

**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)	

**REPLY TO TELECOMMUNICATIONS BOARD OF PUERTO RICO’S RESPONSE TO
REQUEST FOR CLARIFICATION AND DECLARATORY RELIEF**

TracFone Wireless, Inc. (“TracFone”), hereby replies to the April 17, 2012 Response of the Telecommunications Regulatory Board of Puerto Rico (“Board”) to TracFone’s Request for Clarification and Declaratory Relief filed in this matter.¹

In its Response, the Board makes a series of defamatory and factually incorrect assertions about TracFone, its conduct in the provision of Lifeline service in Puerto Rico, and its motivations for seeking relief from the Commission as requested in its February 22, 2012 Emergency Petition for Declaratory Ruling and for Interim Relief and its March 9, 2012 comments in support of its Emergency Petition. For example, the Board accuses TracFone of “imped[ing] the Board’s efforts to eliminate waste and abuse in the Lifeline program in Puerto Rico,”² and of a “lack of cooperation with the Board and an unfortunate pattern of misinformation.”³ In addition, the Board accuses TracFone of improperly obtaining the March

¹ Request for Clarification and Declaratory Relief, WC Docket No. 11-42, *et al*, filed April 10, 2012 (“Request”).

² Response at 1.

³ *Id.*

26 notice to customers attached to TracFone's Request for Clarification which the Board asserts is a non-public document.⁴

What the Board has not done in its response is refute any of the material facts set forth in TracFone's Request for Clarification. It has not refuted the fact that the announced changes to the Board's decision requiring de-enrollment and debarment from Lifeline benefits for prescribed durations is only applicable to those Puerto Rico Lifeline customers who were de-enrolled on March 1, 2012 pursuant to the Board's January 30, 2012 directive. It has not refuted the fact that the Board has changed its debarment policy for those March 1 de-enrollees and allowed them (having already been de-enrolled from all Lifeline programs) to be re-enrolled immediately, provided, however, that they may re-enroll only with the provider who served them first. It has not refuted the fact that all other Puerto Rico Lifeline consumers who have been deprived by Board edict of federal Lifeline benefits to which they are entitled (including those who were de-enrolled on April 1 per the Board's February 7 directive, and those who are to be de-enrolled on May 1 per the Board's March 7 directive) will have no re-enrollment rights (at least, none yet announced by the Board). Most importantly, the Board still has not provided any basis for Puerto Rico to be excluded from the requirement codified at Section 54.405(e) of the Commission's rules that require persons enrolled in multiple Lifeline programs to be de-enrolled from all except one program -- a requirement applicable to ETCs "in any state."⁵

As a preliminary matter, TracFone herein addresses the Board's accusations regarding the March 26 Notice. Contrary to those accusations, that notice was not improperly obtained by TracFone. Attached to this Reply is an affidavit executed by Edwin Quiñones, a partner in the Puerto Rico law firm of Quiñones & Arbona. Mr. Quiñones is TracFone's local counsel in

⁴ *Id.*, at 4.

⁵ 47 C.F.R. §54.405(e). See also Lifeline and Link Up Reform and Modernization, et al, 26 FCC Rcd 9022 (2011).

matters before the Board. As explained in Mr. Quiñones's affidavit, a copy of the March 26 Notice was provided to Mr. Quiñones's law firm by a journalist who reports on local matters, including business matters, in Puerto Rico. Mr. Quiñones's law firm was informed by the journalist that the Notice had been provided to the journalist by an employee of the Board, specifically the Board's public relations officer. The journalist then forwarded to Mr. Quiñones's law firm the March 26 Notice. Nothing in the release of the Notice to the journalist by the Board's public relations officer or in the subsequent provision of the Notice by the journalist to Mr. Quiñones's law firm indicates that the Notice dated March 26 and signed by the Board President and by the Board Secretary was awaiting "approval" by the Electoral Commission or by any other department of the Government of Puerto Rico, or that the signed and dated Notice had not been sent to de-enrolled Lifeline consumers. If the Board is seriously concerned about notices not being obtained by ETCs and others prior to their being "approved" and sent to consumers, then it would behoove the Board not to leak them to the media. If the Board chooses to leak not-yet-public documents to the media, it has no right to assert -- as it did in its Response -- that TracFone's obtainment of the leaked document was improper.

Even more importantly than the Board's unsupported and factually erroneous assertion that TracFone has improperly obtained a non-public Board document already leaked to the media by the Board, the Board's Response contains a series of misleading and, in some cases, demonstrably incorrect statements regarding the Board's own actions. The most blatant misstatements involve the revisionist explanation of the Board's March 7, 2012 Resolution and Order.⁶ For example, the Response states that the March 7 Order "provided different

⁶ In Re: Universal Service Fund Lifeline/LinkUp, Case No. JRT-2001-SU-0003, ("March 7 Order"). Attached to the Board's Response is an English translated version of the order certified to be true and accurate. In this Reply, all references to the March 7 Order are based on that certified translation attached to the Board's Response.

mechanisms based on the period in which they [de-enrolled consumers] were found ineligible.”⁷ That statement indicates that the Board’s March 7 Order establishes different mechanisms for those persons de-enrolled on March 1 than for persons de-enrolled on April 1, for those who will be de-enrolled on May 1, and for any other consumers who may be de-enrolled per future Board orders and directives. That statement is incorrect. The March 7 Order addresses only those consumers who were de-enrolled on March 1 (“By means of this *Resolution and Order*, we receive (sic) the rule applicable to individuals as duplicated for reasons of their social security of Regulation Number 8093 . . .”).⁸ The Board’s January 30 directive that certain consumers be de-enrolled on March 1, 2012 was limited to those who were found to be “duplicates” based on Social Security number.

Nothing in the March 7 Order or in any other Board document -- issued or unissued -- indicates that any determinations have been made regarding any de-enrolled consumers other than those who were de-enrolled on March 1. Those consumers who were de-enrolled on April 1 (based on residential address), those who will be de-enrolled on May 1 (based on allegedly incomplete information), and any future de-enrolled consumers are not subject to any Board orders, notices or anything else establishing any re-enrollment rights, conditions, or limitations. Whether the Board’s not yet approved, not yet issued, “non-public” March 26 Notice or any other notice will be sent to some, all, or none of the persons who have been de-enrolled or who might be de-enrolled in the future remains a mystery.

⁷ Response at 5.

⁸ In its Response at p. 5, the Board repeats its false statement that the March 7 Order establishes re-enrollment rights (albeit only with the first provider) for consumers de-enrolled on dates other than March 1. (“ . . . for those consumers who were not de-enrolled on March 1, 2012, they can continue receiving their benefit and service from the first carrier.”) Contrary to that statement, the March 1 Order, by its express terms, is applicable only to March 1 de-enrollees.

Moreover, nothing in the Board's Response contradicts the clear and explicit limitation in the March 7 Order that those consumers who were de-enrolled on March 1 based on the January 30 Board demand may immediately re-enroll, but only with the ETC who first provided the customer with Lifeline service. This limitation is stated in the first ordering clause:

IT IS RESOLVED TO LEAVE PENDING OUR RULE APPLICABLE TO DUPLICATES FOR SOCIAL SECURITY OF JANUARY OF 2012, IN SUCH A WAY THAT THE CUSTOMER CAN REMAIN WITH THE SERVICE TO WHICH THE SUBSIDY WAS FIRST APPLIED, IF SO DESIRED.⁹

In short, the March 7 Order directly contradicts the statement in the Board Response that, for those customers who lost their Lifeline benefits on March 1, the Board determined to: a) make them eligible to continue receiving benefits; and b) allow them to select the ETC of their choice.¹⁰ Contrary to that statement, the March 7 Order does not allow March 1 de-enrollees to select the ETC of their choice. That choice has been taken from those consumers by the Board. They may only re-enroll in the Lifeline program of the provider's service to which the subsidy was first applied. Whether the Board has changed its mind with regard to the March 1 de-enrollees and will now allow them to re-enroll in their preferred ETC's Lifeline program -- as stated in the non-public March 26 Notice -- is known only to the Board. If the March 26 Notice does reflect a revised policy and if the Board does send the March 26 Notice to persons de-enrolled on March 1, then there will be one re-enrollment policy established for those de-enrolled on March 1 and another, not-yet-announced, policy (or policies) for all other de-enrolled customers. Nothing in the Board's Response contradicts that unassailable fact or provides any explanation as to what re-enrollment rights, if any, the Board may someday make applicable to anyone de-enrolled other than those de-enrolled on March 1.

⁹ March 7 Order at 2 (emphasis added).

¹⁰ Response at 5.

Several other aspects of the Board's Response warrant brief comment. The Board continues to rely on what it describes as Commission approval of states which have established their own "audit mechanisms"¹¹ and cites to paragraph 221 of the Commission's recent Lifeline Reform Order.¹² Curiously, neither the words "audit" nor "audit mechanisms" appear in paragraph 221. What paragraph 221 says is that states may establish their own systems for checking for duplicative Lifeline support rather than relying on the national duplicates database. Nothing in paragraph 221 or anywhere else in the Lifeline Reform Order indicates that states may establish de-enrollment requirements which result in deprivation of all Lifeline benefits for any period of time (not 4 months, not one year, not permanent ineligibility). Indeed such deprivation of federal Lifeline benefits for any period of time would violate 47 C.F.R. § 54.405(e) -- a rule promulgated by the Commission which is applicable to "all states."

Paragraph 221 does establish a process which allows states to opt out of the Commission's duplicates database requirements, provided that they certify to the Commission that they have "a comprehensive system in place to check for duplicative federal Lifeline support that is at least as robust as the processes adopted by the Commission and that covers all ETCs operating in the state and their subscribers." Paragraph 221 further provides that states seeking to avail themselves of this opt-out process must submit a certification within six months of the effective date of the Lifeline Reform Order. Such certifications are approved if not acted on by the Wireline Competition Bureau within 90 days of filing. However, as TracFone noted in its February 22, 2012 Emergency Petition for Declaratory Ruling and Interim Relief, the Board at that time had not sought to avail itself of the opt-out process. Now, more than two months later, it still has failed to submit such a certification. Accordingly, the process described at paragraph

¹¹ *Id.* at 2.

¹² Lifeline and Link Up Reform and Modernization, et al, FCC 12-11, released February 6, 2012.

221 of the Lifeline Reform Order is not relevant to the Board's conduct in ordering de-enrollment of qualified Lifeline consumers from all Lifeline-supported programs and deprivation of consumer choice in selecting Lifeline providers, and its reliance upon that paragraph is misplaced.¹³

As it has done in prior filings, the Board once again makes generalized accusations about the conduct of ETCs. See, e.g., p. 7 of the Response: “. . . the Board has received significant information from subscribers preliminarily showing that some ETCs have engaged in fraudulent and deceptive conduct,” To date, the Board has neither specified the ETCs to whom it claims to have received such information nor offered any description of that alleged deceptive and fraudulent conduct. TracFone has been designated as an ETC in thirty-nine states and provides Lifeline service in more than thirty-five of those states. Not one other state commission has accused TracFone of engaging in fraudulent or deceptive conduct in connection with its Lifeline program. If there were any merit to the Board's accusations, including that TracFone has engaged in an “unfortunate pattern of misinformation,”¹⁴ it would seem probable that such problems would have surfaced in at least some of those other states. They have not. TracFone's policy throughout its history as an ETC providing Lifeline service has been to cooperate with the Commission and with every state commission where it operates as an ETC and to comply with all applicable requirements -- federal and state -- governing Lifeline-supported service.

¹³ As TracFone has explained in prior filings, TracFone provides Lifeline service in Puerto Rico without receiving any support from the Puerto Rico Universal Service Fund. Therefore, TracFone's Lifeline program imposes no strains on the Puerto Rico fund and to the extent the Board relies on Puerto Rico legislative enactments empowering it to preserve the Puerto Rico fund's resources to justify its draconian de-enrollment policies, such legislation is not relevant to TracFone's Lifeline service.

¹⁴ Response at 1.

Nothing contained in the Board's Response contradicts the fact that the Board's articulated policies governing certain de-enrolled consumers set forth in its March 7 Order differ from those set forth in its not-yet-issued (but signed) March 26 Notice, and that such differences, at the very least, create confusion and appear to establish different requirements and different re-enrollment rights, depending on when consumers are de-enrolled. For that reason as well as for the reasons articulated in prior submissions, TracFone respectfully reiterates its request that the Commission issue a ruling declaring that all state policies, practices, and procedures governing duplicate enrollment in Lifeline programs supported by the federal Universal Service Fund ensure that all consumers receive notification that 1) they may only receive one Lifeline-supported service; 2) that they will be de-enrolled from all except one such service; and 3) that they must be afforded a choice of which Lifeline-supported service in which to enroll.

Respectfully submitted,

TRACFONE WIRELESS, INC.



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April 24, 2012

Attachment

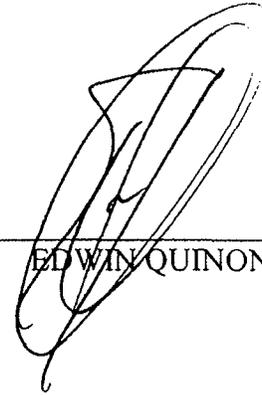
AFFIDAVIT

I, Edwin Quiñones, of legal age, married, attorney and resident of Guaynabo, Puerto Rico, having been duly sworn, under penalty of perjury, assert the following:

1. That my name and personal circumstances are as stated above.
2. That I am a partner in the law firm Quiñones & Arbona, with business address Doral Bank Plaza, Suite 701, # 33 Calle Resolución, San Juan, Puerto Rico 00917.
3. That my law firm serves as counsel to TracFone Wireless, Inc. ("TracFone") in matters before the Telecommunications Regulatory Board of Puerto Rico and all representation of TracFone before the Telecommunications Regulatory Board of Puerto Rico is performed by me or by the attorneys employed by my firm acting under my direct supervision.
4. That, on April 3, 2012, I read a publication in a digital newspaper, published on the same date, regarding Lifeline service in Puerto Rico and the recent efforts by the Telecommunications Regulatory Board ("Board") to require that certain consumers of Lifeline-supported services lose their benefits.
5. That said article included an extensive interview with the Board's President regarding the Lifeline benefits in Puerto Rico.
6. That the article indicated that, according to the Board, consumers who had been de-enrolled from Lifeline-supported service would be allowed to re-enroll. To that effect, the article mentioned that, on that same date, the Board had published in a newspaper a Notice to Lifeline consumers regarding their ability to re-enroll in the Lifeline program.
7. That, upon reading the article I instructed my secretary to contact the journalist in order to inquire regarding the Notice mentioned in the article.
8. That the journalist sent to my law firm a copy of a Notice dated March 26, in the journalist's possession, signed by Sandra E. Torres Lopez, President, and by Ciorah J. Montes Gierbolini, Secretary.
9. That the journalist indicated to my law firm that the Notice was provided to her by the Board's Public Relations Officer.

10. That said Notice informed de-enrolled Lifeline customers in Puerto Rico that they would be able to re-enroll in the Lifeline program with the provider of the consumer's choice.
11. That the aforementioned is a true and correct account of how my law firm received copy of said Notice.

In San Juan, Puerto Rico, this 23rd day of April, 2012.



EDWIN QUINONES

Affidavit Núm. 104

Sworn and subscribed before me by Edwin Quiñones, of legal age, married, attorney and resident of Guaynabo, Puerto Rico, whom I personally know, in San Juan, Puerto Rico, on this 23 day of February 2012.

ANGEL L.
GATELL
GARCIA
ABOGADO - NOTARIO



NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Raymond Lee, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that on April 24, 2012, a true and correct copy of the foregoing Reply to Response to Request for Clarification and Declaratory Relief of TracFone Wireless, Inc. was sent via electronic mail and overnight delivery to the following unless stated otherwise:

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