

**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

COMMENTS OF TRACFONE WIRELESS, INC. ON GCI PETITION FOR CLARIFICATION OF ANNUAL RECERTIFICATION RULE

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby files its Comments in support of the petition of General Communications, Inc. (“GCI”) for clarification of the annual Lifeline eligibility recertification rule set forth in 47 C.F.R. § 54.410(f).

INTRODUCTION

Commission Rule 54.410(f), which the Commission promulgated in its Lifeline Reform Order,¹ provides as follows: “All eligible telecommunications carriers must annually re-certify all subscribers except for subscribers in states where a state Lifeline administrator or other state agency is responsible for re-certification of subscribers’ Lifeline eligibility.” GCI states that the Commission Staff has advised it that Staff interprets the annual recertification requirement in Section 54.410(f) to require Eligible Telecommunications Carriers (“ETCs”) to recertify each

¹ See *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, 27 FCC Rcd 6656 (2012) (“Lifeline Reform Order”).

Lifeline subscriber's continuing Lifeline eligibility within 12 months of that subscriber's initial certification or most recent recertification of eligibility. GCI asks the Commission to clarify that Section 54.410(f)'s annual certification requirement requires recertification of each subscriber once per calendar year rather than once every 12 months.

TracFone agrees with GCI that the annual recertification requirement requires ETCs to recertify their Lifeline customers continuing eligibility once each calendar year, not once every 12 months. However, TracFone disagrees with GCI that any clarification is required. The rule as written is explicit and the plain, commonly-accepted meaning of the term "annual" means once per year. This conclusion is further supported by the Lifeline Reform Order, as well as the Universal Service Administrative Company's ("USAC") interpretation of the annual recertification requirement. Moreover, allowing ETCs to recertify the eligibility of all Lifeline subscribers once each calendar year effectively protects the Universal Service Fund ("USF") from waste, fraud, and abuse.

I. The Lifeline Reform Order and the Annual Lifeline Eligible Telecommunications Carrier Certification Form (FCC Form 555) Confirm That the Annual Recertification of Lifeline Eligibility May Be Conducted Once Per Calendar Year.

Section 54.410(f) requires ETCs to "annually re-certify all subscribers," but does not specify when the ETCs must perform the annual recertification of their Lifeline subscribers. However, the Lifeline Reform Order, which established Section 54.410(f), directs ETCs about the timing of the annual recertification. As noted by the Commission, "[p]ursuant to the new rule we adopt today, all ETCs (or states, where applicable) must recertify the eligibility of their Lifeline subscriber base as of June 1, 2012 by the end of 2012 and report the results to USAC by January 31, 2013."² The Commission further stated that "[t]his re-certification may be done on a

² Lifeline Reform Order, ¶ 130 and Appendix C.

rolling basis throughout the year, at the ETC's election."³ Therefore, ETCs are instructed to recertify their entire subscriber base as of June 1, 2012, complete their recertification efforts by December 31, 2012, and report the results by January 31, 2013, or to recertify their subscribers on a rolling basis.⁴ As such, ETCs may conduct their recertification efforts during the period of June 1 through December 31 or spread the recertification process throughout the entire year -- each ETC can make its own choice.

The Lifeline Reform Order also addresses the annual recertification requirement for the time period after 2012. As explained by the Commission, "[o]ngoing eligibility of Lifeline subscribers must continue to be verified annually after 2012; however, we expect that ETCs will increasingly gain access to automated means of verifying subscriber eligibility."⁵ After 2012, if ongoing eligibility of subscribers cannot be determined through access to a database, then ETCs remain responsible for the annual recertification of Lifeline subscribers. However, the Commission directed "USAC to work with the ETCs and the Bureau to develop a plan for USAC to conduct annual recertifications in lieu of ETCs, with such annual certifications starting in 2013."⁶

Like the annual recertification process for 2012, starting in 2013, ETCs may either recertify the continued eligibility of all of its subscribers at one time or they may conduct the recertification "on a rolling basis throughout the year."⁷ Thus, an ETC can fulfill the

³ *Id.* ¶ 130 (emphasis added).

⁴ The Commission delegated "to the Wireline Competition Bureau the authority to establish, in coordination with USAC, a process for facilitating the collection of consumer re-certifications on a rolling basis." *Id.* n.338. As of the date of these Comments, such a process has not been established.

⁵ Lifeline Reform Order, ¶ 133.

⁶ *Id.*

⁷ *Id.* & n.346.

Commission's annual recertification requirement by recertifying its Lifeline subscriber base once each calendar year or on a rolling basis (which may or may not be within 12 months from each subscriber's most recent certification of eligibility). If an ETC decides to continue to conduct the annual recertification of its customer base after 2012 (either at one time or on a rolling basis), rather than to allow USAC to do so, the ETC must provide the results of its recertification efforts to USAC, the Commission, and relevant state commissions, by January 31 of each year, beginning on January 31, 2014.⁸

GCI's interpretation of the annual recertification requirement to mean a once per calendar year recertification of all Lifeline subscribers, as opposed to Commission Staff's suggestion that each subscriber must be recertified within 12 months of that subscriber's most recent certification of eligibility, is further supported by the Annual Lifeline Eligible Telecommunications Carrier Certification Form (FCC Form 555) dated November 2012. Indeed, to the extent that there was any ambiguity about whether the annual recertification requirement was intended to be a once per calendar year requirement applied to the entire subscriber base or an every 12 months requirement applied on a subscriber-by-subscriber basis, that ambiguity is definitively resolved by FCC Form 555.

In accordance with the Lifeline Reform Order, the Wireline Competition Bureau and USAC coordinated to develop FCC Form 555 to be used for ETCs to submit their annual recertification data.⁹ FCC Form 555 explicitly states a filing deadline of "January 31 (Annually)" and includes a certification in Section 2 that the ETC "has procedures in place to recertify the continued eligibility of all of its Lifeline customers." The form also requires ETCs to use the number of Lifeline subscribers claimed on the May FCC Form 497 as the starting point

⁸ *Id.* ¶ 148.

⁹ *Id.*

for the annual recertification process. After identifying the number of Lifeline subscribers as of May, ETCs must report the number of those subscribers by various categories, including the number of subscribers who the ETC contacted directly, the number of subscribers who responded to the contact, and the number of subscribers whose eligibility was determined by access to eligibility data. Given that ETCs are directed to recertify subscribers as of May of each year, it is clear that the annual recertification requirement in Section 54.410(f) is a once per calendar year recertification of an ETC's subscriber base as it exists in May of each year.

Moreover, the generally-accepted meaning of the term "annual" is once per year. For example, the American Heritage Dictionary defines "annual" to mean "recurring, done, or performed every year."¹⁰ That definition is clear, precise, and explicit: annual means recurring, done or performed "every year." It does not mean "recurring, done or performed every 12 months," or "recurring, done, or performed within one year's time from the last recurrence or performance." Had the Commission intended to promulgate a rule requiring that all Lifeline customers be recertified within a specified period (*e.g.*, 12 months) from their last recertification, it could have done so. By affirmatively choosing to craft a rule requiring annual recertification -- not an every 12 month certification, the Commission now requires that such recertification recur, be done, or be performed every year (*i.e.*, in 2013, in 2014, in 2015, etc.). If the Commission were to deem more frequent recertification to be necessary or appropriate, it would need to modify Section 54.410(f) in accordance with all applicable rulemaking requirements, including those codified in the Administrative Procedure Act¹¹ and the Commission's rules governing

¹⁰ American Heritage Dictionary, <http://www.ahdictionary.com>. Other dictionaries contain similar definitions of "annual."

¹¹ 5 U.S.C. § 500 *et seq.*

rulemaking.¹² As will be explained in the following section, such modification is neither necessary nor appropriate.

II. A Once Per Calendar Year Annual Recertification of Lifeline Eligibility is Sufficient to Protect the USF from Waste, Fraud, and Abuse.

In the Lifeline Reform Order, the Commission explained how the new rule requiring annual recertification of all enrolled Lifeline customers codified in Section 54.410(f) would more effectively prevent waste, fraud, and abuse of USF resources than did the prior rule. As stated by the Commission:

In contrast to the current sampling methodology, all of an ETC's Lifeline subscribers will be subject to annual re-certification requirements. The current sampling methodology, while statistically significant and sufficient for some data analysis purposes, fails to assess the actual eligibility of a large number of subscribers nationwide and, more importantly, leaves enrolled in the program subscribers that are not eligible. In contrast, the approach we adopt today will assess the eligibility of all current subscribers to the program.¹³

The annual recertification process, as described by the Commission in the Lifeline Reform Order, and as implemented by USAC in the Annual Lifeline Eligible Telecommunications Carrier Certification Form (FCC Form 555), protects the USF from waste, fraud, and abuse, by requiring ETCs to recertify all current Lifeline subscribers as of a certain point in time every year, *i.e.*, May. If an ETC is unable to recertify any subscriber's eligibility, that subscriber must be de-enrolled from Lifeline in accordance with the Commission's rules.

GCI surmises that Commission Staff may be concerned that a once per calendar year recertification of an ETC's entire subscriber base, rather than an every 12 months recertification of each subscriber on an individual basis, could result in some subscribers having their eligibility recertified for a 23 month period. For example, if a subscriber enrolled in January 2013 and an

¹² 47 C.F.R. Subpart C (§ 1.399 *et seq.*)

¹³ Lifeline Reform Order, ¶ 135.

ETC was allowed to recertify subscribers once per calendar year, theoretically that subscriber could recertify his or her Lifeline eligibility in December 2014 and still be within the once per calendar year recertification standard. This scenario, however, is not realistic because, as explained above, FCC Form 555 is due January 31 each year and reports the results of an ETC's recertification efforts related to all current subscribers as of May of the preceding year. Moreover, a 23 month gap between a subscriber's Lifeline eligibility recertifications could not be maintained on a long term basis because a subscriber who recertified his or her Lifeline eligibility in December 2013 would need to be recertified by December 2014.

Even if ETCs were permitted under a once per calendar year recertification requirement to recertify a Lifeline subscriber who enrolled in January of one year in December of the following year, there would be no increased risk of waste, fraud, and abuse of the USF given the existence of other means to minimize such a risk. For example, under the Commission's rules, all Lifeline applicants must provide documentation to evidence their eligibility for Lifeline benefits or have their eligibility confirmed by a state database.¹⁴ In addition, ETCs that do not assess a monthly fee from their Lifeline subscribers must de-enroll any subscriber who fails to use a Lifeline service for 60 consecutive days.¹⁵ Thus, many subscribers, perhaps most subscribers who would not re-certify would lose their Lifeline support for other reasons, *i.e.*, as a result of other Commission-promulgated requirements such as the 60 day non-usage requirement. In short, there are other procedures and requirements in place that significantly decrease the possibility of any waste, fraud, and abuse of the USF.

Finally, a once per calendar year recertification, as set forth in FCC Form 555, guarantees that all subscribers' Lifeline eligibility will be recertified at least once each calendar year.

¹⁴ 47 C.F.R. § 54.410(c).

¹⁵ 47 C.F.R. § 54.405(e)(3).

Indeed, subscribers who enroll in Lifeline between January and May of any year would have their Lifeline eligibility certified twice in that year -- once at the time of enrollment and then again during the recertification process conducted for all current subscribers as of May. Having all subscribers recertified at least once each calendar year, effectively addresses the Commission's concerns about non-eligible individuals remaining enrolled in Lifeline for prolonged periods of time.¹⁶

CONCLUSION

For the reasons stated in these comments, TracFone respectfully asks the Commission to grant GCI's petition and issue an order affirming that ETCs may comply with Section 54.410(f)'s annual certification requirement by recertifying all subscribers continuing Lifeline eligibility once per calendar year.

Respectfully submitted,

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¹⁶ The annual recertification process will diminish in importance over time as a national eligibility database is developed and implemented and as more states allow their state databases to be used by ETCs (subject to appropriate consumer privacy protections) to verify Lifeline applicants' initial eligibility and existing Lifeline customers' continuing eligibility.