

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
TracFone Wireless, Inc. Petition for	)	
Rulemaking to Prohibit In-Person	)	
Distribution of Handsets to Prospective	)	
Lifeline Customers	)	
	)	
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	)	CC Docket No. 96-45
Universal Service	)	

**REPLY COMMENTS OF TRACFONE WIRELESS, INC.**

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## SUMMARY

TracFone's proposal that the Commission prohibit the in-person distribution of handsets to prospective Lifeline customers by or on behalf of Eligible Telecommunications Carriers would prevent fraudulent enrollment, would conserve Universal Service Fund resources, and would enhance the perception of Lifeline in the wake of criticisms by program critics, including Members of Congress who have called for its elimination. Nothing has besmirched the image of the invaluable Lifeline program more than reports of persons handing out cell phones on street corners, in parks, from cars, tents, kiosks, or other places, sometimes with no questions asked. In some circumstances, it has been reported that distributors of Lifeline handsets have told consumers that the service could be resold to others. Signs appearing in store windows announcing "FREE GOVERNMENT CELL PHONES IN STOCK" have played into the hands of program critics.

TracFone applauds the recent actions by the Wireline Competition Bureau and the Enforcement Bureau. The Wireline Competition Bureau has promulgated a rule prohibiting the distribution of devices with Lifeline-supported service activated until the recipients have confirmed their eligibility and the enrollment process completed. The Enforcement Bureau reminded ETCs that they are liable for the conduct of their agents, representatives and contractors. These actions send important messages. Nonetheless, specific rule changes as proposed in TracFone's petition remain necessary.

Not surprisingly, TracFone's petition was opposed by several ETCs who wish to continue to hand out cell phones with Lifeline-supported service where and when they (or their agents) wish. Consumer groups, policy advocates, and state commissions agree with TracFone that prohibiting in-person handset distribution would prevent waste, fraud, and abuse of USF resources.

The purpose for TracFone’s petition was not to bestow on itself a competitive advantage. TracFone recognizes that in a competitive market, competitors will utilize different business models to market their services. However, where a practice leads to program abuse, even if many companies utilizing that practice are complying with enrollment requirements, the practice should be limited so as to preserve the program. TracFone’s handset distribution proposal would not violate the First Amendment, as several have alleged, since the proposal would not in any manner limit free speech. If the Commission elects to permit in-person handset distribution at “brick and mortar” stores, it should only be allowed at stores owned and operated by ETCs since the potential for fraudulent enrollment is not based on the permanence of the facility where handsets are distributed, but is based on the accountability of the entity distributing the handsets. ETCs are accountable to the Commission for compliance with the Lifeline rules; independent store owners are not so accountable. TracFone does not propose to preclude any ETC from enrolling customers and compiling enrollment data at retail vendor locations whether they are company-owned locations or independently-owned retail establishments. It merely proposes to prohibit distributing handsets with Lifeline-supported minutes until such time as the applicants’ eligibility has been verified by the ETC (not by an agent of the ETC) as required by the Commission’s rules. Nothing in TracFone’s petition would prevent the Commission and the industry from responding rapidly in emergency situations, including natural disasters such as Hurricane Katrina. Also, TracFone recognizes that provision of Lifeline service to tribal communities involves special and unique difficulties. Therefore, TracFone does not oppose a limited exception to an in-person handset distribution prohibition for those ETCs who provide service to tribal areas if the Commission determines such an exception to be appropriate and consistent with its policy of encouraging greater telecommunications service availability to tribal communities.

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**REPLY COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply to comments which were submitted in response to TracFone’s May 13, 2013 petition for rulemaking in this proceeding. In that petition, TracFone requested that the Commission commence a rulemaking proceeding for the purpose of amending its rules to prohibit the in-person distribution of handsets to prospective Lifeline customers.

**Introduction**

As described in its petition, the practice of some Eligible Telecommunications Carriers (“ETCs”) of handing out wireless handsets to prospective Lifeline customers on a real time basis is a practice which is susceptible to fraud, is difficult to police, and perhaps most importantly, has created a negative perception of the Lifeline program which has been exploited by program critics (often for politically-driven reasons) to criticize the program and seek legislative and regulatory actions to eliminate it. TracFone neither stated nor implied that all ETCs using in-person handset distribution engage in fraud. In fact, TracFone believes that most ETCs comply with applicable Lifeline enrollment and eligibility verification requirements. Still reports of

improper practices persist, have been widely reported, and have been a source of embarrassment to responsible Lifeline providers and those who defend the Lifeline program.

Indeed, two bureaus of the Commission recently have acknowledged at least implicitly the potential for abuse by certain ETCs through their handset distribution practices. On June 25, 2013, the Wireline Competition Bureau issued an order in which it amended Section 54.410(a) of the Commission's rules to prohibit ETCs from providing consumers with activated devices (*e.g.*, wireless handsets) which the ETCs represent to enable use of Lifeline-supported service unless and until the ETC has 1) confirmed that the consumer is a qualifying low-income consumer pursuant to Section 54.409, and 2) completed the eligibility determination and certification required by the applicable sections of the Commission's rules.<sup>1</sup> Also, the Enforcement Bureau issued an Enforcement Advisory to "remind" ETCs that they are liable for conduct by their agents, contractors, and representatives which violates the Commission's Lifeline rules. The Enforcement Bureau deemed that advisory necessary based on its recognition that "some ETCs are failing to ensure that their agents, contractors, and representatives adhere to the Lifeline rules."<sup>2</sup> The importance of these actions to the preservation of the Lifeline program was eloquently stated by Acting Chairwoman Clyburn as follows: "We take any abuse of our rules seriously – and are acting aggressively to enforce them in order to preserve the program for the less fortunate among us who rely on Lifeline to reach emergency services, jobs, and loved ones."<sup>3</sup>

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<sup>1</sup> In the Matter of Lifeline and Link Up Modernization and Reform, DA 13-1441 (released June 25, 2013).

<sup>2</sup> FCC Enforcement Advisory – Lifeline Providers are Liable if their Agents or Representatives Violate the FCC's Lifeline Program Rules, DA 13-1435, released June 25, 2013.

<sup>3</sup> News – FCC Takes Further Steps to Ensure Compliance with Rules Protecting Lifeline Program Against Waste, Fraud and Abuse, released June 25, 2013.

These June 25 actions are important steps, but they do not go far enough. Promulgation of a rule explicitly prohibiting the distribution of devices with Lifeline-supported service until the recipient's Lifeline eligibility has been determined and the enrollment process completed, and a reminder that ETCs are responsible for the conduct (and misconduct) of their agents, contractors, and representatives demonstrate the Commission's commitment to stamping out opportunities for improper Lifeline enrollment and preventing such abusive behavior whether done directly by ETCs or by others acting on their behalf. TracFone's petition identified a specific practice which creates an enormous opportunity for such misconduct and proposed a remedy which would remove that opportunity. TracFone reiterates its request that the Commission further demonstrate its commitment to preventing Lifeline fraud and waste of Universal Service Fund ("USF") resources by prohibiting in-person distribution of handsets – a practice which is not necessary to operate a successful Lifeline program, a practice which invites fraudulent enrollment, and a practice that projects an image of recklessness and fraudulent conduct.

Not surprisingly, virtually all ETCs who use various forms of in-person handset distribution opposed TracFone's petition.<sup>4</sup> Those commenters generally expressed the view that prohibiting in-person handset distribution is not necessary to prevent waste, fraud, and abuse of USF resources, that existing rules and prospectively available databases will solve the problem

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<sup>4</sup> See, e.g., Comments of General Communications, Inc. ("GCI"), i-Wireless, TerraCom, Inc., and its affiliate, YourTel America, Inc. ("TerraCom/YourTel"), Q-Link Wireless, LLC ("Q-Link"), the National ALEC Association/Prepaid Communications Association ("NALA/PCA"), Budget Prepay, Inc. ("Budget"), the Joint Comments of Absolute Mobile, Assist Wireless, Blue Jay Wireless, Boomerang Wireless, Global Connection, i-Wireless, and Telrite ("Joint Commenters"), and CompTel. In addition, comments in opposition to the petition were filed by two entities representing providers who serve tribal areas. See Comments of the Navajo Nation Telecommunications Regulatory Commission ("NNTRC"), and Comments of Smith Bagley, Inc.

raised in TracFone’s petition, and that the purpose underlying TracFone’s petition was to obtain for itself a competitive advantage. Those assertions and others will be addressed herein.

Other commenters, including public interest and consumer advocacy groups concerned about the continued availability of Lifeline, and state public service commissions, supported the petition and acknowledged the fraud problem occasioned by certain providers’ handset distribution practices.<sup>5</sup> The State Commissions offered an insightful analogy: “Providing a phone prior to an eligibility determination is akin to providing a credit card without a credit check.”<sup>6</sup> There is a critical distinction between credit card issuers and Lifeline providers. If an overzealous credit card issuer or its agent provides a credit card to an unqualified consumer without properly verifying the consumer’s creditworthiness, it is the card issuer and ultimately its stockholders which bear the risk. With Lifeline, if an overzealous ETC or an ETC’s overzealous agent, representative, or contractor provides a phone loaded with USF-supported minutes of use to a person not entitled to Lifeline support (or to a person whose household already has Lifeline-supported service), it is the USF, and ultimately the nation’s telecommunications service consumers who contribute to that fund, who bear the risk. That is why effective fraud prevention measures are so essential to the credibility – and ultimately the survivability – of the Lifeline program, and that is why important steps must be taken to ensure that Lifeline is preserved for

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<sup>5</sup> See Comments of the Free State Foundation (“FSF”), Comments of the National Grange, Joint Comments of Community Action Partnership, Consumer Action, Maryland CASH Campaign, the National Association of American Veterans, Inc., and the National Consumers League (“Consumer Advocates”), the Joint Comments of the Public Service Commission of the District of Columbia, the Nebraska Public Service Commission, the Vermont Public Service Board, the Indiana Utility Regulatory Commission, the Mississippi Public Service Commission, the Public Utilities Commission of Ohio, and the West Virginia Public Service Commission (“State Commissions”). The only other commenting state commission, the California Public Utilities Commission, opposed the petition on the narrow basis that the proposed in-person handset distribution prohibition would conflict with California’s system for its state-supported wireline Lifeline program called California Lifeline, which uses a third party administrator.

<sup>6</sup> Comments of State Commissions at 2.

the less fortunate who rely on Lifeline to reach emergency services, jobs, and loved ones, as noted by Acting Chairwoman Clyburn.

Before addressing the initial comments, several preliminary observations are in order. First, it should be readily apparent to anyone who is familiar with the Lifeline program in general and the provision of wireless Lifeline services in particular, that the program is under attack.<sup>7</sup> Rightly or wrongly (in TracFone's judgment, quite wrongly), multiple Members of Congress have called for the elimination of the program. News media have been saturated with negative stories regarding the program, most of which contain anecdotal examples of improper sign up practices by certain ETCs, and which include video clips or descriptions of persons handing out phones on street corners, or from cars, tents, or store fronts, with "Free Government Cell Phones in Stock" advertising, which in itself is forbidden by new advertising rules, and with no apparent effort to first determine whether the phone recipient is either qualified for Lifeline support or whether the recipient or any member of the recipient's household is already receiving Lifeline-supported service, as well as with no warning to consumers that Lifeline service is not transferable and may not be resold. Whether these anecdotal examples are typical of any ETC's practices or are aberrations is not the point. The point is that those images drive the perception of the program and fan the flames of those who seek to eliminate wireless Lifeline. In short, the purpose underlying TracFone's handset distribution petition is to enhance perception of the program and make it easier to defend against program critics, as well as to eliminate a potential

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<sup>7</sup> For example, Senator David Vitter (R-LA) has introduced legislation which would end Lifeline support for wireless services. Two Members of Congress, Rep. Marsha Blackburn (R-TN) and Rep. Tim Griffin (R-AR), sent a letter to the Commission on May 6, 2013 asking that the program be frozen until the Commission concludes that the Tsarnaev brothers, accused of committing the Boston Marathon bombing, did not receive Lifeline benefits. Such cries are not the work of one political party. See, e.g., Letter to the Commission from Senator Claire McCaskill (D-MO) dated June 11, 2013, asking that Lifeline be eliminated and the funds used to support the E-Rate and the ConnectED initiative.

source of fraud. A vibrant wireless Lifeline program not under attack is in the interest of all Lifeline providers, regardless of their marketing and distribution preferences, and is in the interest of those millions of low-income households who have come to rely on available wireless Lifeline service and who would suffer if this invaluable program were to be curtailed or eliminated.

Second, several commenters have asserted that the preferable means for detecting and preventing Lifeline fraud is through the establishment and implementation of a national eligibility database rather than a limitation on handset distribution practices. TracFone concurs fully with that point. If the Commission (or the industry) could wave a magic wand and immediately create such an eligibility database, the USF and those who contribute to that fund would be protected against fraud no matter what marketing, enrollment, and handset distribution methods are used by Lifeline providers. Unfortunately, neither the Commission nor any ETCs possess such a magic wand. In the February 2012 Lifeline Reform Order,<sup>8</sup> the Commission stated as a goal that an eligibility database would be available by year-end 2013. It is now July 2013 and it remains undetermined when the long-anticipated eligibility database will become available. Until such time as there is an eligibility database (and, of course, a requirement that ETCs use that database to confirm their Lifeline applicants' eligibility), other actions will be necessary to prevent fraud and to ensure the integrity of the program. TracFone understands that significant progress is being made on the deployment of the National Lifeline Accountability Database, *i.e.*, the "duplicates" database which will enable Lifeline providers to verify whether Lifeline applicants or members of their households are receiving Lifeline-supported service from another ETC. The imminent availability of the duplicates database will be an important step

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<sup>8</sup> Lifeline and Link Up Reform and Modernization, et al., 27 FCC Rcd 6656 (2012) ("Lifeline Reform Order").

toward eliminating one type of fraudulent enrollment – duplicate enrollment. It will not prevent enrollment by persons who are not Lifeline-eligible based on income or enrollment in a qualifying program. TracFone, like all other Lifeline providers, is hopeful that a national eligibility database will be available soon.<sup>9</sup> However, until that occurs it is imperative that the industry and the Commission, as well as state governments, work cooperatively to identify and implement practices and requirements which facilitate determinations of Lifeline eligibility and which prevent fraudulent use of USF resources. Placing reasonable limitations on the handset distribution process as proposed in TracFone’s petition would be one such practice.

**The Proposed Prohibition on In-Person Handset Distribution  
Is About Ensuring the Integrity of the Lifeline Program;  
It Is Not About Obtaining a Competitive Advantage for TracFone**

Several commenters have accused TracFone of seeking a prohibition on in-person handset distribution to obtain a competitive advantage by impeding its competitors’ ability to use a business model which differs from TracFone’s.<sup>10</sup> That accusation is unsupported, unsupportable, and incorrect. With more than 3.7 million currently-enrolled Lifeline customers in 38 states, TracFone’s enrollment practices have served it and its Lifeline customers well. TracFone acknowledges that its chosen practice of first requiring verification of eligibility and then providing a handset through the mail, even overnight delivery service, delays the time between when a consumer applies and when that consumer receives Lifeline-supported service. However, that method, combined with other procedures which TracFone has implemented (some required by Commission rules; others voluntarily implemented), has enabled it to develop a Lifeline customer base with very few unqualified enrollees. Nonetheless, TracFone realizes that

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<sup>9</sup> TracFone also has been actively involved in efforts to arrange for ETC access to state eligibility databases. To date, state databases are available in approximately ten states with many others under discussion.

<sup>10</sup> See, e.g., Comments of i-Wireless at 1, Budget at 2, Joint Commenters at 2.

in a competitive market for any product or service, competitors will utilize different strategies and procedures. TracFone has no desire either to dictate how other providers market their services or to make its chosen method the industry model.

However, as noted above and in TracFone's petition, TracFone continues to believe that in-person handset distribution has done more than anything else to damage the perception of an invaluable public assistance program and to give ammunition to program critics, including lawmakers, who have called for its abolition. Until such time as a national eligibility database (or suitable state eligibility databases) becomes available, elimination of in-person handset distribution practices will be an effective measure to prevent fraud and enhance the image of the program.

#### **Prohibiting In-Person Handset Distribution Would Not Violate the First Amendment**

While TracFone disagrees with those commenters who have opposed its proposal for a prohibition on in-person handset distribution, it acknowledges that most of the arguments in opposition reflect legitimate concerns about how Lifeline providers should be allowed to market their services and enroll customers, and that good faith differences of opinion exist as to how to detect and prevent Lifeline fraud. However, several of the opposing arguments are rather silly. One such argument is the claim that a prohibition on in-person distribution of Lifeline-supported handsets would be an unconstitutional violation of the First Amendment. The First Amendment prohibits the government from enacting any law which impedes freedom of speech. Nothing in TracFone's petition asks the Commission to prohibit or otherwise restrict any ETC from communicating with potential customers or from exercising their rights of free speech. All TracFone has proposed is a prohibition on handing out handsets with minutes of use on the phones supported by the federal USF.

Nothing in the First Amendment or any other provision of the United States Constitution precludes the Commission from promulgating regulations to implement the Lifeline program and to protect the USF against waste, fraud, and abuse. In fact, in the Lifeline Reform Order, the Commission promulgated very specific regulations prescribing certain information which must be communicated by ETCs to Lifeline applicants (i.e., compelled speech). For example, Section 54.410(d)(1) of the Commission's rules requires ETCs to provide to Lifeline applicants enrollment forms which contain specific Commission-mandated information. That prescribed information includes such matters as i) Lifeline is a federal benefit and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment, etc.; ii) only one Lifeline service is available per household; and iii) Lifeline is a non-transferable benefit. Similarly, Section 54.401(d)(2) of the Commission's rules requires Lifeline applicants to communicate certain information to their chosen Lifeline provider (i.e., the applicant is compelled to speak). Yet neither communication requirements imposed on Lifeline providers nor those imposed on prospective customers as part of the Lifeline enrollment process are barred by the First Amendment.

**If In-Person Handset Distribution Is to Be Permitted  
at "Brick and Mortar" Stores, It Should Only Be  
Allowed at Stores Owned and Operated by Lifeline Providers**

In its petition, TracFone was deliberately non-specific regarding the scope of its proposed in-person handset distribution prohibition. While many of the most egregious examples of improper enrollment and handset distribution have occurred on streets, in parks, or on sidewalks in low-income communities, there have also been reported instances of ETCs and/or their agents operating out of cars, tents, kiosks, or other temporary facilities. One commenter – Nexus Communications – has proposed to prohibit handset distribution at such temporary facilities but allow such real time distribution at so-called brick and mortar stores. Ideally, all in-person

handset distribution should be prohibited. TracFone continues to believe that, as noted by several commenters, including the Free State Foundation (at 2) and the Consumer Advocates (at 2), requiring ETCs first to verify the applicant's eligibility and then to send to the applicant a handset ready for use would alleviate opportunities for short circuiting the eligibility verification process, for sales personnel (whether employees or agents) to convey misinformation when handing out phones to consumers, and for the negative perception created by the practice of handing out Lifeline-supported phones on a real time basis.

That said, TracFone recognizes that some commenters assert a difference between street corner distribution or operation out of temporary facilities on the one hand and operation at a permanent store location on the other. However, the risk of improper enrollment practices does not depend on the permanence of the facility where the phones are handed out. Rather, the risk will be impacted by the accountability of the ETC. For that reason, TracFone would allow for in- person handset distribution only at "brick and mortar" stores operated by ETCs. It would not allow real time handset distribution at stores operated by others, even where the store operators are nominally agents of the ETC. Although distribution of handsets at such locations would be prohibited under TracFone's proposal, customer enrollment applications and supporting information could be received at such locations and transmitted to the ETC for proper verification. ETCs are subject to the Communications Act and the Commission's rules governing Lifeline, and the Commission has broad authority to enforce the Act and those rules against ETCs and impose sanctions for violations. Independent agents, including operators of stores where Lifeline services are marketed, are not telecommunications carriers or ETCs and are not subject to Commission's regulation. Indeed, the Commission may not even issue a notice of

apparent liability for forfeiture to such a non-regulated entity without first issuing a notice of violation or citation.<sup>11</sup>

The Enforcement Bureau's recent reminder that ETCs are liable for the conduct of their agents, representatives, and contractors sends an important message to all ETCs. However, that reminder alone may not be sufficient. Independent agents do not have the same incentives as do ETCs to comply with the enrollment verification requirements. Their incentives are to maximize their compensation by distributing as many Lifeline-supported handsets as they can. Whether or not the phone recipient is Lifeline-eligible and whether or not the customer subsequently is de-enrolled does not affect the agent's revenues. Unless ETCs have access to a database for real time qualification or are required to retain documentation of program-based eligibility provided by applicants, agents will continue to have incentives to enroll customers without verifying the applicants' eligibility.<sup>12</sup> Recently, Senator Vitter posted on his website a photograph of a store with the following sign in the window: "FREE GOVERNMENT CELL PHONES IN STOCK." It cannot be determined from the photo whether the store was owned and operated by an ETC or was operated by an independent agent. Either way, the sign is misleading and plays into the negative and inaccurate perception that the federal government is giving away cell phones. If the store was an ETC store, the ETC would be accountable and would be subject to a Commission enforcement action. If, however, the store was operated by someone other than an ETC (for example, a convenience store or neighborhood grocery store in a low-income community), the

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<sup>11</sup> 47 U.S.C. § 503(b)(5).

<sup>12</sup> On May 30, 2013, TracFone petitioned the Commission to require all ETCs that view documentation of program-based Lifeline eligibility to maintain in their possession and available for audit all such documentation for not less than three years following receipt of such documentation. See Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based Eligibility Documentation, WC Docket No. 11-42 *et al.* (filed May 30, 2013). The Commission has not yet issued a decision on the petition.

Commission would have no enforcement power against that store owner and would have to rely on the ETC itself to police those independent store operators.<sup>13</sup>

**TracFone’s In-Person Handset Distribution Proposal Would  
Not Preclude Such Distribution in Appropriate Situations  
Such as Natural Disasters or at Tribal Communities**

Several commenters have asserted that a prohibition on in-person handset distribution would preclude ETCs from providing service rapidly to persons who have been displaced from their homes due to natural disasters such as Hurricane Katrina, superstorm Sandy, and the recent Oklahoma tornadoes.<sup>14</sup> This argument is a red herring. Nothing in TracFone’s proposal is intended to inhibit service providers’ ability to respond to such emergencies or the Commission’s authority to implement such policies and programs as necessary to ensure rapid deployment of service. Indeed, TracFone provided emergency Lifeline service to nearly 30,000 residents of Louisiana and Mississippi who were forced from their homes in 2005 following Hurricane Katrina. It did so by establishing response centers in affected areas and distributing handsets

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<sup>13</sup> Operation of a brick and mortar store by an ETC does not ensure that handsets will not be distributed without fully verifying the applicant’s eligibility. Recently, a news article posted on nola.com – a New Orleans, Louisiana-based website, described a situation where a consumer was able to acquire a phone with Lifeline-supported minutes already loaded at a Budget Prepay store in New Orleans with minimal checks on whether the applicant was Lifeline-eligible. Another article posted on the Mailonline website – a site operated by the United Kingdom’s Daily Mail newspaper, described a situation where a consumer acquired a handset from a Stand Up Wireless location in Philadelphia even when the consumer stated to the sales representative that his intent was to sell the phone to obtain money to buy drugs. The same article describes a similar situation which occurred at a TerraCom promotional event in Minneapolis. In the Minneapolis case, the consumer expressed an intention to use the money from the sale of the phone to buy an “awesome pair of shoes.” ETCs should be responsible for verifying Lifeline applicants’ eligibility before providing a handset loaded with Lifeline-supported service. They should also not misleadingly advise Lifeline applicants that Lifeline-supported services can be resold and the proceeds used by buy drugs, shoes, or anything else. It is difficult, if not impossible, to effectively prohibit such conduct by independent third party agents.

<sup>14</sup> Comments of CompTel at 6-7, Nexus at 8 n.10, and Joint Commenters at 6.

with 300 pre-loaded minutes pursuant to the Commission's Katrina Lifeline program.<sup>15</sup> The lessons of the Katrina program are that the Commission has the authority to establish special programs and promulgate special rules and procedures as necessary to address emergency situations, and that the telecommunications service industry in general and the wireless industry in particular have the ability and the commitment to respond quickly and effectively to such emergencies. There is no reason for the Commission to decline to adopt an appropriate and effective fraud prevention measure which would be generally applicable given its ability and authority to make adjustments to address unique situations such as natural disasters and other emergencies.

The NNTRC and Smith Bagley properly note the unique circumstances involving tribal lands. As they describe in their comments, homes in tribal communities are geographically dispersed, living arrangements are different, as are cultural norms, within tribal communities. The Commission long has been committed to enhancing the availability of telecommunications service in tribal lands. To the extent that the unique circumstances affecting such tribal communities warrant different requirements, TracFone would have no objection to allowing in-person handset distribution in those communities if the Commission concludes that such distribution does not present an undue risk of fraud and if it concludes that such distribution policies will facilitate the ability of residents to obtain Lifeline-supported services.

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<sup>15</sup> Federal-State Joint Board on Universal Service, et al, 20 FCC Rcd 16883 (2005).

### **Conclusion**

As described in its petition and in these reply comments, TracFone has proposed a prohibition on in-person distribution of handsets loaded with minutes of use supported by the USF. Such a prohibition would eliminate a significant source of wireline fraud and would eliminate a practice which has been the source of continuing criticism by those who are committed to abolishing Lifeline in general and wireless Lifeline in particular. Hopefully, such a prohibition will no longer be necessary when duplicates and eligibility databases become available. Until that time, a limitation on the in-person distribution of handsets will be an invaluable fraud prevention measure and will enhance the credibility of the all-important Lifeline program.

Respectfully submitted,

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