

**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 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. Numerous carriers, state public utility commissions, consumer advocacy groups, and other interested parties, filed initial comments in this proceeding.

TracFone and virtually all other commenters support the Commission’s decision to adopt a widespread automated means of verifying Lifeline program eligibility, but caution the Commission against conditioning receipt of federal Lifeline funds on state participation in an eligibility database. TracFone and other commenters agree that a single national database is the most efficient model. However, access to available state databases is important until such time as a national database becomes available to ETCs. Although there are privacy concerns associated with an eligibility database, those concerns can be addressed by obtaining consent to use Lifeline applicants’ data, requiring disclosure of only the last four digits of the applicants’ Social Security numbers, limiting ETCs’ database access to indicating whether applicants are Lifeline-eligible with a yes or no response, and requiring ETCs to maintain the confidentiality of that response.

Commenters also agree that initially focusing on the three programs through which most consumers qualify for Lifeline (i.e., Medicaid, SNAP, and SSI) is a sound decision. TracFone and consumer advocacy groups urge the Commission to continue to allow Lifeline applicants to provide a self-certification under penalty of perjury, rather than require full certification of eligibility through the presentation of documents prior to the database being available.

TracFone and many commenters support the Commission's proposal to allow ETCs to receive Lifeline support from the USF only when they provide Lifeline service directly to subscribers. This proposal promotes efficiency and accountability and ensures the success of the substantial reforms established in this proceeding. TracFone and numerous other commenters support the Commission's adoption of a uniform flat rate for Lifeline support as being consistent with the statutory principle of competitive neutrality. TracFone encourages the Commission to implement a Lifeline support amount that will allow ETCs to provide a meaningful benefit to low-income households and that will not decrease the current Lifeline benefit received by any low-income household. TracFone and other commenters support a rule that would allow a household to split the Lifeline discount across two lines or between a wireless and wireline Lifeline service.

TracFone and virtually all commenters believe that ETCs should be permitted, but not required, to allow Lifeline subscribers to apply their Lifeline discount to bundled service packages. TracFone urges the Commission to allow competition in the market for Lifeline services to continue to work to meet the needs of low-income consumers. Many commenters support AT&T's proposal to allow incumbent wireline ETCs to limit their ETC designations to participation in the high cost program. TracFone also agrees with the proposal that the Commission should adopt a uniform ETC application process for ETCs seeking federal Lifeline support and that the Commission should eliminate the requirement that providers seeking to receive Lifeline support conform their service to rural telephone company service areas. Finally, TracFone urges the Commission to carefully consider whether increasing the record retention period to ten years is necessary to ensure compliance with the Commission's rules or to reduce waste, fraud, and abuse of USF resources.

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TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply comments regarding the further notice of proposed rulemaking issued in the above-captioned proceedings.¹

In the Notice, the Commission sought comment on various issues and proposals to continue its goal of further reforming and modernizing the Lifeline program funded by the Universal Service Fund (“USF”). The numerous initial comments filed in this proceeding indicate a strong consensus regarding the steps the Commission should take to reform the Lifeline program. Virtually all commenters agree that the Commission should establish an automated means to determine Lifeline eligibility for the three most common programs through which consumers qualify for Lifeline and that the Commission should implement a uniform flat rate Lifeline support for all ETCs. The commenters overwhelmingly agree that only those Eligible Telecommunications Carriers (“ETCs”) with a direct relationship with Lifeline

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”).

subscribers should receive Lifeline support and that the Commission should expand the Lifeline eligible groups to include participants in the Supplemental Nutrition Program for Women, Infants and Children (“WIC”) and homeless veterans programs. Moreover, the commenters stress the importance of ETCs being able to decide whether to participate in the Lifeline program and to determine the terms of the Lifeline plans they will offer.

I. The FCC Should Promptly Establish a National Database to Enable Eligible Telecommunications Carriers to Verify All Consumers’ Eligibility for Lifeline While Protecting Those Consumers’ Privacy Interests.

TracFone fully supports the Commission’s decision to adopt a widespread automated means of verifying Lifeline program eligibility. TracFone and other commenters agree that a single national database, as opposed to a separate database or databases in each state, is the most efficient model.² As stated by Verizon Wireless, “a system under which ETCs could interface with a single national administrator for all Lifeline eligibility determinations would be more efficient than a system that requires Lifeline providers to interface with multiple, incompatible state systems.”³ In particular, a national database is a significantly more efficient mechanism than numerous separate databases to certify eligibility for ETCs that serve several Lifeline subscribers in several states.⁴ Moreover, it is easier for the Commission to understand and

² As an alternative to a single national database, Sprint suggests a single interface to reach federal and state databases. Sprint Nextel Corporation (“Sprint”) Comments, at 3. While such a system may be more efficient than accessing state databases separately, if each state database requires different information or has different properties, any perceived increase in efficiency will be lost.

³ Verizon Communications, Inc. and Verizon Wireless (“Verizon Wireless”) Comments, at 2-3.

⁴ See United States Telecom Association (“USTelecom”) Comments, at 2 (national database more efficient for companies that serve several states).

oversee a single database.⁵ That said, access to available state databases will facilitate the ability of qualified low-income consumers to enroll in Lifeline programs during the period until a national database becomes available to ETCs. For that reason, TracFone has been working with state commissions and other state governmental departments to enter into appropriate arrangements to allow ETCs to access state databases for the purpose of verifying consumers' Lifeline program-based eligibility.

While commenters agree that a national database is optimal, they caution the Commission against conditioning receipt of federal Lifeline funds on state participation in a national database or on state implementation of its own eligibility database. As ITTA notes,

a state's Lifeline-eligible consumers should not be denied Lifeline benefits just because the state in which they reside has failed to follow the course of action the FCC prefers. Eligible consumers should be actively encouraged to participate in the Lifeline program, not penalized for actions outside of their control.⁶

AT&T is the only commenter that wants to punish consumers for a state's failure to participate in a national database. AT&T asserts, "[i]f states determine that it is in the best interest of low-income consumers residing in their states to have access to this federal benefit, the states must cooperate by participating in the creation of a comprehensive national Lifeline database."⁷ TracFone urges the Commission to reject AT&T's proposal as directly counter to one of the cardinal goals of universal service, which is to provide low-income consumers with access to telecommunications services.⁸

⁵ See Independent Telephone & Telecommunications Alliance ("ITTA") Comments, at 4-5; Third Party Verification, Inc. Comments, at 4 ("An eligibility database can only work if it is national in nature and subject to the supervision and authority of the Commission.").

⁶ ITTA Comments, at 6 n.9; see also Public Utilities Commission of Ohio ("PUCO") Comments, at 5; Third Party Verification, Inc. Comments, at 3-4.

⁷ AT&T Services, Inc. ("AT&T") Comments, at 7.

⁸ 47 U.S.C. § 254(b)(3).

The establishment of a national database raises privacy concerns. However, those concerns can be allayed by obtaining consent to use Lifeline applicants' data to confirm they are eligible for Lifeline,⁹ by limiting database access to indicating to ETCs whether applicants are Lifeline-eligible with a yes or no response,¹⁰ and by requiring ETCs to maintain the confidentiality of that response. Several commenters, including TracFone, assert that Lifeline applicants do have legitimate privacy concerns regarding disclosure of full Social Security Numbers on Lifeline applications. As noted by the Florida PSC, "requiring a Lifeline applicant to provide a full social security number for the national eligibility database may create a barrier to Lifeline enrollment."¹¹ Also, as TracFone stated in its initial comments, 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. There is no basis for requiring a full Social Security Number to query an eligibility database to confirm an applicant's participation in a Lifeline-qualifying program. Indeed, the Commission has only required the last four digits of a Lifeline applicant's Social Security Number to check the National Lifeline Accountability Database to see whether the applicant or someone in the applicant's household is already receiving Lifeline support (known as "duplicate enrollment").¹² Lifeline applicants have legitimate privacy concerns regarding disclosure of full Social Security

⁹ See Third Party Verification, Inc. Comments, at 6 (requiring ETCs to obtain customer consent at time of application satisfies state and federal privacy rules).

¹⁰ See Comments of Access Humboldt, *et al.* ("Joint Consumers"), at 5

¹¹ Florida Public Service Commission ("Florida PSC") Comments, at 5.

¹² See COMPTEL Comments, at 8.

numbers on Lifeline applications. Given that such disclosure is not necessary to accurately verify eligibility, there is no basis for needlessly compromising applicants' privacy rights.¹³

The Commission recommends in the Notice that eligibility databases, which are to be available by the end of 2013, initially focus on the three programs through which most consumers qualify for Lifeline (i.e., Medicaid, SNAP, and SSI). Enabling ETCs to verify the eligibility of the majority of Lifeline applicants through a database will vastly improve the accuracy and efficiency of the Lifeline enrollment process. Given the large number of programs through which an applicant may qualify for Lifeline, a national or state database will be most beneficial if it encompasses all Lifeline qualifying programs.¹⁴ Furthermore, before expanding the list of Lifeline-qualifying programs, the Commission should consider whether electronic access to participation data is available for the relevant programs.¹⁵

AT&T points out that if there is a national database for some programs but not others, then the result is a "fractured system" that "would be more costly for all parties and would expose the eligibility determination process to the variations in standards and protocols that have

¹³ Given these legitimate and well-documented privacy concerns, it is particularly unfortunate that a few state commissions, such as the Telecommunications Regulatory Board of Puerto Rico, have required Lifeline applicants to provide ETCs with their full nine digit Social Security Numbers and have required that consumers who do not provide nine digit numbers to be de-enrolled from Lifeline programs.

¹⁴ See T-Mobile USA, Inc. ("T-Mobile) Comments, at 3 (database should not be limited to three programs); Leap Wireless International, Inc. and Cricket Communications, Inc.) ("Leap Wireless") Comments, at 5-6.

¹⁵ See CTIA Comments, at 3; AT&T Comments, at 29 (new Lifeline-qualifying programs should be added "so long as participants in that new program can be readily incorporated into the comprehensive national Lifeline database."). Commenters overwhelmingly agree that the Commission should expand Lifeline eligible groups to include participants in the Supplemental Nutrition Program for Women, Infants and Children and homeless veterans programs as Lifeline qualifying programs. See, e.g., Sprint Comments, at 11-12; NASUCA Comments, at 15-16; Leap Wireless Comments, at 6-7.

plagued the current program.”¹⁶ While TracFone agrees that having a database that includes all Lifeline-qualifying programs is the optimal solution, the Commission should not delay the implementation of eligibility databases until such databases encompass all Lifeline-qualifying programs. The Commission soundly decided to focus on the three programs that comprise the large majority of programs Lifeline applicants rely upon for enrollment.

Under the Commission’s recently revised rules, starting June 1, 2012, ETCs are required to use full certification to verify the eligibility of all Lifeline applicants that rely on a program other than one included in a database.¹⁷ Consumer Advocacy Groups agree with TracFone that full certification is extremely burdensome to applicants who often do not have the required documentation of program-based eligibility readily available or the means to deliver such documentation to their chosen ETC. These groups assert that “[b]arriers for low-income consumers include limited access to technology, including scanners, copy and fax machines – even access to the post office can be difficult (as many have closed or have limited hours and those that remain open no longer make available copying and fax services).”¹⁸ TracFone and the Consumer Advocacy Groups – groups that represent the interests of the low-income consumers who are the intended beneficiaries of the Lifeline program – urge the Commission to continue to

¹⁶ AT&T Comments, at 5.

¹⁷ 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.

¹⁸ Alliance for Generational Equity *et al.* (“Consumer Advocacy Groups”) Comments, at 1

allow Lifeline applicants to provide a self-certification under penalty of perjury that they participate in a Lifeline-qualifying program prior to the database being available.¹⁹

Many commenters, consistent with TracFone's position, oppose the use a third party administrator to examine income and program documentation submitted by consumers and make determinations of eligibility. Those commenters express concerns that a third party administrator could delay the eligibility process and create higher costs,²⁰ undermine the Commission's rules that place the obligations of its Lifeline rules on ETCs,²¹ and prevent ETCs from distinguishing the quality of their customer service from other ETCs' customer service during the enrollment process.²² Notably, Solix, Inc., a third party administrator for several state USFs, is the only commenter other than AT&T (the company that proposed using a third party administrator), to support the use of a third party administrator to certify Lifeline applicants' eligibility.²³

II. Only Carriers That Provide Lifeline Service Directly to Subscribers Should Receive Lifeline Support.

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. Commenters agree that limiting Lifeline support to ETCs that directly provide Lifeline service to customers

¹⁹ See id. TracFone recognizes that access to state databases will be invaluable in enabling ETCs to verify that applicants for their Lifeline services are qualified for Lifeline support. To that end, TracFone is working diligently with state commissions and with other state departments and agencies that administer such databases to enter into suitable database access arrangements. This process will take time and will not be completed by June 1, 2012.

²⁰ See i-wireless, LLC ("i-wireless") Comments, at 5.

²¹ See National Association of State Utility Consumer Advocates ("NASUCA") Comments, at 10.

²² See Sprint Comments, at 5.

²³ See Solix, Inc. Comments, at 10-12.

promotes accountability and efficiency²⁴ and better ensures that those entities that are receiving Lifeline support are complying with applicable federal and state laws.²⁵ The Commission's proposal 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. TracFone supports this proposal because it ensures that the success of the substantial reforms established in this proceeding is not jeopardized.

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

TracFone and virtually all commenters support the Commission's adoption of a uniform flat rate for Lifeline support.²⁶ In contrast, PUCO supports a "multiple technology-specific uniform rates (e.g., a wireline rate and a wireless rate) based upon the voice component costs of the least-priced provider within a specific geographic area."²⁷ PUCO asserts that the least-priced carrier must be a relatively efficient carrier and that the cost structures for wireline and wireless services differ.²⁸ PUCO overlooks the fact that a Lifeline support amount 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.²⁹ As TracFone noted in its initial comments, a uniform flat Lifeline support amount that is available to all ETCs is competitively neutral.

²⁴ See USTelecom Comments, at 4; see also ITTA Comments, at 11 ("it is difficult to oversee compliance with its rules for a non-ETC that has a retail relationship with the customer when it does not interface directly with state or federal regulators.").

²⁵ See AT&T Comments, at 10; Sprint Comments, at 7.

²⁶ See, e.g., ITTA Comments, at 13; CenturyLink Comments, at 5; Michigan Public Service Commission Comments, at 6.

²⁷ PUCO Comments, at 8.

²⁸ See id.

²⁹ 47 U.S.C. § 253.

The Montana Telecommunications Association (“MTA”) is the only other commenter that suggests that the Lifeline support amount not be uniform for all types of ETCs. Specifically, the MTA recommends \$1 of Lifeline support for prepaid wireless Lifeline ETCs.³⁰ MTA claims that the amount of Lifeline support, which was based on a subscriber line charge “has no analogous counterpart in the prepaid wireless ecosystem, where SLCs never existed.”³¹ MTA does not explain why its rationale only applies to prepaid Lifeline-only wireless ETCs and not to all wireless ETCs, including those that also receive high cost support. MTA’s proposal, like PUCO’s proposal violates the principle of competitive neutrality and should be rejected by this Commission.

Competitive neutrality is an important principle with respect to Lifeline service. The advent of competitive ETCs offering alternative Lifeline programs (including, for example, the non-billed wireless plans pioneered by TracFone and now offered by others) brings to the nation’s low-income consumers something that has not previously been available to them -- competitive choices of telecommunications services. Uniform Lifeline support levels for all ETCs will result in those ETCs that best identify consumer needs and wants and deliver perceived value to Lifeline customers will capture the largest portions of the Lifeline service market segment. That is what occurs in other telecommunications service sectors and what should occur in the Lifeline sector.

TracFone encourages the Commission to implement a Lifeline support amount that will allow ETCs to provide a meaningful benefit to low-income households. TracFone has found that \$9.58 per customer per month is a reasonable level of support that enables it to provide a

³⁰ MTA Comments, at 15. MTA also suggests a waiver process whereby ETCs could seek a level of support based on specific costs.

³¹ *Id.* at 14.

valuable service to low-income consumers at no charge. Other commenters, such as i-wireless, ask the Commission to adopt a higher Lifeline support amount. For example, i-wireless states that “the FCC should consider the number of eligible participants in each state and set the national rate based on the weighted average of the current Tier 1, 2 & 3 rates provided per state” and calculates the amount as \$9.63.³² Sprint and NASUCA ask the Commission to adopt a Lifeline support amount of \$10. As Sprint states, adopting a rate below \$10 “would have the effect of decreasing support to households that currently receive the maximum federal support amount based on the tiered support structure and would likely have a negative impact on voice penetration rates in low-income households.”³³ TracFone believes that reducing the level of support would limit the Lifeline benefits which ETCs could provide to Lifeline customers. TracFone asks the Commission to adopt a Lifeline support amount that ensures no low-income household will receive a Lifeline benefit less than the benefit it currently receives.

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 wisely eliminated for non-tribal ETCs in the Lifeline Reform Order. Only one commenter, COMPTEL, asserts that ETCs should receive support for non-recurring service activation fees designed to cover the costs on enrolling a new Lifeline subscriber.³⁴ For the reasons for which the Commission eliminated Link Up support, TracFone urges the Commission not to allow the use of USF funds for non-recurring upfront charges.

³² i-wireless Comments, at 6-7.

³³ Sprint Comments, at 8; see also NASUCA Comments, at 11.

³⁴ See COMPTEL Comments, at 23.

Finally, TracFone and other commenters support a rule that would allow a household to split the Lifeline discount across two lines or between a wireless and wireline Lifeline service.³⁵ Some commenters raise concerns about splitting Lifeline support over two lines, especially if the Lifeline support is split between two different ETCs.³⁶ The Commission could address these concerns by clarifying that Lifeline support may only be split between lines provided by a single ETC.

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."³⁷ For example, if a household chooses to apply for wireless Lifeline service, then when someone leaves the residence with that one Lifeline-supported wireless telephone, then the rest of the household may be without telephone service. Similarly, if a household decides to apply for wireline Lifeline service, once a member of the household leaves the residence, that member will not have telephone service.³⁸ To resolve this issue, T-Mobile suggests that Lifeline support at a rate equal to 50 percent of the Lifeline support for the first line be provided for a second line in each household.³⁹ According to T-Mobile, this structure would facilitate a household's participation in wireless family plans which enable

³⁵ See General Communications, Inc. ("GCI") Comments, at 6; T-Mobile Comments, at 6-7.

³⁶ See USTelecom Comments, at 5-6; ITTA Comments, at 14 (allowing multiple carriers to claim support for same subscriber risks fraud and abuse); Alaska Communications Systems Group, Inc. ("Alaska Communications") Comments, at 6-7 (division of Lifeline support across lines or providers may cause administrative difficulty and customer confusion).

³⁷ Lifeline Reform Order, Statement of Commissioner Mignon L. Clyburn Approving in Part, Concurring in Part.

³⁸ See GCI Comments, at 7.

³⁹ See T-Mobile Comments, at 6-7

family communication.⁴⁰ TracFone believes that it is essential to offer low-income consumers a meaningful Lifeline benefit. TracFone supports T-Mobile's proposal so long as it does not unduly burden USF resources.

TracFone recommends that the Commission allow ETCs to offer Lifeline plans that permit Lifeline customers to apply their Lifeline discount to more than one line from the same ETC. However, as explained in the following section of these reply comments, ETCs should not be required to offer any particular type of Lifeline plan, including one that allows Lifeline consumers to split the Lifeline benefit over more than one line or type of service.

IV. ETCs Should Have Discretion to Develop Lifeline Plans That Meet the Needs of Low-Income Consumers.

In the Notice, the Commission asks whether it should require ETCs to allow Lifeline subscribers to apply their Lifeline discount to bundled service packages. With the exception of two commenters (the District of Columbia Public Service Commission ("DC PSC") and NASUCA), the commenters agree that ETCs should be permitted, but not required, to offer Lifeline customers Lifeline-supported discounts on bundled services.⁴¹ CTIA correctly notes the following: "The Commission historically has pursued a successful policy of letting the marketplace determine the scope of Lifeline offerings, and increased competition has caused those offerings to proliferate."⁴² The market for Lifeline service is highly competitive and ETCs

⁴⁰ See NASUCA Comments, at 14 (supporting use of Lifeline support for a wireless family plan).

⁴¹ See i-wireless Comments at 8; CenturyLink Comments, at 7; Leap Wireless Comments, at 11; USTelecom Comments, at 7.

⁴² CTIA Comments, at 5.

have developed Lifeline plans that contain features that meet the needs of Lifeline-eligible consumers.⁴³

Neither the Commission nor any commenter has provided any reason to conclude that ETCs will not respond to consumers' demands for a discount on service packages.⁴⁴ Although the DC PSC supports a requirement that Lifeline subscribers be allowed to apply their Lifeline discount to bundled service packages, it admits that its own rules permit, but do not require ETCs to offer bundled Lifeline services.⁴⁵ NASUCA also supports a requirement that Lifeline plans include bundled services. NASUCA only mentions that some states have such a requirement, but fails to provide a valid justification for its position. NASUCA also points to two "anecdotes" based on a Lifeline program in Ohio from the 1980s that limited Lifeline customers to measured or message service if their local carrier made such options available. According to NASUCA, Lifeline subscriptions increased when consumers were allowed to purchase multi-service bundles.⁴⁶ However, NASUCA admits that it does not have enough data to make any conclusions about this Ohio anecdote because the "precise numbers were deemed to be proprietary."⁴⁷ Therefore, NASUCA does not offer any justification for adopting a requirement that Lifeline plans include bundled services.

⁴³ See T-Mobile Comments, at 7 ("competition in the Lifeline market is already driving a multiplicity of pricing and service options"); Verizon Wireless Comments, at 8 ("[c]ompetition among Lifeline ETCs already has greatly expanded the Lifeline service options available to consumers").

⁴⁴ See AT&T Comments, at 27 ("the Commission lacks a record basis for such a requirement at this time"; Cox Communications, Inc. ("Cox Communications") Comments, at 15 (there is evidence that a mandate is necessary to enhance consumer choice); COMPTTEL Comments, at 26 (no reason to think ETCs will not respond to consumers).

⁴⁵ See DC PSC Comments, at 4.

⁴⁶ See NASUCA Comments, at 19-20.

⁴⁷ Id. at 20 n. 65 and 21 n.70.

As GCI aptly states:

Allowing but not requiring the use of Lifeline support for bundled service offerings will permit the interplay of consumer choice, ETC administrative structures, and the market to foster the evolution of effective supported bundles that meet real consumer need, without adding yet more administrative cost.⁴⁸

TracFone urges the Commission to allow competition in the market for Lifeline services to continue to work to meet the needs of low-income consumers and not to require ETCs to offer Lifeline plans that include bundled services.

V. 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. The commenters substantially support AT&T's proposal so long as there is another wireline or wireless Lifeline provider serving the incumbent wireline ETC's service area.⁴⁹ The California Public Utilities Commission ("California PUC") and the DC PSC oppose allowing incumbent wireline ETCs not to provide Lifeline service based on a concern that there would be no Lifeline wireline service available.⁵⁰ However, these commissions' concerns are not valid given that wireless and wireline services are considered by consumers to be substitutes for one another. Moreover, a wireless Lifeline service enables a low-income consumer to have discounted service both at a residence and away from home, while wireline service is limited to a residence. The California PUC and DC PSC provide no basis for their position that an incumbent wireline ETC may not cease providing Lifeline service unless an alternative wireline Lifeline option is available. TracFone agrees with the Tennessee Regulatory Authority's suggestion that the determination of

⁴⁸ GCI Comments, at 8.

⁴⁹ See CenturyLink Comments, at 7; USTelecom Comments, at 8.

⁵⁰ See DC PSC Comments, at 5; California PUC Comments, at 9.

whether there are other Lifeline providers serving the incumbent wireline ETCs Lifeline service area should be made by states.⁵¹

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. Permitting carriers to be designated as high cost-only ETCs is consistent with the structure of the USF support mechanisms, which treat the Low Income program and the High Cost program as distinct programs governed by distinct rules. 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.

VI. The Commission Should Adopt a Uniform ETC Application Process for ETCs Seeking Federal Lifeline Support.

Cox Communications recommends that the Commission adopt a standard ETC application process to be used in all states. In particular, Cox Communications suggests that states designate a carrier as an ETC to receive federal Lifeline support if it meets federal requirements.⁵² TracFone, as a ETC in 39 states, has substantial experience with the ETC application process of numerous states. Many states have unique ETC application requirements and procedures that must be met to receive federal and state Lifeline support. Moreover, those requirements and procedures are strictly applied even in situations where the ETC applicant only

⁵¹ See Tennessee Regulatory Authority Comments, at 3.

⁵² See Cox Communications Comments, at 13-14.

seeks federal USF support. Often those procedures result in prolonged delay.⁵³ TracFone supports a requirement that all state commissions utilize the same standards for purposes of a carrier being designated as an ETC to receive federal Lifeline support. Under such a system, states may continue to require carriers to meet state specific requirements to receive additional support from a state fund.

Cox Communications also asks the Commission to eliminate the requirement that providers seeking to receive Lifeline support conform their service to rural telephone company service areas.⁵⁴ The effect of the application of Section 214(e)(5) to wireless ETCs is to deny low-income consumers residing in rural communities the benefits of wireless Lifeline services for no reason other than that wireless ETCs do not have wireless coverage throughout the entirety of a rural telephone company's service area. The Commission has granted two petitions that requested forbearance from the requirement that the service area of a competitive ETC conform to the service area of any rural telephone company serving the same area, for the limited purpose of becoming designated as Lifeline-only ETCs.⁵⁵ TracFone requests that the

⁵³ For example, TracFone applied for Lifeline-only ETC designation in Oregon in 2010. In June 2011, a stipulation was executed among TracFone, the Oregon Public Utility Commission ("PUC") staff, and all intervenors in the case. Pursuant to that stipulation, TracFone committed to numerous concessions as conditions of being designated as an ETC. Despite the fact that the stipulation (agreed to by all parties) was filed with the Oregon PUC in June 2011, it has yet to be considered by the Oregon PUC and remains pending today -- nearly one year later. TracFone has encountered similar delays in other states.

⁵⁴ Id. at 13; see 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b).

⁵⁵ See Telecommunications Carriers Eligible for Universal Service Support (Cricket and NTCH Petitions for Forbearance), 26 FCC Rcd 13723 (2011).

Commission extend its grant of forbearance to all ETCs to facilitate the availability of wireless Lifeline service to all qualified low-income households within a wireless carrier's service area.⁵⁶

VII. The Commission Should Carefully Consider Whether Expanding Record Retention Requirements Is Necessary.

In its initial comments, TracFone generally supported 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. However, TracFone also agrees with the position of numerous commenters that increasing the record retention requirement to ten years is unduly burdensome.⁵⁷ The Commission has not articulated a problem with the current record retention period nor a reason as to why tripling the current record retention period is necessary.⁵⁸ As CenturyLink notes, there is no evidence that False Claims Act cases have been hindered by not having ten years of records.⁵⁹ Moreover, given that the Commission has substantially reformed the Lifeline program to reduce waste, fraud, and abuse, including requiring audits of large ETCs and participation in databases to identify duplicate enrollments and confirm eligibility, there may be no need to require ETCs to retain voluminous

⁵⁶ There is precedent for the Commission establishing a blanket forbearance process for similarly-situated entities seeking forbearance. In the Lifeline Reform Order, the Commission eliminated the requirement that any ETC seeking forbearance from the requirement that it provide USF-supported service, at least in part using its own facilities, file with the Commission a petition for forbearance pursuant to Section 10 of the Communications Act (47 U.S.C. § 160). Instead, all carriers seeking forbearance from the facilities requirement of Section 214(e)(1)(A) of the Act file with the Commission a compliance plan explaining how they will comply with the Commission's forbearance conditions.

⁵⁷ See Solix, Inc. Comments, at 8; AT&T Comments, at 29-30; USTelecom Comments, at 8-9.

⁵⁸ See GCI Comments, at 11; Verizon Wireless Comments, at 9; Alaska Communications Comments, at 10 (the Commission has not identified any problems with the current system nor a need for the extension).

⁵⁹ See CenturyLink Comments, at 8.

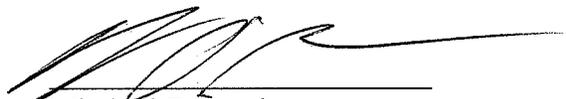
data for a ten year period.⁶⁰ TracFone urges the Commission to carefully consider whether increasing the record retention period to ten years is necessary to ensure compliance with the Commission's rules or to reduce waste, fraud, and abuse of USF resources.

CONCLUSION

TracFone respectfully requests that the Commission consider TracFone's views and recommendations set forth in these reply comments and in TracFone's initial comments, filed April 2, 2012, as it determines whether and how to further revise its rules governing the Lifeline program.

Respectfully submitted,

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⁶⁰ See COMPTEL Comments, at 32.