a carrier that purchases access to an unbundled network element incurs all of the forward-looking costs associated with that element. As discussed below, we conclude that universal service support should be provided to the carrier that incurs the costs of providing service to a customer. Because a carrier that purchases access to an unbundled network element incurs the costs of providing service, it is reasonable for us to find that such a carrier should be entitled to universal service support for the elements it obtains.²⁰

As noted in Section II of these comments, the Commission proposes to modify ILECs' obligation to resell their services under 47 U.S.C. § 251(c)(1) so as not to require ILECs to resell their voice telephony services at a wholesale discount based on a retail rate that already has been further discounted by the amount of the Lifeline subsidy. Instead, ILECs' resale obligation would be limited to offering their retail services at a wholesale rate. Therefore, under the Commission's proposal, unlike the scenario described by the Commission when it decided to consider unbundled network elements as a carrier's own facilities, a reseller would not be receiving a relatively greater discounted price than a carrier that leases unbundled network

²⁰ Id., ¶¶ 161-62 (footnotes omitted).

elements. As such, there is no financial reason to treat resellers differently from carriers that rely on the network elements of other carriers to provide Lifeline service.

VII. Incumbent Wireline ETCs Should be Allowed to Choose Whether to Participate in the Lifeline Program.

The Commission seeks comment on a proposal by AT&T that incumbent wireline ETCs be allowed to choose whether to participate in the Lifeline program. TracFone supports AT&T's proposal so long as there is another wireline or wireless Lifeline provider or providers serving the incumbent wireline ETC's service area. Section 254(e) of the Communications Act (47 U.S.C. § 254(e)) provides that an ETC designated under 47 U.S.C. § 214(e) "shall be eligible to receive specific Federal universal service support." Section 214(e)(1) further states that an ETC:

shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier).

Under this statutory framework, the Commission has granted petitions from wireless resellers requesting the Commission to forbear from application or enforcement of the facilities requirement for ETCs²¹ and has designated resellers as Lifeline-only ETCs.²² In the Lifeline

²¹ See, e.g., Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless Petition for Forbearance from 47 USC §214(e)(1)(A), CC Dkt. No. 96-45 et al., Order, 25 FCC Rcd 8784 (2010); Virgin Mobile USA, L.P. Petition for Forbearance from 47 USC §214(e)(1)(A) et al., CC Dkt. No. 96-45, Order, 24 FCC Rcd 3381 (2009); Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance, CC Dkt. No. 96-45, Order, 20 FCC Rcd 15095 (2005).

²² See, e.g., Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the State of Alabama et al., WC Dkt. No. 09-197, Order, 25 FCC Rcd 17797 (2010); Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petitions for Designation as an Eligible Telecommunications Carrier in the State of Alabama et al., CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008).

Reform Order, the Commission extended blanket forbearance from application of the Communications Act's facilities requirement in Section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions.²³

As the Commission and the state commissions have authority to designate carriers as ETCs for Lifeline only, so too, do the Commission, and the state commissions similarly, have authority to designate carriers as ETCs only for purposes of receiving high cost support. However, to ensure that Lifeline service is available to all qualified low-income households, as part of the designation process, a carrier requesting ETC designation for high cost purposes only should be required demonstrate that Lifeline service in the proposed ETC service area is available from at least one other ETC - wireline or wireless. In addition, if an existing ETC wants to cease offering Lifeline service, it should be required to petition the designating authority (either the Commission pursuant to Section 214(e)(6) or a state commission pursuant to Section 214(e)(2)) for consent to relinquish its ETC designation for Lifeline services. In such petitions, the petitioning ETC should be required to demonstrate that at least one other ETC is offering Lifeline service in the relevant service areas. Allowing an existing ETC to terminate its Lifeline service complies with Section 214(e)(4) of the Communications Act, which permits relinquishment of an ETC designation so long as the area in question is served by at least one ETC. TracFone suggests that the Commission require an ETC wishing to relinquish its ETC designation for Lifeline (while continuing to be a designated as an ETC for purposes of receiving high cost support) to comply with the relinquishment procedures set forth in Section 214(e)(4).

²³ See Lifeline Reform Order, ¶¶ 368-81.

Furthermore, permitting carriers to be designated as high cost-only ETCs is consistent with the structure of the USF support mechanisms. The Low Income program and High Cost program are each funded by separate parts of the USF, have distinct purposes, and are governed by separate and distinct Commission rules. Consumers will not be negatively impacted if ETCs are not required to provide Lifeline service, provided that such service is available from one or more other ETCs, just as consumers were not negatively impacted when the Commission, and later, state commissions designated Lifeline-only ETCs. Moreover, enabling ETCs to receive high cost support to build out and maintain networks in high cost areas, even if those ETCs are not providing Lifeline service, still promotes the goals of universal service.

VIII. The Commission's Record Retention Requirements Should Be Expanded to Allow the Commission to Exercise Its Right to Bring Claims.

Commission Rule 54.417 (47 C.F.R. § 54.417) requires ETCs to maintain records to document compliance with all Commission and state requirements governing the Lifeline program for the three preceding calendar years and to maintain documentation of consumer eligibility for as long as a consumer receives Lifeline service. The Commission proposes to extend the record retention period for Lifeline documentation, including subscriber-specific eligibility documentation, to at least ten years to enable the Commission to have adequate records to bring any necessary claims under the False Claims Act, which can involve conduct that relates back to substantially more than five years. Therefore, under the proposed rule, an ETC may need to retain documentation of Lifeline eligibility for more than ten years for those customers who have received Lifeline benefits for more than ten years. TracFone generally supports the Commission's proposal to increase the number of years for which records must be retained so long as any increased time period adopted by the Commission is imposed solely on a prospective basis.

CONCLUSION

TracFone respectfully requests that the Commission consider TracFone's views and recommendations as it determines whether to revise its rules governing the Lifeline program.

Respectfully submitted,

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