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

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

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May 15, 2012

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SUMMARY

The Commission should reconsider, or at least postpone, implementation of the requirement that applicants for Lifeline service provide documentation of their enrollment in program-based eligibility qualifying programs in states where ETCs do not yet have access to state eligibility databases. Such "full certification" is opposed by virtually all wireless Lifeline providers (with one unexplained exception), as well as by consumer advocacy groups, Members of Congress, a former Commissioner and a well-respected free market think tank. No evidence before the Commission contradicts the notion that full certification complicates the Lifeline enrollment process for many low-income households and reduces Lifeline enrollment. Moreover, TracFone and others are working with state governments to establish arrangements for access to state databases, and any full certification requirement should be delayed until those arrangements have been completed.

The definition of "usage" for purposes of the 60 day non-usage rule should be broadened to include taking active steps to receive minutes, either by having the phone charged on turned on during specified times or by consumers dialing 555 (or another appropriate code) to notify ETCs to send additional minutes. Sending and receiving text messages also should be considered usage. In addition to the reality that many consumers use text messaging in lieu of voice telephone calls to communicate as described in TracFone's petition for reconsideration, the Commission should recognize that some Lifeline customers are hearing-impaired. For such customers, text messaging is the most practical way to communicate via telephone.

Establishment of a $9.25 flat rate Lifeline reimbursement amount even on an interim basis is inappropriate and will be disruptive to ETCs and consumers. For some ETCs, including TracFone, it will be a significant reduction in Lifeline reimbursement. For other ETCs, it will be a windfall increase above current reimbursement levels.

Finally, the Commission's well-reasoned decision not to allow Universal Service Fund resources to be diverted to prop up the failing payphone industry should not be reconsidered. All parties commenting on that issue opposed the American Public Communications Council's continuing efforts to have the USF subsidize payphone owners. There is no reason to reconsider that decision.

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REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

TracFone Wireless, Inc. ("TracFone") hereby replies to several of the oppositions to petitions for reconsideration which have been filed in the above-captioned matter.

Introduction

On or about April 2, 2012, several parties, including TracFone, petitioned for reconsideration of certain aspects of the Commission's Lifeline Reform Order.[1] In the Lifeline Reform Order, consisting of nearly 300 pages, the Commission modified its existing rules and promulgated new rules governing the low-income programs supported by the Universal Service Fund (USF), specifically, Lifeline and Link Up. That order and the rules promulgated therein reflect a comprehensive reform of the low-income programs. When those rules are fully implemented, they will facilitate the ability of Eligible Telecommunications Carriers ("ETCs") to provide Lifeline-supported services to low-income households who need that support, while enabling ETCs and federal and state governments to work cooperatively to detect and prevent waste, fraud, and abuse of USF resources.

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[1] Lifeline and Link Up Reform and Modernization, *et al*, FCC 12-11, released February 6, 2012 ("Lifeline Reform Order").

What is most remarkable about the Lifeline Reform Order is how few petitions for reconsideration were filed and how few issues were the subject of reconsideration requests. That indicates a general perception among stakeholders that, in most respects, the Lifeline Reform Order "got it right." It reflects a careful balancing by the Commission of the competing public interest objectives which underlie reforming and modernizing the low-income programs, specifically Lifeline. TracFone shares that perception. For that, the Commission should be commended. This reply is limited to addressing certain matters which were the subject of oppositions and comments on the reconsideration petitions.

I. Mandatory "Full Certification" Should be Reconsidered or at Least Postponed to Afford States and ETCs a Reasonable Period To Arrange for Accessing State Lifeline Eligibility Databases

A substantial portion of TracFone's petition for reconsideration focused on its request that the Commission's "full certification" requirement contained at Section 54.410(c)(1)(i)(B) of its rules be reconsidered, or at least postponed.[2] As described in detail in TracFone's petition, requiring applicants for Lifeline support to produce documentation of program-based eligibility has not been successful in the few states where it has been implemented.[3] There is no evidence cited by the Commission that mandatory "full certification" reduces Lifeline enrollment by persons not qualified for Lifeline benefits. There is, however, abundant evidence on the record that mandatory documentation has served as a bar to thousands of qualified low-income

[2] On May 11, 2012, TracFone filed with the Commission a Request for Postponement of implementation of the full certification requirement. In that Request, TracFone has asked that the effective date of the requirement be postponed for at least one year beyond the scheduled June 1, 2012 effective date so as to afford ETCs and state governments a sufficient period to enter into suitable arrangements for access to state Lifeline program-based eligibility databases.

[3] As noted in TracFone's petition, the Commission relied on the unsupported assertion in a 2010 Government Accountability Office report that 25 unidentified states already require such documentation. Unlike the GAO, TracFone actually provides Lifeline service in 36 of the 40 states where it has been designated as an ETC. Of those 40 states, only 7 require documentation -- far below the number claimed by GAO.

households completing the enrollment process and obtaining Lifeline benefits for which they are qualified.

Moreover, the Commission in the Lifeline Reform Order correctly acknowledges that access to state eligibility databases is the most reliable method for verifying consumers' program-based Lifeline eligibility pending implementation of a national eligibility database which the Commission has set as a goal to be available by year-end 2013. It is for that reason that the rule will only require "full certification" in those states where access to eligibility databases is not yet available to ETCs providing Lifeline service.

Given this evidence and actual experience by Lifeline providers, it is not surprising that nearly all ETCs who addressed the issue concur with TracFone that full certification should be reconsidered, or at least, postponed beyond the scheduled June 1, 2012 effective date. For example, CTIA - The Wireless Association®, on behalf of its many commercial mobile radio service industry members, including numerous Lifeline providers, opposes "full certification," noting that "[r]equiring all ETCs to verify documentation of eligibility - particularly as soon as June 1, 2012 - will deny Lifeline benefits to a large number of eligible consumers, is not necessary to meet the Commission's fiscal goals, and ignores the Commission's decision to move toward automated eligibility verification approaches."[4] Similarly, a group of seven wireless carriers, all of whom are ETCs, opposes "full certification" noting that "it is burdensome for consumers to provide documentation, particularly since low-income consumers often have limited access to technology such as fax machines, copy machines, and scanners."

[4] CTIA Comments at 6.

They noted further that the added burdens would "result in increased non-response rates and, therefore, the de-enrollment of many low-income consumers who are qualified for Lifeline."[5]

In addition to the concerns of ETCs described in the preceding paragraphs, a broad spectrum of other commenters have criticized June 1 full certification implementation date from various public interest perspectives. Comments expressing concern about full certification include thirty-one members of Congress;[6] a coalition of nine consumer groups;[7] a former Commissioner;[8] and a leading free market think tank.[9]

Those commenters corroborate what TracFone has described to the Commission in its petition for reconsideration and in prior filings -- that requiring applicants for Lifeline benefits to produce documentation of program-based eligibility will preclude thousands of qualified low-income households from receiving Lifeline benefits to which they are entitled and which they need. Moreover, the most accurate and most efficient means for verifying that applicants are enrolled in qualifying programs is to check with the official sources -- the state databases of

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[5] Joint Comments of United States Cellular Corporation, C Spire Wireless, Smith Bagley, Inc., Budget Prepay, Inc., PR Wireless, Inc., N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, and Carolina West Wireless.

[6] Letter to The Honorable Julius Genachowski signed by Rep. Alcee Hastings and 30 other Members of Congress dated April 23, 2012 (". . . many states do not have eligibility databases in place to ensure that enrollees qualify for, and are in true need of, Lifeline services. If full certification is implemented in these states, we fear that current and prospective Lifeline subscribers may lose vital access to telephone service.")

[7] Letter dated April 2, 2012 from Alliance for Generational Equity, Community Action Partnership, Consumer Action, Hispanic Federation, Maryland Consumer Rights Coalition, National Association for the Deaf, National Consumers League, National Grange, and World Institute on Disability ("It would be highly unfair and highly confusing to make the change away from self-certification under penalty of perjury prior to the database being up and running.").

[8] Hon. Deborah Taylor Tate, "A Lifeline to Avoid Digital Divide," April 21, 2011 (". . . states, through their public service commissions or other human services agencies could assist with marketing wireless [Lifeline] services, providing streamlined application and eligibility validation through existing eligibility processes.").

[9] Randolph J. May, "Maintaining A Lifeline Safety Net," published by the Free State Foundation, May 3, 2012 ("Such conditioning on state eligibility databases, or requiring documentation that is often referred to as 'full certification,' may well result in denial of support to otherwise qualified low-income persons.").

persons enrolled in qualifying programs. Relying on photocopies of documents which can be reproduced or altered is not likely to prevent unscrupulous persons form falsifying their enrolment qualifications.

Notwithstanding the broad-based opposition to "full certification" by wireless ETCs, there is a single outlier. For reasons best known to itself, one company -- Leap Wireless International, Inc., and its affiliate, Cricket Communications, Inc. favor mandatory "full certification."

At the outset, it should be noted that nothing in the Commission's rules and nothing proposed in TracFone's petition for reconsideration or the comments of parties who concur with TracFone's concerns would prohibit Cricket or any other ETC from requiring applicants for their Lifeline services to produce documentation of program-based eligibility if those ETCs believe that they will be able to obtain such documentation and if they believe that it will better enable them to prevent fraudulent enrollment. As for making full certification mandatory for all Lifeline providers as Cricket advocates, Cricket asserts that full certification was "amply justified by record evidence demonstrating that self-certification and similar procedures have resulted in wasteful expenditures . . . ."[10] However, Cricket fails to cite to or even describe any of that "record evidence" to which it refers. There is a simple explanation for that glaring omission: no such record evidence exists! There is record evidence that mandatory documentation materially complicates the ability of low-income consumers to complete the enrollment process and significantly has reduced Lifeline enrollment in each of the relatively few states where it is already required. There is also record evidence that the lack of a database of consumers receiving Lifeline support has caused so-called duplicate enrollment (*i.e.*, enrollment in multiple ETCs' Lifeline programs). The Commission has prudently addressed the problem of

[10] Cricket Comments at 2.

waste, fraud and abuse caused by duplicate enrollment by mandating the near-term establishment of a national duplicates database and adopting and implementing an interim duplicates resolution process which has worked well in the first twelve states where it was used and now is being implemented in additional states.[11] Cricket fails to recognize the difference between preventing duplicate enrollment on the one hand, and preventing enrollment by unqualified households on the other hand.

Again, without data or explanation, Cricket states that it has not found that full certification deters consumers from completing the Lifeline enrollment process.[12] It is theoretically possible that Cricket, unlike TracFone, unlike the seven wireless ETCs who filed joint comments, and unlike all of CTIA's members who concurred in CTIA's comments, has not found mandatory documentation to be an impediment to Lifeline enrollment. However, based on the information which Cricket chose to share with the Commission, no one knows. Cricket has not indicated which states where it currently operates as a Lifeline provider require full certification; nor has it indicated whether it voluntarily requires documentation of program-based eligibility in states where full certification is not required; neither has it provided any data which support its assertion that mandatory documentation has not discouraged Lifeline enrollment. In contrast, TracFone placed on the record very specific and very public information about its experience in Missouri -- a full certification state, and contrasted that experience with data from states such as Louisiana -- a state where self-certification under penalty of perjury is permitted. If Cricket does indeed have data regarding its experience with full certification that contradicts evidence currently in the record, then it should provide that data so that parties may review it and so that the Commission may factor that data into its deliberations. In the absence of such factual information and data, generalized but unexplained observations that Cricket's "experience"

[11] See Lifeline and Link Up Reform and Modernization, *et al*, 26 FCC Rcd 9022 (2011).
[12] *Id.*, at 4.

differs from that of all other wireless Lifeline providers rings hollow and should be summarily disregarded by the Commission.

One other party -- the California Public Utilities Commission ("CPUC") -- opposes TracFone's request that the full certification requirement be reconsidered. The CPUC states that it does not have an automated electronic eligibility database that carriers can use to verify applicant eligibility.[13] That may be so. However, the CPUC has not indicated whether other California departments or agencies maintain such databases. It seems probable that the California state agencies which administer the Lifeline-qualifying programs (such as Medicaid, Supplemental Nutritional Assistance Program, Low Income Home Energy Assistance, etc.) do maintain such databases and that such databases could be made available to ETCs to verify whether Lifeline applicants are enrolled in qualifying programs. The interests of low-income California households would be better served if that state's departments and agencies worked together cooperatively with each other and with Lifeline providers to make such databases available rather than having one state agency -- the CPUC -- advocating a mandatory full certification requirement which will prevent many low-income California households from completing the Lifeline enrollment process.[14]

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[13] CPUC Opposition at 4. The California PUC's stated concerns about the need for full certification are curious in light of its own history administering Lifeline in that state. According to Commission data, in 2002, nearly 132 percent of qualified low-income California households were receiving Lifeline support. See 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). In other words, in the past nearly one-third more California households were receiving Lifeline-supported service than those entitled to such supported service.

[14] At p. 2 of its Opposition, the CPUC states that the California Lifeline program subsidizes connection and conversion charges for Lifeline customers. Presumably, any subsidization of connection and conversion charges is funded solely by state resources. Use of federal USF sources to subsidize connection and conversion charges would, of course, violate the Commission's elimination of Link Up, except for Tribal areas where the ETCs also receive high cost support.

II. The Definition of Usage Should be Reconsidered and Broadened

In its petition for reconsideration, TracFone requested that the definition of "usage" for purposes de-enrollment for non-usage be broadened. Specifically, it requested that usage be deemed to include receipt of minutes as TracFone and other providers have done for several years. There was very little opposition to the request that the usage definition be broadened. One commenting party -- Sprint Nextel Corporation -- concurs with expanding the usage definition to include such indicia of usage as sending text messages and checking voice mail messages.[15]

One party -- the National Telecommunications Cooperative Association ("NTCA") -- opposes any expansion of the usage definition. However, NTCA's opposition appears to be based on a misunderstanding. NTCA objects to inclusion of receiving additional minutes as usage on the basis that Lifeline supports services, not devices.[16] TracFone has never suggested that Lifeline funding should support devices. Indeed, since commencement of its SafeLink Wireless® Lifeline service in 2008, TracFone Lifeline customers have been provided with wireless handsets at no charge. Those handsets are funded entirely by TracFone, not by the USF. In its petition for reconsideration, TracFone explained that customer receipt of monthly minute allotments is not automatic. Rather the consumer must engage in an affirmative act to receive those monthly minute allotments. The consumer must have the phone charged and turned on at the beginning of each month. Making the effort to charge the phone and making the further effort to have it turned on at a specified time signals an unambiguous intent by the Lifeline customer to remain enrolled in the program. Those consumers enrolled in TracFone's Lifeline service who do not receive their monthly minute allotments have an alternative means to receive the minutes. By dialing "555," the consumer notifies TracFone that the minutes have not been

[15] Sprint Nextel comments at 7.
[16] NTCA Comments at 4.

received and TracFone responds by then sending the minutes. Each of these tasks -- charging the phone, turning it on, and dialing 555 -- indicate an intent by Lifeline customers to remain enrolled in the program and to use their Lifeline service and should constitute usage for purposes of the non-usage rule.

No commenters opposed sending/receiving SMS text messages as usage. In its petition for reconsideration, TracFone explained why marketplace realities made it appropriate to include text messaging as usage whether or not text messaging is a "supported service." There is another reason why text messaging should be considered to be usage. Some of its Lifeline customers as well as those of other Lifeline providers are hearing-impaired. For those consumers, texting is the most practical means to communicate with others via telephone since no special equipment is needed. One of the important benefits of text messaging is that it enables telephone "conversations" to take place on a real time basis between hearing-impaired persons as well as between hearing-impaired persons and non-hearing-impaired persons. For that reason, in addition to those previously identified, TracFone reiterates its request that "usage" for purposes of Section 54.407(c)(2) include receiving additional minutes and sending/receiving SMS text messages.

III. Even as an "Interim" Amount, the $9.25 Support Rate Should be Reconsidered

TracFone sought reconsideration of that portion of the Lifeline Reform Order eliminating the three tier Lifeline reimbursement structure and replacing it on an interim basis with a flat $9.25 reimbursement rate. As TracFone explained in its petition, the basis upon which the three tier reimbursement structure was established -- incumbent local exchange carrier subscriber line charges -- no longer is appropriate since many providers of Lifeline service are not ILECs and are not required to assess subscriber line charges on their consumers. However, replacement of support levels from the current levels to an interim reimbursement rate of $9.25 will result in a

significant reduction in support for some ETCs (including TracFone) and will result in windfall increases in support for other ETCs, including some of the largest ILECs whose current subscriber line charges are on average below $6.50, and whose current monthly per line levels of Lifeline reimbursement are well below $9.25. Even on an interim basis, such changes in support would cause disruptions and should be avoided.

Only one party opposed TracFone's request that the $9.25 flat rate be reconsidered. The National Association of State Utility Consumer Advocates (NASUCA) opposed on the sole basis that the absence of record support does not warrant reconsideration since it was only intended as an interim amount.[17]

As explained in TracFone's petition, implementation of the $9.25 flat reimbursement rate will reduce TracFone's Lifeline support by more than one million dollars per month. Other ETCs will experience profound gains -- some of nearly $2.00 per line per month.[18] Even on an interim basis, such reductions to some and such windfall gains to others will cause unnecessary market disruption, serve no public purpose benefit, and should be avoided.

IV. The Universal Service Fund Should not be Used to Subsidize Private Payphone Owners

The American Public Communications Council filed a petition for reconsideration in which it continued its shameless crusade to take money from the Universal Service Fund to line the pockets of its members -- owners of pay telephones. It is well-documented that use of payphones is in decline. It is also well-documented why. The advent and increased affordability of wireless devices has reduced demand for payphone services, even by low-income consumers. Furthermore, the payphone industry has hastened its own demise by significantly raising its rates for calls once deregulated and by entering into alliances with carriers who charge above-market

[17] NASUCA Comments at 5.
[18] TracFone Petition at 25-26.

high prices for long distance calls from payphones. Those circumstances have been described in detail by TracFone in prior filings and will not be repeated here.

TracFone notes, however, that a broad array of parties has opposed APCC's petition for reconsideration. Parties opposing APCC's efforts to obtain USF support for its members include Verizon, the United States Telecom Association, Sprint Nextel, and NASUCA. TracFone joins in that opposition and respectfully urges the Commission not to allow USF resources to be hijacked to enhance the profits of payphone owners.

Counting its December 2010 emergency petition and motion for interim relief, its comments and ex parte letters in this proceeding and its petition for reconsideration, APCC has repeated its request for a USF handout many times. Yet it has never offered or proposed in any of those filings to pass through any portion of USF subsidies its members would receive in free or discounted services to low-income consumers. In the Lifeline Reform Order, the Commission reviewed the record before it and wisely determined that USF resources should not be diverted to prop up the payphone industry. That aspect of the Lifeline Reform Order should not be reconsidered.

Conclusion

For the reasons stated herein, as well as those set forth in TracFone's petition for reconsideration, TracFone respectfully requests that the Lifeline Reform Order be reconsidered to the extent indicated in its petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Raymond Lee, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that on May 15, 2012, a true and correct copy of the foregoing Reply to Oppositions to Petitions for Reconsideration was sent via first-class mail, postage pre-paid, to the following unless stated otherwise:

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