

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

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

PETITION FOR RECONSIDERATION AND CLARIFICATION

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TABLE OF CONTENTS

SUMMARY	i
INTRODUCTION	1
I. Mandatory Documentation of Program-Based Eligibility Should Not Be Required Until Access to Eligibility Databases is Ubiquitously Available.....	3
II. The Definition of Usage Should be Revised to Include Receipt of Minutes.....	15
III. Receipt of Lifeline Support Should Not Be Based Upon Activation of a Handset Provided to a Lifeline Consumer.....	19
IV. The Requirement that Temporary Addresses be Verified Every 90 Days Will Be An Impediment To Providing Lifeline Support To Persons In Temporary Residences And Should Be Reconsidered	22
V. The Establishment of a Flat Lifeline Support Level of \$9.25 Per Month Is Not Supported By Record Evidence And Should Be Reconsidered	25
CONCLUSION.....	27

SUMMARY

TracFone generally agrees with the reforms to the Lifeline program set forth in the Lifeline Reform Order and commends the Commission for taking bold steps to modernize the program and making it available to those who need Lifeline support in order to obtain affordable telecommunications services while adopting measures which will prevent waste, fraud, and abuse of Universal Service Fund resources. Notwithstanding its overall agreement with those reforms, TracFone believes that certain rule changes contained in the Lifeline Reform Order are not justified by the record, will not achieve the goals of the order, and for which reconsideration is warranted. These include the following:

Documentation of program-based eligibility (so-called “full certification”) should not be required until such time as ETCs and state government departments and agencies are able to enter into arrangements which will allow ETCs to access state eligibility databases which would obviate the need for full certification. There is no record evidence that full certification will prevent unqualified persons from obtaining Lifeline benefits. There is extensive evidence that requiring full certification will impede many qualified low-income consumers from completing the Lifeline enrollment process.

For purposes of the 60 day non-usage de-enrollment requirement applicable to ETCs who provide non-billed Lifeline services, the definition of “usage” should include receipt of minutes. In order to receive monthly minutes on TracFone’s SafeLink Wireless® Lifeline program, consumers must have their phones charged and turned on at the beginning of each month. Making the effort to have the phones charged and turned on indicates that consumers intend to use the service and to remain enrolled in Lifeline. Also, the Commission should reconsider its decision not to allow text messaging to count as usage. Excluding text messaging from the definition of usage on the basis that it is not a supported service ignores the realities that a large

portion of wireless phone users (more than 31%) use text messaging as their primary means for communicating with others.

The Commission should reconsider the requirement that Lifeline customers must activate their own wireless handsets before Lifeline benefits may be provided. TracFone and other ETCs normally ship their qualified and enrolled Lifeline customers handsets which have been already activated and the first month's allotment of minutes loaded on the phones and ready for use. To require wireless Lifeline customers to activate their own phones would disregard the fact that most wireless service customers have their handsets activated for them by the carrier or the carrier's agent at the time and place of purchase. There is no reason why this additional burden should be placed on wireless Lifeline consumers.

TracFone commends the Commission for enabling persons with temporary addresses (such as persons residing in shelters) to enroll in Lifeline. However, the requirement that ETCs re-verify such persons' temporary addresses every 90 days is unnecessarily burdensome and unworkable. While such consumers' addresses should be re-verified, that should be done as part of the annual re-verification process. Alternatively, re-verification of temporary addresses should not be required more often than every nine months.

Finally, the Commission's establishment of a flat \$9.25 per month per customer Lifeline support amount has no record justification. For some ETCs, it will represent a significant reduction in Lifeline support. For other ETCs, including several of the largest incumbent local exchange carriers, \$9.25 will be a substantial increase in Lifeline support. Given the Commission's stated concern about controlling the amount of Universal Service Fund support, it seems improbable that the Commission intended to provide such an additional support "windfall" to any ETCs. TracFone agrees with the Commission that Lifeline support should no

longer be based on subscriber line charges. However, TracFone recommends that Lifeline support be kept at current levels until the Commission in the further rulemaking phase of this proceeding establishes a new permanent support level.

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PETITION FOR RECONSIDERATION AND CLARIFICATION

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby petitions for reconsideration and for clarification of certain aspects of the Commission’s Lifeline Reform Order.¹

INTRODUCTION

As will be described in this petition, several aspects of the Lifeline Reform Order contain requirements which, unless modified on reconsideration, will impede the ability of TracFone and other Eligible Telecommunications Carriers (“ETCs”) to deliver the promise of Lifeline service to many qualified low-income consumers. Such requirements will not facilitate the detection and prevention of waste, fraud, and abuse of Universal Service Fund (“USF”) resources. However, those requirements, unless changed on reconsideration, will preclude many qualified low-income households from receiving Lifeline-supported services. Notwithstanding the few matters described herein where reconsideration is warranted, the Lifeline Reform Order is a carefully-

¹ Lifeline and Link Up Reform and Modernization, et al, FCC 12-11, released February 6, 2012 (“Lifeline Reform Order”).

crafted, well-reasoned decision which promulgates rules and articulates policies which will materially improve the Lifeline program by enhancing its availability to those who qualify for assistance and who need assistance while including several important reforms which will enable ETCs to detect and prevent waste, fraud, and abuse of USF resources. Notwithstanding the several reconsideration matters raised herein, the Commission has achieved a balanced approach to reforming Lifeline and has taken a forward looking approach to modernizing and enhancing the program. For that, the Commission should be congratulated.

TracFone is gratified that the Commission's Lifeline reforms adopted to prevent waste, fraud, and abuse of USF resources include several suggestions of TracFone, some of which already have been implemented by it. These include, *e.g.*, elimination of the Link Up program except for tribal lands; annual verification of all Lifeline customers' continuing eligibility rather than limiting annual verification surveys to random samples of customers; implementation of a 60 day non-usage policy; and requiring all ETCs to obtain date of birth and Social Security Number (last 4 digit) information. TracFone is confident that those reforms will enable the Commission to achieve both its short-term and long-term savings goals while ensuring that Lifeline benefits are available to those who qualify and who need Lifeline-supported services.

In addition, the Lifeline Reform Order recognizes the growing importance of affordable access to broadband service to all Americans and orders the commencement of pilot programs to examine methods for providing subsidized broadband service. This is an important and timely initiative which TracFone supports. In the following sections, TracFone addresses those aspects of the Lifeline Reform Order where reconsideration is necessary and appropriate in order to achieve the objectives articulated in that order.

I. Mandatory Documentation of Program-Based Eligibility Should Not Be Required Until Access to Eligibility Databases is Ubiquitously Available

From TracFone's perspective and, more importantly, from the perspective of thousands of low-income consumers throughout the nation, the most problematic aspect of the Lifeline Reform Order is the requirement that, in states where access to state consumer eligibility databases is not available, Lifeline applicants must produce documentation of their participation in qualifying programs. This documentation requirement, commonly referred to as "full certification," is set forth at newly-promulgated Section 54.410(c)(1)(i)(B) of the Commission's rules. Unless modified on reconsideration, that full certification requirement will commence on June 1, 2012 -- less than 60 days following this petition. As will be explained in this petition, full certification is an unnecessary and burdensome requirement which should be reconsidered. At the very least, its implementation should be delayed for at least one year so as to enable ETCs and states to work together to facilitate access to state data bases and to enable ETCs to revise their enrollment procedures as necessary to conform with the full certification requirement.

Throughout this proceeding, TracFone and others have opposed mandatory full certification and explained in various submissions why full certification is not an effective mechanism for preventing enrollment in Lifeline programs by unqualified persons; why other, more effective mechanisms to prevent such enrollment are available and already have been required; and why full certification will prevent many thousands of qualified low-income consumers from completing the enrollment process and obtaining the federal Lifeline benefits to which they are entitled and which they need.

For example, TracFone has explained that in the few states which currently require full certification and where it provides Lifeline service as an ETC, far fewer applicants are able to complete the Lifeline enrollment process than in states which follow the prior Commission rule

of self-certification under penalty of perjury.² In a November 4, 2011 letter, TracFone further explained that it has been able to prevent enrollment in its Lifeline program by non-qualified persons by requiring applicants to provide the following information: 1) full name; 2) address; 3) date of birth; and 4) Social Security Number (last 4 digits). During 2011, TracFone denied not less than 400,000 applications for Lifeline service for failure to provide those required data points. Those denials resulted in savings to the USF of approximately \$48 million. Moreover, had all ETCs been required to obtain that information from applicants and denied Lifeline applications which did not contain that information, savings to the USF could have been as much as \$192 million. That savings alone would achieve a substantial portion of the \$200 million which the Commission in the Lifeline Reform Order adopted as a savings goal for the first year. Requiring all ETCs to obtain this information from Lifeline applicants and prohibiting enrollment of those applicants who do not provide the required information would effectively prevent fraudulent enrollment by persons not qualified for Lifeline support without unreasonably burdening those who do qualify but have no means for producing documentation of program-based eligibility.

² See, e.g., letter from Mitchell F. Brecher, counsel for TracFone, to Marlene Dortch, Secretary, Federal Communications Commission, dated August 3, 2011 where TracFone notes that in Louisiana -- a self-certification state -- 71 percent of persons who contact TracFone about its Lifeline program complete the enrollment process, whereas in Missouri -- a full certification state -- only 32 percent complete the enrollment process. The percentages of customers in those two states who are able to verify their continuing eligibility one year later are about the same -- 65.12 percent in Louisiana, 69.05 percent in Missouri. The uncontroverted fact that so many fewer consumers in full certification states than in self-certification states are able to complete the Lifeline enrollment process contradicts the unsupported predictive judgment at paragraph 106 of the Lifeline Reform Order. There the Commission states that it is not persuaded that requiring documentation of Lifeline eligibility will “unduly reduce enrollment in Lifeline or otherwise significantly hinder low-income consumers from obtaining needed telephone service.” No doubt, the 69 percent of those Missouri consumers who contacted TracFone regarding Lifeline but who were unable to complete the enrollment process would disagree with the Commission’s prediction.

Notwithstanding substantial record evidence that full certification is not an effective way to prevent enrollment in Lifeline programs by persons who are not eligible for Lifeline support, the Commission nonetheless has mandated full certification for those states which do not yet allow ETCs to access eligibility data bases. It has done so based on misleading and unsupported information and on a series of speculations. Promulgating regulations on mere speculation when the Commission has before it contrary evidence is the antithesis of reasoned decision making and warrants reconsideration.

The Commission has mandated full certification in reliance on a 2010 Report of the Government Accountability Office.³ According to the GAO Report relied upon by the Commission, “25 states currently require consumers to provide documentation of enrollment in a qualifying program.”⁴ That statistic appears in the GAO Report at Table 6 (Lifeline Administrative Processes in States that Provide Intrastate Lifeline Support) at p. 51. Nowhere does the GAO Report identify the 25 states which it claims require documentation of enrollment in a qualifying program. Neither does the Lifeline Reform Order provide a comprehensive list of full certification states.

Based on TracFone’s experience as an ETC providing Lifeline service, it believes that the GAO Report’s unsupported and unexplained assertion regarding the number of full certification states is highly doubtful. Therefore, to the extent that the Commission’s decision to require full certification is based on an assumption that about half the states already impose such a requirement, that appears to be an inaccurate assumption. Currently, TracFone is designated as

³ United States Government Accountability Office - Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program, October 2010 (“GAO Report”).

⁴ Lifeline Reform Order at ¶ 94.

an ETC to provide Lifeline service in 39 states.⁵ Of those, it currently offers its SafeLink Wireless[®] Lifeline service in 36 states. Of those 39 states, only seven require documentation of program-based eligibility, *i.e.*, full certification. Those seven states are Indiana, Kentucky, Missouri, Puerto Rico⁶, Rhode Island, South Carolina, and Texas. The other 32 states where TracFone is a designated ETC do not require full certification. Even this number may inflate the extent to which full certification currently is required. One of those full certification states - Texas - is also an automatic enrollment state. Pursuant to state law, consumers who are enrolled in state qualifying programs are automatically enrolled in Lifeline and are not required to produce documentation of enrollment in a qualifying program in order to obtain Lifeline benefits. Thus, for many Texas Lifeline customers, the automatic enrollment process obviates the need for full certification.

Furthermore, the decision to require full certification seems to be built on a series of speculations and conjectures rather than on hard data. One example of such speculation is at footnote 82 of the Lifeline Reform Order. At paragraph 103, the Lifeline Reform Order states that the “data suggests that existing certification procedures may be insufficient to prevent ineligible consumers from enrolling in Lifeline.” The accompanying footnote, after acknowledging that it is not unusual for consumers not to respond to surveys, states “[a] subscriber’s failure to confirm his or her continuing eligibility is **potentially suggestive** that the consumer **may** not be eligible for the program” (emphasis added).

⁵ By order issued March 22, 2012 by the New Mexico Public Regulation Commission, New Mexico became the 39th state to designate TracFone as an ETC.

⁶ When the Telecommunications Board of Puerto Rico designated TracFone as an ETC in 2010, self-certification was permitted. Subsequently, in 2011, that Board changed its requirements to full certification.

Before imposing a requirement which will be a barrier to thousands of qualified Lifeline applicants completing the enrollment process and receiving Lifeline benefits to which they are entitled, the Commission should have a stronger basis to impose a full certification requirement than potential suggestions. In prior filings, TracFone has explained why consumers do not complete the enrollment process in full certification states such as Missouri. Lifeline consumers are low-income, often transient persons; some live in temporary housing. The reality is that for many such applicants, the requisite documentation is not readily available to them. For those who do have in their possession documentation of eligibility, they have no means for delivering the documentation to their chosen ETC. Such consumers rarely have access to fax machines, photocopiers, scanners and computers with Internet access -- all necessary to send such documentation electronically to their ETC. Even U.S. Postal Service post offices which, in the past, have provided these services no longer do so. The unavailability of the documentation and the lack of a means to provide the documentation is what precludes sixty-nine percent of those Missouri residents who contact TracFone about Lifeline from enrolling. There is no factual basis to support the speculative suggestion that some of those customers may not be eligible for Lifeline as potentially suggested by the Commission.

In this regard, the Commission refers to a letter submitted by Nebraska Public Service Commissioner Anne C. Boyle. As indicated by Commissioner Boyle's letter, Nebraska is a full certification state.⁷ According to Commissioner Boyle, an unspecified "fairly large" number of those Lifeline applicants do not provide documentation of eligibility. Although Commissioner Boyle does not indicate whether the Nebraska Commission ever has addressed why consumers

⁷ TracFone has not applied to be an ETC in Nebraska and does not provide Lifeline service in that state.

do not produce such documentation, she indicates that “[i]t is quite curious and makes us wonder if they are ineligible for Lifeline and, perhaps other government benefits.”⁸

Commissioner Boyle’s unspecified description of those who do not provide documentation of eligibility as “fairly large” does not support a conclusion that a substantial number of unqualified persons in Nebraska -- or any other state -- are obtaining Lifeline benefits. In short, based on the record before the Commission, it can not be determined how many Lifeline customers in Nebraska -- if any -- are obtaining Lifeline benefits to which they are not entitled. What can be determined based on information available to the Commission is that most persons in Nebraska who are qualified for Lifeline support are not receiving such support. According to data compiled by the Universal Service Administrative Company (“USAC”) and posted on its website (www.universalservice.org), in 2010, the percentage of Lifeline-eligible low-income Nebraska households receiving Lifeline benefits was between ten percent and twenty percent.⁹ According to Commission data, in 2002, the Nebraska Lifeline participation rate was 17.1 percent of eligible households.¹⁰ In other words, between 2002 and 2010, the percentage of Lifeline-eligible Nebraskans receiving Lifeline support was stagnant and may have even declined (from 17.1 Percent in 2002 to between 10 and 20 percent in 2010). Lifeline enrollment in Nebraska remained stagnant during that period despite the dramatic economic downturn in 2008 which continues to the present and despite the “advent of prepaid wireless cards” which,

⁸ Letter from Anne Boyle, Commissioner, Nebraska Public Service Commission, to Hon. Julius Genachowski, Chairman, Federal Communications Commission, July 13, 2011 (“Boyle Letter”).

⁹ USAC website (www.universalservice.org), 2010 Lifeline Participation Rates by State.

¹⁰ Lifeline and Link Up (*Report and Order and Further Notice of Proposed Rulemaking*), 19 FCC Rcd 8302 (2004), at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002).

according to Commissioner Boyle “has only exacerbated the problem of waste, fraud and abuse.”¹¹

While the Commission’s concerns -- and Commissioner Boyle’s concerns -- about unqualified persons receiving Lifeline benefits are based on little more than speculation and potential suggestions, data on the record indicates otherwise. As the Commission properly noted in the Lifeline Reform Order, several states allow ETCs to access state eligibility databases to verify their Lifeline customers’ continuing eligibility. Two such states are Washington and Wisconsin. If, as is suggested in the Lifeline Reform Order, self-certification causes large numbers of unqualified persons to receive Lifeline benefits to which they are not entitled, it would be expected that access to such databases would reveal large numbers of unqualified Lifeline recipients in those states. The facts prove otherwise. In Washington, 88 percent of TracFone Lifeline customers who self-certified under penalty of perjury that they are enrolled in qualifying programs were shown in the state data base to be enrolled in those qualifying programs one year later. In Wisconsin, the percentage of persons self-certifying to program-based eligibility who were shown in the state database to be enrolled in a qualifying program was 94 percent.¹² Bearing in mind that some portion of those persons lose their Lifeline eligibility during the year following enrollment based on changing economic circumstances, the conclusion is inescapable that a very high percentage of persons who self-certify under penalty of perjury that they are Lifeline-eligible are, in fact, Lifeline-eligible.

This high correlation between those consumers who self-certify under penalty of perjury that they are Lifeline-eligible and those whose eligibility is confirmed by state databases a year

¹¹ Boyle Letter at 2.

¹² Letter from Mitchell F. Brecher, counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42, filed August 24, 2011.

later is not surprising to TracFone. Neither should it surprise the Commission. The information required by TracFone from all Lifeline applicants in all states, including full name, date of birth, residential address, and Social Security Number (last 4 digits) and TracFone's use of a third party entity (Lexis Nexis) to verify the accuracy of that information makes it difficult and extremely rare for consumers to successfully falsify their information.

Another example of the Commission's reliance on speculation rather than factual evidence to justify full certification is its statement that "ineligible subscribers **may be enrolling** in the program at a particularly rapid rate in states that do not require documentation of program-based eligibility at sign-up."¹³ In stating that consumers may be enrolling at a rapid rate, the Commission notes that in Louisiana -- a self-certification state -- Lifeline participation increased by 1,565 percent between 2008 and 2011.¹⁴ Couching the increase in Lifeline enrollment in Louisiana in this manner demonstrates the age-old axiom often attributed to Mark Twain that there are three kinds of lies: 1) lies; 2) damned lies; and 3) statistics. The percentage increase in Louisiana Lifeline enrollment is not important. What is important is how many qualified low-income Louisiana households are receiving Lifeline benefits. Historically, Lifeline participation in Louisiana has been dreadful. In 2002, only 7.4 percent of qualified Louisiana households were receiving Lifeline benefits.¹⁵ In 2010, according to USAC, Lifeline participation in Louisiana remained under 50 percent (*i.e.*, between 20 percent and 50 percent).

In short, less than one-half of those low-income households entitled to Lifeline support in Louisiana are receiving it despite the fact that Louisiana has among the lowest per capita incomes of any state, and despite the damage to Louisiana's already poor economy caused by

¹³ Lifeline Reform Order at ¶ 103 (emphasis added).

¹⁴ *Id.*

¹⁵ See n. 9.

Hurricane Katrina in 2005, and the worldwide economic meltdown of 2008. Given these facts, an increase in the percentage of low-income Louisiana households receiving Lifeline assistance to a level still below fifty percent of eligible households is hardly a public interest concern and there is no factual basis for concluding that the increase is the result of waste, fraud and abuse of the Lifeline program in Louisiana. It is far more probable that the increase in Louisiana Lifeline enrollment reflects the fact that at long last some ETCs are actually reaching out to low-income Louisiana households in an effective manner, educating qualified consumers about the availability of Lifeline-supported services and their right to receive such services, if qualified, and to the fact that some ETCs for the first time are offering Louisianans Lifeline services with benefits and features which those consumers actually want.

In mandating full certification, the Commission expresses the incorrect belief that ETCs have available to them multiple options for obtaining documentation of customer eligibility. What the Commission ignores is that not all options identified by the Commission are available to all ETCs. At paragraph 107 of the Lifeline Reform Order, the Commission states that “. . . some ETCs enroll consumers using a variety of methods **including at retail stores** (*i.e.*, in person)” (emphasis added). It then encourages ETCs to provide consumers with multiple methods for presenting the required documentation, including in person.

The Commission is suggesting as a solution to the well-chronicled difficulties of obtaining documentation of program-based eligibility from consumers that consumers should bring their documentation to retail stores which then, in turn, would send them to the ETC. There is a problem with that suggested solution: the Commission prohibits certain ETCs, including TracFone, from utilizing retail stores to enroll Lifeline customers. In September 2005, the Commission issued an order granting TracFone forbearance from application or enforcement

of Section 214(e)(1)(A) of the Communications Act and Section 54.201(i) of the Commission's rules which require ETCs to provide USF-supported services, at least in part, using their own facilities.¹⁶ That grant of forbearance is subject to certain Commission-imposed conditions and limitations, including the following: “. . . **we reject the point of sale procedures that would allow TracFone Lifeline customers to submit qualifying information to the retail vendor.**”¹⁷

Since the TracFone Forbearance Order, all of TracFone's procedures and systems for Lifeline customer enrollment have been based on the 2005 condition which requires TracFone to have direct contact in the Lifeline enrollment process and which specifically forbids it from using retail stores to enroll Lifeline customers. Contrary to the Commission's suggestion at paragraph 107 that ETCs have available various methods for enrolling customers, including direct in person contact at retail stores, that alternative is not available to TracFone and to other ETCs who have been granted forbearance.¹⁸

As described above, mandatory full certification will present a substantial obstacle to enrollment in Lifeline programs by many qualified low-income households. That lesson has already been learned by TracFone in the seven states where it currently is subject to full certification. Moreover, there is no record evidence that full certification will prevent enrollment by unqualified persons any more effectively than will other requirements such as mandatory

¹⁶ In the Matter of Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance, 20 FCC Rcd 15095 (2005) (“TracFone Forbearance Order”).

¹⁷ TracFone Forbearance Order at ¶ 19 (emphasis added).

¹⁸ Even if the Commission on its own motion were to modify the conditions in the TracFone Forbearance Order so as to eliminate the prohibition on use of retail stores in the Lifeline enrollment process (something which TracFone never has requested), it would take many months or longer for TracFone to revise its procedures developed over the nearly seven years following the TracFone Forbearance Order so as to include retail vendors in the Lifeline enrollment process. To date, TracFone has never asked a retail vendor to participate in Lifeline enrollment and it has no reason to know whether any would do so, and if they were willing, on what terms would they be so willing.

obtainment of full name, date of birth, address and Social Security Number (last 4 digits) information.

The Commission's mandate of full certification is even more questionable given the long-held concerns of the Department of Justice and others with similar documentation requirements in connection with voting rights. That issue has been studied by numerous groups in and out of government. For example, in 2006, the Brennan Center for Justice at New York University School of Law published a survey which indicated, *inter alia*, that as many as seven percent of U.S. citizens do not have ready access to citizenship documents (*e.g.*, drivers licenses, passports, birth certificates), and that the percentage of citizens without access to such proof of citizenship documents is higher among low income citizens.¹⁹ Just as documentation of citizenship is a well-recognized barrier to low-income and minority citizens' ability to exercise voting rights, so too, is full certification of program-based eligibility a barrier to enrollment by qualified low-income consumers in Lifeline programs.

The fact that full certification may be only a temporary requirement until a national database is available, hopefully by year end 2013 does not reduce its adverse impacts. Between now (actually June 1, 2012) and year end 2013, many consumers will attempt to obtain Lifeline benefits to which they are entitled. Mandatory documentation of program-based eligibility will preclude many of those consumers from receiving those benefits. Once they abandon the enrollment process, they are likely to be discouraged from attempting to enroll in Lifeline and will be unlikely to make further enrollment attempts in the future. As the Commission has noted, several states already allow ETCs to access state eligibility databases, obviating the full certification requirement in those states. TracFone and other ETCs are working with state

¹⁹ www.brennancenter.org.

governments and with federal governmental departments to make arrangements for access to such databases. However, that process will take some time as ETCs, regulators and federal and state departments negotiate the terms of the access arrangements. Those processes should be given a reasonable period of time to be completed and implemented before any ETCs are required to demand that Lifeline applicants produce documentation of program-based eligibility. For that reason, the Commission should reconsider its decision to require full certification of program-based eligibility in states which do not allow ETCs to access state eligibility databases.

At the very least, the Commission should defer any full certification requirements for at least 12 months from the effective date of the Lifeline Reform Order so as to afford ETCs, state governments, and appropriate federal departments and agencies an opportunity to negotiate the terms of such state eligibility database access. In suggesting a 12 month period to implement full certification, TracFone is mindful of the fact that within days of release of the Lifeline Reform Order, the Commission released a report and order modifying its telemarketing call rules.²⁰ In the Robocall Order, the Commission promulgated rules requiring that telemarketers obtain written consent before placing autodialed telemarketing calls to consumers and eliminated the prior rule which allowed for such calls to be placed without caller consent where there was an established business relationship. Despite the fact that these rule changes were made to protect consumers from unwanted telemarketing calls, callers were given a full twelve months to comply with those new requirements. Robocall Order at ¶ 66. If it is in the public interest to afford telemarketers twelve months to revise their procedures and systems to comply with the new telemarketing restrictions, it is no less in the public interest to afford ETCs a comparable period

²⁰ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, FCC 12-11, released February 15, 2012 (“Robocall Order”).

to make the major changes to their operations, including arranging for access to federal and state databases, in order to comply with the newly-established rule requiring full certification.

II. The Definition of Usage Should be Revised to Include Receipt of Minutes

The Commission has promulgated a rule, applicable only to providers of prepaid Lifeline services, requiring that Lifeline customers be de-enrolled from Lifeline programs if they fail to use the service for 60 consecutive days. Once a customer has been de-enrolled for non-usage, the ETC must immediately notify USAC and the ETC no longer may receive Lifeline support for de-enrolled customers.²¹ The non-usage rule adopted by the Commission is similar to that implemented several years ago by TracFone in every state where it provides Lifeline service as an ETC. That process was developed by TracFone in consultation with several state commissions. TracFone supported the Commission's adoption of a non-usage rule.²²

However, one aspect of the Commission's non-usage rule should be modified on reconsideration. That one modification involves the definition of "usage." Section 54.407(c)(2) defines "usage" for purposes of the 60 day non-usage requirement to include any of the following:

- (i) completion of an outbound call
- (ii) purchase of minutes from the ETC to add to the customer's balance;
- (iii) Answering an incoming call from anyone other than the ETC;
- (iv) Responding to direct contact from the ETC and confirming that the consumer wants to continue to receive Lifeline service.

²¹ The 60 day non-usage rule is codified at Section 54.407(c) of the Commission's Rules.

²² TracFone also proposed a 60 day non-payment rule for post-paid or billed Lifeline programs. Under that rule, if a customer enrolled in a billed Lifeline service did not pay its bills for 60 days, the customer would similarly be de-enrolled. Just as 60 days non-usage may signal an intent not to use Lifeline-supported services provided on a non-billed basis, so too would 60 days of non-payment indicate an intent by a Lifeline customer not to remain enrolled. Without explanation, the Commission did not adopt that 60 day non-payment proposal.

Excluded from this definition of “usage” is receipt of monthly minute allotments by the Lifeline customer.²³ The 60 day non-usage process developed by TracFone in consultation with state commissions includes receipt of minutes. TracFone sends monthly allotments of minutes to its SafeLink Wireless[®] Lifeline customers on or about the first of each month. In order to receive those minutes, customers must have their wireless handset turned on and the handset battery charged. In fact, SafeLink Wireless[®] customers are instructed in writing at the time of service commencement that they must have their phones turned on in order to receive minutes.

Because customers have been instructed to have their phones turned on and charged in order to receive their minute allotments, the conclusion is inescapable that doing so reflects an affirmative intent by the consumer to remain enrolled in the Lifeline program. Lifeline customers who do not intend to remain enrolled in the program and do not intend to continue to use the service (even if only occasionally) do not bother to keep their phones charged and do not make it a point to have the phones turned on at the beginning of each month in order to receive the next monthly allotment of minutes. While most TracFone customers initiate or receive some calls every month, not all do so. Some Lifeline customers save their minutes for emergencies. Others (especially those enrolled in the SafeLink Wireless[®] 68 minute plan which includes

²³ The Lifeline Reform Order contains no explanation why receipt of minutes has been excluded from the definition of usage for purposes of the 60 day non-usage de-enrollment requirement, despite the fact that receipt of minutes has been deemed to constitute usage in the policy as implemented in all states where TracFone provides Lifeline service as an ETC. Not one state commission has objected to inclusion of receipt of minutes within the usage definition.

international calling) save their minutes for international calls.²⁴ The fact that some Lifeline customers do not use their Lifeline service to initiate or receive calls each month does not mean that they do not value the service or that they do not intend to use the service. By making the effort to have the phone charged and turned on each month in order to receive their monthly minutes, such customers are articulating an intent to remain Lifeline customers and are doing so in the manner in which they have been instructed by TracFone, based on the non-usage policy implemented by TracFone in consultation with state commissions. As such, those consumers have every right to remain enrolled in the Lifeline program.

Rectification of this shortcoming in the usage definition would be a simple matter. All that the Commission need do is to insert the words “or receipt” between the words “purchase” and “minutes” in Section 54.407(c)(2)(ii). With that revision, Section 54.407(c)(2)(ii) would read as follows: “Purchase or receipt of additional minutes from the Eligible Telecommunications Carrier to add to the subscriber’s service plan.” With that simple revision, TracFone and other similarly-situated ETCs would be able to continue to implement their existing non-usage policies -- policies which have been found sufficient in the states where those ETCs provide Lifeline service.

Another aspect of the non-usage policy which merits reconsideration is the Commission’s determination noted at footnote 709 not to allow sending and receipt of text messages to be considered to be usage for purposes of the non-usage policy. The only stated basis for the

²⁴ Of those TracFone Lifeline customers whose only usage in February 2012 was receipt of minutes, nearly one-half (46 percent) are enrolled in either the SafeLink Wireless[®] 68 or 125 minutes plans. Consumers electing those plans often do so either because unused minutes carry over or, in the case of the 68 minute plan, they want to preserve their minutes for international calling. In such cases, not sending or receiving calls for 60 days in the absence of something else (*i.e.*, not having the phone charged and turned on to receive monthly minutes) does not indicate an intent to no longer remain in the program.

exclusion of text messaging is that text messaging is not included in the list of supported services codified at Section 54.101(a)(1) - (9). Excluding text messaging from the definition of usage for purposes of the non-usage policy disregards the realities of how consumers communicate using cellular telephones and other wireless devices. For many users of wireless telecommunications services, including many consumers of Lifeline-supported services, text messaging has become the *de facto* communications method of choice, especially among younger consumers. It is not unusual for young adults as well as teen-aged consumers to send/receive hundreds of text messages daily -- to their friends, to their families, to their employers, to their health care providers, etc.²⁵ To disregard the unassailable truth that hundreds of thousands of consumers, including many Lifeline customers, utilize text messaging predominantly or even exclusively to convey real time information to others and to converse with others ignores current realities of human behavior. Moreover, the Commission already allows use of text messaging for other purposes in connection with the Lifeline program. For example, ETCs are allowed to use text messaging to verify their customers' continuing eligibility as well as by persons with temporary addresses to re-verify their temporary addresses. Accordingly, TracFone respectfully requests

²⁵ See, e.g., "Americans and Text Messaging", published September 19, 2011, by the Pew Internet & American Life Project, a Project of the Pew Research Center. The data contained in that Pew report indicates that not less than 31% of American consumers prefer to use text messaging rather than voice calling. Young adults in the 18-24 age range exchange on average 109.5 text messages daily -- about 3,200 messages per month. These statistics demonstrate that for many consumers, text messaging is the preferred communications capability of cell phones, and to exclude sending and receipt of text messages as "usage" for Lifeline usage purposes based solely on the list of supported services in the Commission's rules disregards consumer behavior and economic reality. The Pew report is available at <http://pewinternet.org/reports/2011/Cell-Phone-Texting-2011.aspx>.

that the Commission allow the sending and receiving of text messages to count as usage for purposes of the 60 day non-usage policy now codified at Section 54.407(c)(2).²⁶

III. Receipt of Lifeline Support Should Not Be Based Upon Activation of a Handset Provided to a Lifeline Consumer

Closely related to the non-usage policy governing de-enrollment for non-usage is the Commission's newly-adopted requirement governing when Lifeline support may begin. Pursuant to Section 54.407(c)(1), ETCs offering Lifeline services which do not require collection of monthly fees from consumers (*i.e.*, so-called "prepaid" services) may not receive USF support for a subscriber until the subscriber activates the service. This rule which was not even proposed in the Commission's notice of proposed rulemaking in this proceeding, unless reconsidered, will dramatically alter the manner in which TracFone and other ETCs provide Lifeline service, will complicate and unnecessarily delay delivery of Lifeline-supported services to consumers, and will do nothing to prevent waste, fraud, and abuse of USF resources.

Since the advent of its SafeLink Wireless[®] Lifeline service in 2008, TracFone has sent to consumers (using reliable overnight delivery services such as FEDEX) welcome packages containing handsets and materials describing the service. Those handsets are shipped to consumers with the first month's allotment of airtime minutes loaded onto the phone, activated, and ready for use by those consumers. Importantly, TracFone does not send handsets to Lifeline customers until the customer has completed the enrollment process and TracFone has determined

²⁶ In other contexts, the Commission has deemed SMS text messages to be telephone calls. For example, in its recent Robocall Order, the Commission concluded that the prohibition against autodialed telemarketing calls to consumers is applicable to voice and text lines. Robocall Order at ¶ 4. Just as consumers view SMS text messages in the same manner as voice calls for telemarketing purposes, so too do consumers view voice calls and SMS text messages the same when those consumers happen to be Lifeline customers.

the customer to be qualified for Lifeline support based on all applicable federal and state requirements. This process has worked well for consumers and for TracFone.

However, under Section 54.407(c)(1), TracFone and other ETCs offering non-billed Lifeline services no longer will be allowed to use that process. Instead they will be required to send qualified, properly-enrolled Lifeline customers non-activated phones and will not be allowed to receive USF reimbursement until those phones are activated or used to make a phone call. As a result, those consumers will no longer be able to remove the handsets from the box and begin using the phones to place and receive calls as they have been able to do since the program's inception.

Requiring Lifeline consumers to activate their own handsets in order to commence Lifeline service will impose a new burden on those consumers and one not typically imposed on consumers of wireless services. As the Commission is no doubt aware, when consumers purchase traditional post-paid wireless service, the carrier or its agent activates the phone for the customer at the time and place of handset purchase. A consumer visits a store (either owned and operated by a wireless provider or an independent retail vendor such as Best Buy). The consumer selects the device and then executes the necessary paperwork to establish the service contract. The carrier's (or agent's) employee then removes the handset from the box, activates it, does a test call, and hands it to the consumer who then leaves the store with an activated, ready-for-use phone.²⁷

Nowhere in the Lifeline Reform Order does the Commission explain why this standard wireless industry process -- activation of the handset by the service provider -- is somehow

²⁷ Undersigned counsel has owned about a dozen mobile phones, has never had to activate any of them and would have no idea how to do so. Each of those devices was activated for the purchaser at the time of purchase.

appropriate for non-Lifeline-supported services and for billed Lifeline-supported services, but is somehow not appropriate for non-billed Lifeline-supported services. Stated slightly differently, nowhere does the Commission explain why non-billed wireless Lifeline consumers, unlike all other consumers of wireless services, should bear the responsibility of activating their own handsets. In fact, as a result of rule changes set forth in the Lifeline Reform Order, ETCs would have no economic incentive to provide activated phones to non-qualified Lifeline customers. The costs to TracFone and other ETCs of enrolling customers, providing and delivering a handset at no charge to customers, and providing several months worth of usage benefit would greatly exceed the amount of USF reimbursement the ETC would receive for providing several months of service before de-enrolling such customers pursuant to the non-usage policy.

A solution to this problem is suggested at footnote 707 of the Lifeline Reform Order. In that footnote, the Commission states “[a] third party, such as an ETC, cannot activate the service for the subscriber unless expressly authorized to do so by the subscriber.” This statement indicates that ETCs may offer their Lifeline customers the opportunity to authorize the ETC to activate the handsets on their behalf. Based upon footnote 707, TracFone plans to revise its Lifeline enrollment application forms to include a space where the applicant may authorize TracFone to activate the phone on the customer’s behalf. When customers provide that authorization, TracFone will send such customers activated ready-to-use handsets upon their enrollment in its Lifeline program.

IV. The Requirement that Temporary Addresses be Verified Every 90 Days Will Be An Impediment To Providing Lifeline Support To Persons In Temporary Residences And Should Be Reconsidered

Of the reforms adopted by the Commission to facilitate the availability of Lifeline-supported services to those who most need assistance, few, if any, are more important than making the one-per-household rule applicable to persons with temporary addresses. The Commission wisely recognizes that many persons residing in homeless shelters, nursing homes, halfway houses, and other group living situations -- often on a transient basis - need Lifeline-supported service to be able to contact the people and institutions essential to helping them improve their lives. As long ago as July 2009, TracFone raised with the Commission how the one-per-household policy as then interpreted was impeding the efforts of persons residing in shelters to obtain Lifeline service.²⁸ Many parties commented in support of the notion that persons residing in shelters and other temporary housing situations should be able to receive Lifeline support if otherwise qualified. Such supporting comments were filed in response to a 2009 public notice,²⁹ and in response to the notice of proposed rulemaking in this proceeding.

By allowing residents with temporary addresses to receive Lifeline benefits the Commission has taken an important step to making Lifeline support available to all who qualify for that support and who need that support. There is, however, one problem with the Commission's temporary address requirement. Section 54.410(g) requires ETCs to recertify those of their Lifeline subscribers who have enrolled using temporary addresses every ninety (90) days. TracFone understands that a temporary address is, by definition, temporary, and that

²⁸ Letter from Mitchell F. Brecher, counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, filed July 17, 2009.

²⁹ Public Notice - Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program "One-Per-Household" Rule as Applied to Group Living Facilities, DA 09-2257, released October 21, 2009.

persons claiming to reside at temporary locations, including shelters, should have to verify periodically that they continue to reside at that address. The problem is with the 90 day requirement. In order for TracFone or any other ETC serving temporary address customers to complete an address (or an eligibility) re-verification process, it must begin that process long before the deadline. In order to have customers claiming a temporary address verify that they continue to live at that address every 90 days, the ETC must begin the verification process almost immediately. If a Lifeline subscriber claiming a temporary address enrolls in Lifeline on April 1, its address must be re-verified by June 30. The ETC must begin the process of contacting that customer within days of the customer's April 1 enrollment. TracFone has learned from experience that customers, including temporary address customers, are difficult to reach and that it often takes multiple communications with the customers to elicit responses.

Moreover, an ETC which enrolls a temporary address customer incurs substantial initial costs in marketing to that customer, enabling the customer to complete the enrollment process, providing a handset with usage to the customer, and providing service. It will be uneconomic for TracFone or for any ETC to serve such customers if a substantial portion of those customers must be de-enrolled after only three months for failure to verify their address within that short time frame if they are using the service.³⁰

TracFone has undertaken significant effort and expense to establish security protections which it utilizes to prevent multiple enrollments at the same residential address unless it is able

³⁰ Pursuant to the 60 day non-usage policy, those customers who have no usage for 60 consecutive days must be de-enrolled. Subject to the concerns described in Section 2 above, TracFone understands the reasons for the non-usage policy and agrees with the policy. It does not agree that Lifeline customers with temporary addresses who are using their Lifeline service and who rely on that service should lose that service after 90 days solely because they did not respond in a timely manner to requests that they verify that they remain at the same address, especially when those requests are to be sent almost immediately after the customer has enrolled in the Lifeline program.

to determine that the enrollments are from separate households. TracFone refers to these protections as “locks.” In order to implement a 90 day address re-verification for temporary addresses, it will need to revise those security locks. To do so will take significant development time.

In addition, as another ETC, General Communications, Inc. (“GCI”), states in comments to the Office of Management and Budget (“OMB”), the 90 day temporary address verification requirement will require that ETCs develop and implement major changes to their tracking methods and their outreach procedures and that there has been no showing that the increased paperwork required by that rule will produce any material reduction in waste, fraud, and abuse of USF resources which will not result from other Lifeline reforms including, *e.g.*, the requirement that ETCs re-verify all of their Lifeline customers annually.³¹ TracFone shares those concerns raised by GCI in its comments to OMB, and respectfully suggests that those concerns warrant Commission reconsideration and modification of the 90 day temporary address re-verification requirement. Specifically, TracFone respectfully requests that on reconsideration the Commission abandon the special 90 day address re-verification requirement for temporary addresses and instead, specifically require that temporary address information be re-verified as part of the annual verification of continuing eligibility requirement. Alternatively, TracFone proposes that temporary addresses be re-verified at least every nine months.

³¹ Letter from John T. Nakahata, counsel for GCI, to Nicholas A. Fraser, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB Control Number: 3060-0819, WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45), filed March 23, 2012.

V. The Establishment of a Flat Lifeline Support Level of \$9.25 Per Month Is Not Supported By Record Evidence And Should Be Reconsidered

TracFone concurs with the Commission's decision to eliminate the Tier 1, Tier 2, and Tier 3 support factors to determine the amount of monthly per customer Lifeline support to be received by ETCs. Continuing to base Lifeline support on incumbent local exchange carrier ("ILEC") subscriber line charges (Tier 1) makes little sense since not all ETCs are subject to subscriber line charge requirements. Specifically, no wireless ETCs are subject to subscriber line charge requirements. However, establishing \$9.25 as the maximum allowable monthly reimbursement amount (excluding those ETCs serving tribal areas who will continue to receive Tier 4 support) is an arbitrarily-selected amount which should be reconsidered.

The Commission selected \$9.25 based on USAC data indicating that \$9.25 was the average per line Lifeline support amount in September 2011³² Nowhere in the Lifeline Reform Order is there any explanation of how that average amount was calculated. However it was calculated, the Commission should remain mindful of the fact that it is only an average. As with any average, some ETCs will see reductions in their support levels; others will see increases. Individual ETCs' support levels under the old rules were dependent on various factors. Most importantly, on the level of subscriber line charges of the ILECs in whose study areas the ETCs provide Lifeline service. Based on the geographic areas where it provides Lifeline service, in September 2011, TracFone received approximately \$9.58 per month per Lifeline customer. Its support level is about the same today. Therefore, reducing its support from the current level to \$9.25 may sound like a nominal reduction. However, based on its enrolled Lifeline customers, that change will reduce its monthly support by more than one million dollars per month.

³² Lifeline Reform Order at n. 151.

While TracFone will suffer a million dollar per month reduction in USF support, other ETCs will see their support increase. For example, the current subscriber line charge of the ILEC, Verizon, in the District of Columbia is \$3.86. An ETC providing Lifeline service only in the District of Columbia such as Verizon, would have received at most \$7.36 ($\$3.86 + \$1.75 + \1.75). Unlike TracFone, whose monthly per customer support will be reduced by \$0.25, that ETC's monthly Lifeline support will be **increased** by \$1.89 per customer per month ($\$9.25 - \$7.36 = \$1.95$).³³ Nowhere in the Lifeline Reform Order does the Commission acknowledge that in its effort to establish a flat Lifeline support funding level de-linked from subscriber line charges, some ETCs will experience support reductions while others will benefit from significant Lifeline support increases.

Based on the foregoing, TracFone respectfully requests that the Commission reconsider its establishment of an interim flat support level and allow ETCs to continue to receive reimbursement at their own September 2011 levels while the Commission considers permanent changes to the Lifeline support mechanism in the further rulemaking portion of this proceeding.

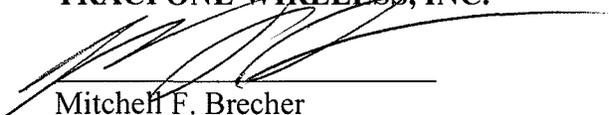
³³ The example of Verizon in the District of Columbia is illustrative of this unintended consequence of increasing Lifeline support for certain ETCs but is not the only such example. Other ETCs with subscriber line charges and hence Tier 1 support below \$6.50 will experience significant increases in their per line support. Those include, but are not limited to, AT&T California (Pacific Bell) whose subscriber line charge is \$4.40; Frontier Communications West Coast (\$2.24); Frontier Communications of the Southwest, Inc. (\$2.72); AT&T Illinois (Illinois Bell) (\$4.53); CenturyLink in Nebraska (\$2.90); CenturyLink in Nevada (\$3.58); AT&T Nevada (\$4.63); CenturyLink in Pennsylvania (\$4.30); CenturyLink in Virginia (\$3.88). Each of those ILEC ETCs as well as other ETCs providing Lifeline service in their study areas will enjoy substantial increases in the per line Lifeline support.

CONCLUSION

For the reasons set forth in the petition for reconsideration, TracFone respectfully urges the Commission to reconsider several aspects of its Lifeline Reform Order consistent with the views expressed herein.

Respectfully submitted,

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