

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

In the Matter of)	
)	
Petition for Rulemaking to Prohibit)	
In-Person Distribution of Handsets)	
to Prospective Lifeline Customers)	
)	
Lifeline and Link Up Reform)	WC Docket No. 11-42
and Modernization)	
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	

**COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC. AND
CRICKET COMMUNICATIONS, INC.**

Leap Wireless International, Inc. and Cricket Communications, Inc. (together, “Cricket”) hereby submit comments in response to the petition for rulemaking filed by TracFone Wireless, Inc. (“TracFone”), which seeks to prohibit in-person distribution of handsets to Lifeline customers.¹ TracFone has raised legitimate concerns about waste, fraud, and abuse committed by dishonest, fly-by-night suppliers that distribute handsets on street corners, or out of the trunks of cars, while evading Lifeline eligibility requirements. But TracFone has proposed a remedy to this problem—a comprehensive ban on *all* in-person distribution of handsets, including at established retail stores—that is overbroad and inappropriate, and indeed would affirmatively harm the Commission’s efforts to prevent waste, fraud, and abuse in the Lifeline program.

¹ See TracFone Wireless, Inc., Petition for Rulemaking, WC Docket No. 11-42, *et al.*, (filed May 13, 2013) (“TracFone Petition”).

DISCUSSION

TracFone’s petition is based on its concern that “unscrupulous providers and irresponsible agents” have been providing handsets to customers while evading Lifeline’s eligibility requirements.² As TracFone notes, there have been troubling reports of dishonest suppliers’ providing handsets on street corners without properly determining the customer’s eligibility for the Lifeline program.³ TracFone further points out that such conduct not only constitutes the type of waste, fraud, and abuse that the Commission has been attempting to curtail, but also “besmirch[es]” the entire Lifeline program, including legitimate participants.⁴

Cricket shares TracFone’s concerns about the impact of unscrupulous providers on the Lifeline program. Cricket agrees that the Lifeline program has been marred by unethical suppliers who hand out handsets on street corners, out of the trunks of cars, or out of temporary tents, without adequately documenting subscribers’ eligibility. Such conduct constitutes a serious abuse of the Lifeline program and creates improper incentives and opportunities for consumers to evade eligibility requirements. It also damages the reputation of the program and of the legitimate carriers who are providing a vital service to low-income Americans.

For these and other reasons, Cricket has long supported the Commission’s efforts to weed out waste, fraud, and abuse in the Lifeline program.⁵ Cricket has a lengthy track record of implementing measures to curb such waste, fraud, and abuse, including its adoption of documentation requirements well before the Commission instituted such safeguards in its

² *Id.* at 1.

³ *Id.* at 3-4, 6.

⁴ *Id.* at 1.

⁵ *See, e.g.*, Comments of Leap Wireless International, Inc. and Cricket Communications, Inc., *Lifeline and Link Up Reform and Modernization, etc.*, WC Docket No. 11-42 (filed April 2, 2012).

February 2012 order.⁶ And Cricket continues to support all reasonable steps to curb the problems, including rules that would target dishonest actors who provide handsets on street corners without properly enforcing eligibility rules.

But while TracFone's concerns are legitimate, its proposed remedy of prohibiting *any* in-person distribution of handsets to prospective Lifeline customers is not remotely proportional to the problem that it identifies. Cricket is willing to give TracFone the benefit of the doubt that perhaps its petition was written without brick-and-mortar retail stores in mind (rather than assuming that TracFone deliberately seeks to disadvantage carriers that rely on store-based enrollment and handset distribution). But the concerns that TracFone raises, such as opportunities for fraud on street corners,⁷ simply do not apply to established retail outlets. Indeed, the in-person, real-time enrollment that occurs at brick-and-mortar retail stores provides an ideal opportunity to ensure compliance with eligibility rules. To the extent that TracFone actually intends to prohibit in-person enrollment at retail stores, its proposal would significantly harm the public interest and should be rejected.

Cricket sells devices through a network of brick-and-mortar retail stores across the country in which employees and certain designated agents are comprehensively trained on the requirements of the Lifeline program. Such Cricket representatives carefully explain the eligibility requirements and restrictions to prospective Lifeline participants and require them to provide the necessary certifications. Cricket personnel also obtain and review documentation of eligibility for Lifeline enrollment, including proof of participation in a qualifying low-income program or satisfaction of the income-based eligibility standard. And Cricket requires Lifeline

⁶ *Lifeline Link Up Reform and Modernization, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012).

⁷ See TracFone Petition at 6.

applicants to furnish photo identification for authentication purposes. Thus, while TracFone raises a concern that street-corner enrollment “may often prevent ETCs from performing the necessary verification to certify that those customers are eligible for Lifeline benefits,”⁸ such concerns do not apply at all to enrollment at Cricket retail outlets staffed with trained personnel. To the contrary, the robust, real-time verification by trained personnel at Cricket stores is *more* reliable in ensuring compliance with Lifeline eligibility rules than TracFone’s proposed process of Internet-based and mail order enrollment, as such processes do not permit an in-person, real-time review of the customer’s documentation materials and photo ID.

In addition, TracFone’s proposals would create significant obstacles for Lifeline applicants that are wholly unnecessary to prevent the fraud and abuse about which TracFone is concerned. For example, TracFone suggests that the Commission should require “ETCs to send handsets via U.S. mail or approved delivery services after the ETC has verified the applicants’ eligibility,”⁹ but there is no sound reason to require a customer who appears in person and establishes her eligibility for the Lifeline program in full compliance with the Commission’s rules not to obtain a handset immediately. Requiring a customer who has produced documentation and satisfied the Lifeline enrollment requirements to await subsequent delivery of a handset at home or a post office box would cause significant delay and inconvenience and therefore would likely deter legitimate enrollment and undermine the benefits associated with the Lifeline program. And such a requirement would pose particular problems for customers who lack secure delivery options at their residence or place of employment (if any). As Acting Chairwoman Clyburn has noted, consumers’ ability to document their eligibility “can be very difficult when they are not initiating their service in person with the carrier. Access to copy and

⁸ *Id.* at 6.

⁹ *Id.* at 7.

fax machines for low-income consumers, and sometimes even the post office, can be significant barriers...”¹⁰ The Commission therefore should ensure that any restriction on in-person distribution of handsets is narrowly tailored to the concerns at issue and does not sweep in legitimate store-based distribution options.

TracFone’s petition also fails to account for carriers like Cricket that frequently sell handsets to customers out of their retail stores and provide undiscounted wireless services for some months or years *before* such customers apply for Lifeline benefits. In such circumstances, TracFone’s proposed ban on in-person handset distribution would seem to require Cricket to force a customer to turn in her phone and then wait to have it returned by mail before she could become a Lifeline participant, notwithstanding her status as an existing customer and her satisfaction of all Lifeline eligibility requirements. There is plainly no legitimate basis for imposing such needless burdens on eligible low-income consumers.

There are far more targeted options available to the Commission than the remedy proposed by TracFone. Notably, TracFone’s petition fails to mention that several states, including Georgia, California, and South Carolina, have already taken steps to address fraudulent enrollment practices that involve distribution of handsets from tents, vehicles, and the like. The Commission can continue rely on states to take steps to combat such instances of waste, fraud, and abuse, or it could consider adopting new rules modeled on the experience of states in considering the issues (none of which have implemented outright bans on in-person distribution of devices). To the extent the Commission concludes that additional federal rules are warranted, those rules must be more targeted than the complete ban on in-person handset distribution

¹⁰ See Statement of Commissioner Mignon L. Clyburn Approving In Part, Concurring in Part, *Lifeline Link Up Reform and Modernization, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012).

proposed by TracFone. For example, the Commission could implement more limited rules that prohibit enrollment of Lifeline subscribers from tents, vehicles, or other temporary structures (although appropriately delineating the scope of the restriction would be difficult). But in no event should the Commission entertain a prohibition against sales of handsets at brick-and-mortar stores, given that store-based interaction allows for improved reliability in complying with the eligibility rules compared to TracFone's proposed procedures.

For these reasons, the Commission should reject TracFone's overbroad and unnecessary proposal to ban all in-person enrollment in the Lifeline program. Cricket shares TracFone's concerns about waste, fraud, and abuse arising from shady operations that pop up on street corners, and Cricket remains eager to work with the Commission on the development of appropriate measures to address those harms. But TracFone's proposal to ban all in-person distribution of handsets would itself create public interest harms that far outweigh the benefits.

Respectfully submitted,

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