Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
TracFone Petition to Amend Lifeline Rules to Prohibit In Person Distribution of Handsets to Prospective Lifeline Customers	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42

COMMENTS OF TERRACOM INC.

TerraCom, Inc. ("TerraCom") and its affiliate YourTel America, Inc. ("YourTel") submit these comments in response to the Wireline Competition Bureau's request for comments on the above-captioned Petition ("the Petition") of TracFone Wireless, Inc. ("TracFone").[1] In its Petition, TracFone makes some general and unobjectionable statements about how it supports the Commission's goals of eliminating waste, fraud, and abuse in the Low Income Fund, how it supported and/or suggested many of the rule changes the Commission ultimately adopted in the *Lifeline Reform Order*[2], and how TracFone is attempting to find other ways to help the Commission further its goals of improving the efficiency and image of the Lifeline program.[3] TracFone attempts to support its narrative of itself as diligent Fund reformer, by pointing to its

[1] *Wireline Competition Bureau Seeks Comment on TracFone's Petition to Amend Lifeline Rules to Prohibit In-Person Distribution of Handsets to Prospective Customers*, Public Notice, Docket No. 11-42 (rel. May 17, 2013).

[2] See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Red 6656 (2012) ("*Lifeline Reform Order*").

[3] Petition, generally, pp.1-4.

Petition filed over a year ago, asking the Commission to require all carriers to retain proof of customer eligibility as a way of not only ensuring compliance with the Commission's new rules, but also assisting carriers' ability to demonstrate this compliance in subsequent audits.[4]

TerraCom does not dispute TracFone's contention that it has frequently supported reform proposals that would help improve the integrity of the Lifeline program and the low income fund. TerraCom has also supported many, if not most, of the Commission's Lifeline Reform Rules. Moreover, TerraCom continues to support TracFone's Petition requesting that the Commission require carriers to retain customer documents proving eligibility where no database was available to verify customer eligibility.

There can be no doubt that some of TracFone's suggestions to improve Lifeline efficiency and efficacy, gleaned from its experience as a wireless Lifeline provider, can help both the Commission and other carriers to better work together to provide the best Lifeline service for all consumers, including consumers contributing to the Fund. The instant Petition, however, is not TracFone's most helpful suggestion.

But, in fairness to TracFone, if the Commission had adopted TracFone's proposed rule requiring carriers to keep applicants' proof of program/income eligibility, then TracFone would presumably have no reason to be concerned that carriers distributing handsets in-person have not first verified customer eligibility before giving the customer the handset. Nonetheless, putting aside whether TracFone's concerns are justified, TracFone's Petition, in this case is unnecessarily broad. A rule preventing in-person handset distribution by all carriers would punish those carriers those carriers who are verifying customer eligibility quickly enough to

[4] Petition at 4. See also, n.11 referencing TracFone's prior petition to require ETCs to retain proof of eligibility.

comply with the Commission's rules while, at the same time, quickly satisfying the customer's desire for connectivity.

THE COMMISSION MUST DECLINE TRACFONE'S REQUEST TO PROHIBIT EVEN THE LAWFUL IN-PERSON DISTRIBUTION OF HANDSETS

The biggest problem with TracFone's instant Petition is that it *requires* the Commission to assume that vast majority of Lifeline ETCs distributing handsets in-person are deliberately ignoring the Commission's rules. TracFone's Petition is clearly based on its own assumption of rampant lawlessness among ETCs that distribute handsets at the same events that provide opportunities for "grassroots marketing." Without this presumption, TracFone's proposed rule offers little to no benefit for the Lifeline program, for ETCs, beneficiaries, or contributors to the USF.

However, TracFone offers no evidence upon which the Commission could reasonably adopt such a radical presumption. Instead, TracFone invites the Commission to agree with its own assumption that in-person handset distribution cannot in most instances be consistent with faithful adherence to the Commission's rules. However, the FCC cannot make broad rules based upon nothing more than the unsupported assumptions of any petitioner—even if the petitioner has as much experience in the market as TracFone.

To the contrary, absent strong evidence supporting the need for the prohibition that TracFone seeks, the Commission must presume that regulated ETCs are acting in a manner fully consistent with its rules. This is the only basis upon which rational policy can be made, and rational rules adopted. After all, what would be the point of the FCC adopting rules in its 2012 *Lifeline Reform Order* only to make additional rules a year later predicated on the assumption that ETCs were not following the 2012 rules?

The excessive and indiscriminate breadth of the prohibition rule that TracFone seeks seems to be recognized even by TracFone. For while TracFone should be required to demonstrate a strong evidentiary correlation between USF fraud and in-person handset distribution in order to justify its proposed rule, TracFone stops short of stating that the practice of distributing handsets during a grassroots marketing event is a *sine qua non* indicator of an ETC's failure to verify customer eligibility. In fact, TracFone explains that this is exactly *not* what it is saying.[5]

Instead, TracFone argues that

> the practice of in-person handset distribution *makes it easier* for ETCs to provide Lifeline phones to consumers without first determining whether those consumers are eligible to receive Lifeline supported service in accordance with the Commission's rules, and *more difficult to enforce the rules and police violations of those rules*.[6]

(emphasis added). It is hard to understand, without some additional explanation, how in-person handset distribution makes enforcement and policing of FCC rule violations more difficult. Carriers that disregard Commission rules do so at their own peril, and the discovery of rule violations occurs in the same manner for those that distribute handsets in-person as it does for companies that distribute handsets through the mail: via frequent and thorough USAC audits. Whether an ETC has first performed all relevant notifications and verifications before providing the customer with a handset will never be apparent to a casual observer, no matter how the customer receives their handset.

Similarly, exactly how in-person distribution makes it *easier* for ETCs to disregard the Commission's rules is never explained. If anything, one could argue, handling an inventory of

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[5] See Petition, p. 6, n. 16. ("This is not to suggest or imply that ETCs who use in-person handset distribution are violating the applicable eligibility verification and Lifeline enrollment rules.")

[6] *Id.*

phones in the field requires those distributing the phones to keep better records, as required by the rules adopted in the Commission's *Lifeline Reform Order*[7]. A casual disregard of Commission rules is bound to be quickly discovered by those that fail to keep meticulous records.

The Commission must also consider whether there is any benefit to Lifeline stakeholders when contemplating whether a blanket prohibition on all in-person handset distribution is justified. TerraCom believes that, at least for itself and its customers, there are significant advantages to the Lifeline program from allowing responsible carriers to quickly perform eligibility verifications and distribute handsets to new customers shortly after the customer applies for Lifeline and provides proof of eligibility.

TracFone does not dispute that there is value in performing "grassroots marketing" at community events where customers can be educated and services explained and demonstrated in person. Given that all carriers consider grassroots marketing to be valuable and effective, there can be no argument that distributing handsets to customers that are eligible to receive Lifeline service at the same time, and event, is a more efficient means of distribution. After all, the prospective customer can receive their phone upon verification of eligibility, and the carrier need not employ a separate, more expensive, and less timely distribution channel if the carrier can quickly and remotely verify consumer eligibility.

And isn't this the point of competition? Those that figure out how to more efficiently distribute their service in compliance with Commission rules are rewarded, and customers benefit accordingly. TracFone claims to "anticipate" this ineluctable conclusion and notes that it

[7] See, *e.g.*, *Lifeline Reform Order* at ¶¶ 298-299 (discussing consequences of not keeping accurate records).

was able to become the largest provider of wireless Lifeline service while relying on the distribution model it has always used.[8]

This rationale, though, is a distraction that most likely holds little relevance in today's Lifeline market. To TracFone's credit, it was the first to act upon its realization that all consumers, including Lifeline participants, had a preference for mobility in their telecommunications service. TracFone put in the work to educate and persuade regulators of the legitimacy of its position, and TracFone reaped the first-mover benefits to which it was entitled.

However, this does not mean that every company will be on equal footing if every carrier is compelled to use TracFone's initial distribution model. A centralized distribution model, where all products are shipped from a common distribution center, strongly favors the largest firms—who can benefit from substantial scale economies. The Commission should try, whenever possible, to make sure its rules are competitively neutral. TracFone's proposed rule is not competitively neutral and should not be adopted by the Commission.

Finally, while many of TracFone's underlying concerns are well-placed (though not always accurate), there is every reason to believe that TracFone's concerns have their greatest appeal at this particular point in the implementation of the sweeping reforms the Commission adopted in the *Lifeline Reform Order*. Once the duplicate and eligibility databases the Commission has authorized become the primary means through which customers will establish their eligibility, the Commission should expect even greater use of mobile data interfaces by Lifeline ETCs. As the Commission's intended reforms become fully realized, carriers and customers can look forward to greater mobility—and greater in-person distribution of handsets.

Thus, even if the Commission were tempted to adopt TracFone's overly-broad proposed rule, the inevitable need to quickly sunset this rule would be at the agency's doorstep. In the

[8] See Petition, p. 7, n. 17.

case of this TracFone Petition, the public interest can only be served by the Commission declining to adopt TracFone's proposed prohibition on the in-person distribution of handsets.

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Accordingly, and for all the foregoing reasons, TerraCom asks the Commission to expeditiously deny TracFone's Petition for Rulemaking so that the Commission can focus on the unfulfilled parts of the *Lifeline Reform Order*—such as the duplicate and eligibility databases, which will certainly improve Fund performance.

Respectfully submitted,

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