

**Before the
Federal Communications Commission
Washington, D.C. 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
)	

**COMMENTS OF THE JOINT COMMENTERS ON TRACFONE PETITION TO
REQUIRE RETENTION OF LIFELINE PROGRAM-BASED ELIGIBILITY
DOCUMENTATION**

The Joint Commenters, by and through their attorneys, submit these comments in response to the Federal Communications Commission’s (“Commission’s” or “FCC’s”) Public Notice seeking comment on TracFone’s petition to require retention of Lifeline program-based eligibility documentation.¹ The Joint Commenters are existing or prospective competitive eligible telecommunications carriers (“ETCs”) that currently provide or will provide wireless, sometimes wireline, and, with increasing frequency, broadband service to eligible low income consumers in numerous states.² The Joint Commenters agree that ETCs should be required to

¹ See *Wireline Competition Bureau Seeks Comment on TracFone Petition to Require Retention of Lifeline Program-Based Eligibility Documentation*, WC Docket Nos. 12-23, 11-42, 03-109; CC Docket No. 96-45, Public Notice, DA 12-1095 (rel. July 9, 2012) (“Public Notice”).

² The Joint Commenters are Absolute Home Phones, Inc., Absolute Home Phones, Inc. dba Absolute Mobile, Absolute Mobile, Inc., Blue Jay Wireless, LLC, Boomerang Wireless, LLC, Easy Telephone Services Company dba Easy Wireless, Global Connection Inc. of America, TAG Mobile, LLC and Telrite Corporation. All of the members either

retain a copy of the eligibility documentation that was viewed to enroll Lifeline applicants because the documentation requirements of the current rules remain open to interpretation and ETCs would be better served to be able to provide a copy of the eligibility documentation in an audit context.³ Further, if the Commission decides to require ETCs to retain a copy of all eligibility documentation, the Commission should allow such documentation of proof of eligibility for Lifeline to suffice for enrollment even if the applicant cannot be verified in a state eligibility database.

I. THE COMMISSION SHOULD REQUIRE ETCs TO RETAIN ELIGIBILITY DOCUMENTATION FOR PURPOSES OF AUDITS

One of the most concrete and important reforms from the *Lifeline Reform Order* to eliminate waste, fraud and abuse was to require that ETCs view an applicant's proof of eligibility for the Lifeline program to enroll that applicant.⁴ Before June 1, 2012, end users could de-fraud the program by self-certifying eligibility for the Lifeline program even if they were not actually eligible. ETCs were not required to see proof of eligibility, except in certain states, and therefore had to rely on the word of applicants. The Commission's solution, which has been beneficial, was to require ETCs to view eligibility documentation to enroll applicants.

currently provide or will wireless Lifeline service; many of the members provide wireline Lifeline service; and many are providing, or are planning to provide, broadband data services to Lifeline customers.

³ The TracFone petition requests that the Commission require retention of the program-based eligibility documentation. Although the vast majority of Lifeline applicants demonstrate eligibility through program participation, the Joint Commenters would also support a requirement to retain income-based eligibility documentation.

⁴ See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 99-110 (Feb. 6, 2012) ("*Lifeline Reform Order*").

The Joint Commenters support this reform. Although there are difficulties with implementation of the requirement and demonstrating that proof of eligibility was viewed, as discussed further below, the Joint Commenters, which enroll most of their customers in person, have not seen a significant drop off in enrollment in June, 2012 since the eligibility documentation requirement was put into place.⁵ Just as more fortunate individuals carry their health insurance card in their wallet or their grocery store card on their keys, low-income individuals generally carry their SNAP card, Medicaid card or other documentation that proves their eligibility for Lifeline because they use such documentation on a daily basis to purchase food, visit the doctor or pick up prescriptions.

Collecting and verifying the eligibility documentation is not difficult or onerous, but demonstrating to the Universal Service Administrative Company (“USAC”) (or the Commission if necessary) that the eligibility documentation was viewed is more difficult and subject to regulatory uncertainty. Section 54.410(c)(1)(i)(B) of the Commission’s rules requires that the ETC “review documentation demonstrating that a prospective subscriber qualifies for Lifeline.”⁶ Section 54.410(c)(1)(iii) states that ETCs must “keep and maintain accurate records detailing the...documentation a subscriber provided to demonstrate his or her eligibility for Lifeline.”⁷ Finally, Section 54.417 states that ETCs must “maintain records to document compliance with all Commission...requirements governing the Lifeline...program.”⁸

⁵ This contrasts with TracFone’s report of a 79 percent decline in enrollment in June, 2012 as compared to May, 2012. *See* Notice of *Ex Parte* Presentation, WD Docket No. 11-42 (July 9, 2012) at 1.

⁶ 47 C.F.R. § 54.410(c)(1)(i)(B).

⁷ 47 C.F.R. § 54.410(c)(1)(iii).

⁸ 47 C.F.R. § 54.417.

Those rules leave unclear the method that ETCs must use to demonstrate that they viewed eligibility documentation beyond noting the type of documentation viewed. At the end of May, USAC released guidance on its interpretation of how ETCs are required to demonstrate that they viewed eligibility documentation, which included noting the type of documentation viewed (*e.g.*, award letter or benefits card), the date or expiration date of documentation, and identifying information about the documentation (*e.g.*, blue SNAP card or letter from State Health and Human Services Agency”).⁹ It has also been suggested that ETCs should write down numbers from the eligibility documentation, such as the last four digits of an account number.

This guidance, while helpful, still leaves the method of proving that an ETC viewed each particular eligibility document gray and subject to the interpretation of individual USAC auditors. Because the Commission’s rules do not specify exactly what information from the eligibility documentation should be written down, the interpretation of the general requirements is left to ETCs and to specific USAC auditors. A common sense reading of the requirement to keep accurate records of the documentation that a subscriber provided to demonstrate eligibility would be to note the type of documentation (*i.e.*, SNAP card or Medicaid card). It is a matter of interpretation to require that ETCs write down dates and account numbers from the eligibility documentation, and such interpretations can change over time.

The Joint Commenters would prefer that, since they are already required to review the eligibility documentation, they be permitted or required to retain a copy of the eligibility documentation. In that way the proof of eligibility would not be subject to individual interpretation in the context of a USAC audit. Rather, it would be firmly established by showing

⁹ See USAC Guidance available at <http://www.usac.org/li/telecom-carriers/step06/default.aspx>.

the auditor a copy of the eligibility documentation. Many ETCs are already scanning the eligibility documentation on site as part of the enrollment process for secondary compliance review off-site and then deleting the scanned image to comply with the Commission's prohibition on retaining proof of eligibility. Therefore, logistically such ETCs would need only stop deleting the scanned copy to retain the proof of eligibility and keep it in protected files associated with the customer for audit purposes.¹⁰

The Joint Commenters strongly disagree with TracFone's unsupported claim that there is as much incentive and opportunity for fraud with requiring ETCs to view eligibility documentation as there was under end user self-certification.¹¹ Under self-certification an applicant who may or may not even know what the FCC is could certify that he or she participated in one of the eligibility programs to enroll in Lifeline and the ETC was not required to view proof of such eligibility. Under the new regime, not only must the end user certify that he or she meets the program or income based eligibility criteria for receiving Lifeline, that all information on their application form is true and correct and that providing false or fraudulent information to receive Lifeline benefits is punishable by law,¹² but the ETC must also see the eligibility documentation and keep accurate records detailing the documentation viewed. The

¹⁰ Although the Joint Commenters are concerned about state and federal privacy laws with respect to retaining eligibility documentation, the Joint Commenters have come to the conclusion that the risks associated with a regulatory compliance audit are greater at this time. In addition, Illinois has required ETCs to retain proof of eligibility and the Joint Commenters are unaware of any major privacy concerns raised in relation to this requirement.

¹¹ See TracFone Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based Eligibility Documentation, WC Docket No. 11-42 et al. (May 30, 2012) at 3 (“the full certification requirement codified at Section 54.410(c) of the Commission’s rules, in the absence of a document retention requirement, creates comparable, if not even greater, opportunities for unscrupulous ETCs to similarly cheat in order to receive Lifeline support from the USF to which they are entitled.”).

¹² See 47 C.F.R. § 54.410(d)(3).

ETC, unlike the end user, is very familiar with USAC, the FCC, the FCC's rules and the applicable state public utilities commission and its rules. An ETC's failure to follow the FCC's rules risks state and federal audits, enforcement action, potential loss of its ETC designation and other law enforcement action. The Commission's requirement that ETCs view eligibility documentation is clearly far more robust than the previous self-certification requirement.

Nevertheless, the Joint Commenters agree that the Commission could further reduce waste, fraud and abuse, and allow ETCs to more effectively demonstrate compliance in an audit context, by requiring that ETCs retain copies of eligibility documentation for all Lifeline subscribers. Therefore, the Joint Commenters support TracFone's petition.

II. RETAINED ELIGIBILITY DOCUMENTATION SHOULD SUFFICE TO ENROLL LIFELINE APPLICANTS WHEN THE APPLICANT CANNOT BE VERIFIED USING A STATE ELIGIBILITY DATABASE

Under the Commission's new rules, if an ETC can determine a Lifeline applicant's eligibility by accessing one or more state eligibility databases, then the ETC must access such databases to make the eligibility determination.¹³ Therefore, an ETC must turn away a Lifeline applicant that does not appear in a state eligibility database even if that applicant attends an ETC's store or event, shows a government-issued photo identification¹⁴ and shows the ETC current eligibility documentation in the applicant's name. The applicant, who is eligible for Lifeline service and therefore has a right to receive Lifeline service, must be declined by the ETC because the state eligibility database is not up-to-date or reflects a clerical error in the

¹³ See 47 C.F.R. § 54.410(c)(1)(i)(A).

¹⁴ Although ETCs are not required to view photo identification, many ETCs do for identity verification and address normalization purposes.

applicant's name or address. This outcome is exceedingly difficult to explain to low-income consumers and in no way serves the public interest.

Many states do not provide real-time eligibility databases or real-time access to their databases. Many databases are only updated once a week, once a month or even more infrequently. Therefore, they are often not up-to-date with an accurate list of eligible individuals. In addition, they are often not normalized with respect to address and other information and so an ETC may not be able to confirm an applicant's eligibility even though they are in the database.

For example, the Maryland state eligibility database is updated once each month and in Kansas the database covering eligibility pursuant to Supplemental Nutrition Assistance Program ("SNAP"), Temporary Assistance for Needy Families ("TANF") and Low-Income Home Energy Assistance Program ("LIHEAP") is updated once every six months with new enrollees. In addition, according to an analysis by CGM, LLC of the May/June Maryland eligibility spreadsheet, out of a total of 615,678 individuals in the database, there were 56,435 with the date of birth listed as December 31, 9999, and one apparently born in 1882. There were sixty-seven individuals with the last four digits of their social security number listed as 9999 and sixty-five with the last four digits listed as 0001. These incorrect entries will result in declined applicants even where an applicant can demonstrate proof of eligibility and provide his or her correct date of birth and last four digits of his or her social security number. Finally, there were 57,674 addresses in the Maryland spreadsheet that could not be standardized with the Melissa database. Therefore, an address given to an ETC for enrollment that is standardized by the

ETC¹⁵ using the Melissa database will not be found in the Maryland database, even though the customer is eligible for Lifeline. GCM was able to do this analysis because Maryland makes its state database available to ETCs. Other states do not make their databases available in this manner (*i.e.*, ETCs can only submit an applicant for approval or disapproval). Therefore, similar issues likely exist with many other state databases, but the underlying data is not available for analysis.

Because of these weaknesses in the state eligibility databases, which in many cases have been recognized and acknowledged by the state agencies that administer the databases, the Commission should revisit its policy with respect to the supremacy of such databases. If the Commission permits or requires ETCs to view and retain eligibility documentation, then the Commission should also allow ETCs to enroll Lifeline applicants that demonstrate eligibility by showing eligibility documentation even if the ETC cannot match the applicant to a relevant state eligibility database. The viewed and retained proof of eligibility should trump the state database because the applicant's eligibility for Lifeline can be conclusively demonstrated to USAC, the Commission or a state public utilities commission. Such a policy would serve the public interest and the Commission's goals of providing communications assistance to low-income consumers without serious risk of waste, fraud or abuse of the program.

¹⁵ See *Lifeline Reform Order*, ¶ 193 (requiring ETCs to standardize and verify addresses in their records prior to submission of the address data to the Commission's database.).

III. CONCLUSION

For the foregoing reasons, the Joint Commenters urge the Commission to revise its rules to require ETCs to retain eligibility documentation to enroll customers in Lifeline service and allow the review and retention of such eligibility documentation to suffice for enrollment even if the applicant cannot be verified in a state eligibility database.

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