

May 6, 2013

**VIA ELECTRONIC FILING**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: WC Docket No. 11-42 – Lifeline and Link Up Reform and Modernization  
WC Docket No. 03-109 – Lifeline and Link Up  
CC Docket No. 96-45 – Federal-State Joint Board on Universal Service  
**EX PARTE PRESENTATION**

Dear Ms. Dortch:

This letter is submitted on behalf of our client, TracFone Wireless, Inc. (“TracFone”) in response to the ex parte letter submitted April 29, 2013 by the Montana Telecommunications Association (“MTA”). In its letter, the MTA summarized recent meetings held with members of the Commission staff regarding 1) Lifeline; 2) the Rural Health Care Program; and 3) Rural Call Completion. TracFone’s response is limited to that portion of the MTA letter which addressed Lifeline.

Although MTA acknowledges the substantial positive savings in the Lifeline growth rate which have resulted from the Commission’s Lifeline Reform Order (Lifeline and Link Up Reform and Modernization, 27 FCC Rcd 6656 (2012)), it asserts without any factual basis its opinion that savings resulting from the Lifeline Reform Order will “bottom out.” MTA’s asserted reason for such growth is the “continued entry into the program by prepaid wireless CETCs.”

TracFone is a provider of prepaid wireless services which has been designated as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e) of the Communications Act of 1934, as amended, in forty-three states. Although TracFone’s non-Lifeline services are provided on a prepaid basis, to suggest that its Lifeline service (marketed as SafeLink Wireless<sup>®</sup>) is a prepaid service would be inaccurate. TracFone’s Lifeline customers may receive 250 minutes per month of wireless airtime at no charge. Because MTA’s attempt to blame growth of Lifeline on prepaid wireless ETCs is baseless and prejudicial and because its proposed remedies would, if adopted, impede attainment of the goals of the Lifeline program, a response to that letter is compelled.

As noted by MTA, the current Lifeline participation rate (the percentage of Lifeline-eligible households who are receiving Lifeline-supported service) is approximately 55 percent. In other words, even with the growth in program participation occasioned by “prepaid wireless

ETCs,” 45 percent of those eligible nationwide are not receiving Lifeline-supported service. In Montana, the situation is worse. According to the most recent Lifeline participation rate map posted on the Universal Service Administrative Company (“USAC”) website ([www.universalservice.org](http://www.universalservice.org)), the Lifeline participation rate in Montana is between 20 percent and 50 percent. Thus, notwithstanding the growth in Lifeline participation, nearly one-half of Lifeline-eligible households nationwide and more than one-half of Lifeline-eligible households in Montana are not benefitting from the program.

By blaming growth in the still-underutilized Lifeline program on “prepaid wireless ETCs,” MTA implies that those ETCs, unlike other providers, have been principal causers of waste, fraud and abuse of the Lifeline program. However, that implication is contradicted by data. Apparently, Lifeline fraud (or at least, improper Lifeline enrollment) has been a significant problem in Montana. On February 25, 2013, the Montana Public Service Commission issued a news release which indicates that fifty-two percent of enrolled Lifeline customers in Montana were de-enrolled following completion of the 2012 annual re-certification process required by the Lifeline Reform Order. (A copy of that news release is attached to this letter.) In other words, more than one-half of Montana’s enrolled Lifeline customers either could not or did not re-certify that they remained Lifeline-eligible and therefore had to be de-enrolled. One thing is certain: none of Montana’s de-enrolled Lifeline customers received Lifeline service from “prepaid wireless ETCs.” There are no “prepaid wireless ETCs” providing Lifeline service in Montana. Also attached to this letter is a list of Montana’s 28 ETCs. This list is provided to the Commission by USAC in its quarterly report to the Commission. Of those ETCs, only two -- MTPCS and Sagebrush Cellular – are wireless providers. Neither offers prepaid or no charge Lifeline service in Montana. The conclusion is inescapable: Montana’s non-wireless ETCs, including those who are MTA members, had to de-enroll more than one-half of their Lifeline customers because those carriers were unable to determine that their own Lifeline customers were Lifeline-eligible. (To paraphrase the late Walt Kelly, creator of the comic strip Pogo, “we have met the enemy and he is us.”)

As a “solution” to this self-proclaimed problem of continued growth in a program which reaches about half those it is intended to reach, MTA proposes that Lifeline support for “prepaid wireless Lifeline-only ETCs” be capped at \$3.00. To carve out one particular category of Lifeline providers and subject those providers – and ultimately their Lifeline customers – to support levels below those available to all other Lifeline providers and consumers of their services, smacks of discrimination, would contravene a recently-promulgated Commission rule, and would have no impact on modernizing the Lifeline program or preventing waste, fraud and abuse. The current level of Lifeline support is \$9.25 per enrolled customer per month. That amount is codified at Section 54.403(a)(1) of the Commission’s rules and was established as part of the Lifeline Reform Order. Section 54.403(a)(1) further requires that Lifeline providers pass through to their Lifeline customers the full amount of USF support received. MTA members and other ETCs who offer Lifeline-supported discounts on their basic local service rates are required to provide discounts of \$9.25 per month. Similarly, so-called “prepaid wireless ETCs” are required to provide Lifeline benefits valued at \$9.25 per month. In a competitive marketplace, how Lifeline-eligible consumers choose to receive their \$9.25 in supported service is up to those consumers. Some households will prefer to receive monthly bills discounted by \$9.25; other

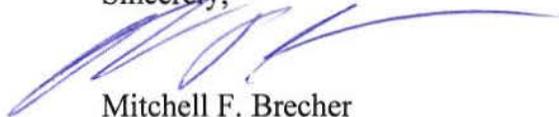
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households will elect to receive a \$9.25 benefit in the form of 250 minutes of wireless airtime. No rationale exists for providing a greater Lifeline benefit to some Lifeline households (*e.g.*, those who receive Lifeline service from MTA members) than the benefit available to other Lifeline households (*e.g.*, those who elect to obtain Lifeline service from TracFone or other “prepaid wireless ETCs”).

MTA’s asserted basis for this facially discriminatory and punitive proposal is to analogize it to the now-repealed “Identical Support Rule.” The Identical Support Rule, prior to its repeal, based competitive ETC high cost support on the costs incurred by incumbent ETCs serving the same area. The ILECs’ costs were used as a proxy for CETCs’ costs for purposes of providing high cost support. Lifeline support is not based on ILEC costs or CETC costs. The Commission established the Lifeline support amount of \$9.25 based upon what it deemed to be a reasonable amount of support to provide to low-income Lifeline-eligible households. The Commission did not and should not base the amount of available Lifeline support per customer on the technology or business model chosen by the ETC selected by the Lifeline consumer.

Pursuant to Section 1.1206(b) of the Commission’s rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher  
*Counsel for TracFone Wireless, Inc.*

Attachments

Cc: Mr. Nicholas Degani  
Ms. Priscilla Argeris  
Mr. Trent Harkrader  
Ms. Kimberly Scardino  
Ms. Linda Oliver

# **Attachment 1**

NEWS RELEASE  
MONTANA PUBLIC SERVICE COMMISSION

FOR IMMEDIATE RELEASE  
FEBRUARY 25, 2013

CONTACT: Justin Post, (406) 444-6171  
PSC Urges Telephone Customers to Verify Lifeline Status

HELENA - A number of Montana telephone customers receiving Lifeline support were surprised in recent weeks to discover an increase in their phone bills after losing the monthly discount.

Although not all Montana Public Service Commissioners are in support of the program, the department as a body nevertheless encourages all Montanans previously enrolled in Lifeline to check their phone bills to determine whether they have lost the discount.

In an effort to curb waste, fraud and abuse, the Federal Communications Commission required those receiving the Lifeline discount to complete a form confirming continued eligibility. More than 6,850 of the 13,184 Montanans enrolled in Lifeline lost the discount either because they were no longer eligible or didn't respond during the recertification process. Those customers are asked to contact their phone carrier to re-establish eligibility.

Eighteen telephone carriers are certified by the PSC to offer Lifeline support in Montana. The carriers said they made efforts to contact the 13,184 customers as part of the recertification. Of those, 6,363 customers responded and only 37 were determined to be no longer eligible for Lifeline.

Another 6,821 did not respond and were automatically de-enrolled from Lifeline. That means 6,858 Montanans, or 52 percent, lost Lifeline support during the recertification process.

Since December, the PSC has received numerous calls from customers who were unaware they needed to recertify. PSC staffers working in the Consumer Assistance program have helped Montanans through the process of seeking to reinstate the discount.

Montana telephone customers previously qualified for Lifeline by receiving Medicaid. The FCC's 2012 Lifeline Reform Order widely expanded eligibility for telephone customers in the Treasure State.

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Who Qualifies for Lifeline:

To qualify for the federal discount the consumer must have income below 135 percent of the federal poverty guidelines or participate in one of the following federal assistance programs: Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, federal public housing assistance (Section 8), LIEAP, National School Lunch Program's free lunch program or Temporary Assistance for Needy Families. CenturyLink customers receiving Medicaid may qualify for the state Telephone Assistance Program, in addition to the federal Lifeline program.

Additional Lifeline discounts are available on tribal lands. To qualify, the consumer must have income below 135 percent of the federal poverty guidelines or participate in one of the following assistance programs: Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, federal public housing assistance (Section 8), LIEAP, National School Lunch Program's free lunch program, Temporary Assistance for Needy Families, Bureau of Indian Affairs General Assistance, Tribally-Administered Temporary Assistance for Needy Families, Head Start (only those households meeting its income-qualifying standard) or the Food Distribution Program on reservations.

The Link-Up program is available on tribal lands and provides a 100-percent reduction in the telephone service installation charge, up to \$100, for qualifying households with no telephone service.

For more information about Lifeline and Link-Up, contact your local telephone service provider.

# **Attachment 2**

BLACKFOOT TELEPHONE COOPERATIVE, INC.
HOT SPRINGS TELEPHONE CO.
INTERBEL TELEPHONE COOPERATIVE, INC.
LINCOLN TELEPHONE COMPANY, INC.
MID-RIVERS TELEPHONE COOPERATIVE, INC.
NEMONT TELEPHONE COOPERATIVE, INC.
NORTHERN TELEPHONE COOPERATIVE, INC.
CENTURYLINK CENTURYTEL OF MONTANA, INC.
PROJECT TELEPHONE COMPANY
RANGE TELEPHONE COOP., INC.
RONAN TELEPHONE COMPANY
SOUTHERN MONTANA TELEPHONE COMPANY
3 RIVERS TELEPHONE COOPERATIVE, INC.
TRIANGLE TELEPHONE COOPERATIVE ASSOCIATION, INC.
BLACKFOOT TELEPHONE COOPERATIVE, INC.
CENTRAL MONTANA COMMUNICATIONS, INC.
CITIZENS TELECOMM CO OF MONTANA
QWEST CORPORATION
MID-RIVERS TELEPHONE COOPERATIVE, INC. (CLEC)
3 RIVERS TELEPHONE COOPERATIVE, INC.
ALLTEL COMMUNICATIONS
CABLE & COMMUNICATIONS CORPORATION
SAGEBRUSH CELLULAR, INC.
RANGE TELEPHONE COOP., INC.
TRIANGLE COMMUNICATION SYSTEM, INC.
MTPCS, LLC
SAGEBRUSH CELLULAR, INC.
MTPCS, LLC