

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Lifeline and Link Up Reform and Modernization) WC Docket No. 11-42
To: The Commission)

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)¹ submits these reply comments in response to the Commission’s request for comment on the petition filed by TracFone Wireless, Inc. (“TracFone”) that the Commission commence a rulemaking to prohibit the in-person distribution of Lifeline handsets.² T-Mobile supports ongoing efforts to eliminate waste, fraud, and abuse in the Lifeline program, but concurs with many commenters that a wholesale prohibition on in-person distribution of handsets will not offer benefits beyond the existing rules, and that focusing on other reform measures instead will be more effective. No rule should prohibit carriers operating retail store locations from providing eligible Lifeline customers with the benefits and convenience of leaving a store with an activated handset, a service that non-Lifeline customers enjoy without restriction. The FCC rules also should not undermine properly controlled and managed outreach efforts in communities to provide services to Lifeline-eligible consumers.

¹ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly-traded company.

² Petition for Rulemaking, TracFone Wireless, Inc., WC Docket Nos. 11-42 *et al.* (filed May 13, 2013) (“TracFone Petition”); *Wireline Competition Bureau Seeks Comment on TracFone’s Petition to Amend Lifeline Rules to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers*, WC Docket No. 11-42, Public Notice, DA 13-1109 (rel. May 16, 2013).

I. ELIMINATING WASTE, FRAUD, AND ABUSE IN THE LIFELINE PROGRAM REMAINS AN IMPORTANT GOAL

T-Mobile concurs with TracFone and other commenters that eliminating waste, fraud, and abuse in the Lifeline program is a critical goal.³ As TracFone points out, last year the Commission implemented a major overhaul of the Lifeline rules to reduce waste, fraud, and abuse.⁴ As a result of the Commission's reforms, there has been a significant reduction in the amount of Lifeline disbursements.⁵ Perhaps most significantly, the new rules clearly prohibit Lifeline eligible telecommunications carriers ("ETCs") from seeking Lifeline reimbursement for a subscriber unless the ETC has received and reviewed documentation demonstrating the subscriber's eligibility.⁶ Just recently, the Commission took further action to protect the Lifeline program. It promulgated a rule that eliminates any doubt that it is unlawful for Lifeline providers to activate Lifeline service before they have verified the customer's eligibility.⁷ The FCC also released an Enforcement Advisory reminding Lifeline carriers of their responsibilities to follow the Lifeline rules and their liability for the actions of their agents.⁸ Thus, T-Mobile submits that the rule proposed by TracFone is duplicative of existing Commission rules.

³ See, e.g., TracFone Petition at 1, 8. See also, e.g., Leap/Cricket comments at 2; State Commission comments at 2; USTelecom comments at 2. Unless otherwise specified, references herein to parties' "comments" refer to initial comments filed in this docket.

⁴ *Id.* at 2-3, citing *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket Nos. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("*Lifeline Reform Order*").

⁵ See, e.g., TracFone Petition at 3.

⁶ 47 C.F.R. §§ 54.410(b)(i), 54.410(c)(i).

⁷ *Lifeline and Link Up Modernization and Reform*, WC Docket No. 11-42, Order, DA 13-1441 (rel. June 25, 2013).

⁸ "Lifeline Providers Are Liable If Their Agents or Representatives Violate the Lifeline Program Rules," Enforcement Advisory, DA 13-1435 (rel. June 25, 2013).

Moreover, it is premature to propose new rules when the reforms contained in the *Lifeline Reform Order* have not yet been fully implemented and enforced. First, the Commission has committed to the deployment of centralized databases to prevent customers from receiving duplicate Lifeline benefits and to prevent ineligible customers from receiving Lifeline benefits.⁹ The Commission is in the process of deploying the duplicates-prevention database,¹⁰ and has sought comment on how to develop an eligibility database or databases.¹¹ These databases will be powerful mechanisms to prevent waste, fraud, and abuse in the program and the Commission should focus significant resources on their deployment.¹²

The *Lifeline Reform Order* also adopted another important safeguard that has not yet been fully implemented. Non-facilities-based carriers were required to obtain Wireline Competition Bureau approval of “compliance plans” before they could begin providing Lifeline services.¹³ The compliance plan requirement is a valuable tool for weeding out bad actors but, to date, no Lifeline ETCs have been declared ineligible to participate in the Lifeline program as a result of the compliance plan review process. It appears that the Bureau is doing a thorough job of reviewing compliance plans to determine whether applicants have the capacity and inclination to comply with the new rules. However, the Commission also has allowed existing non-facilities-based carriers that obtained their Lifeline ETC status before adoption of the compliance

⁹ *Lifeline Reform Order*, 27 FCC Rcd at 6734-55, 6822-27 ¶¶ 179-226, 399-415.

¹⁰ See, e.g., USAC, National Lifeline Accountability Database Webinar June 19, 2013, available at <http://www.usac.org/li/about/outreach/training/061913.aspx>.

¹¹ *Lifeline Reform Order*, 27 FCC Rcd at 6822-27 ¶¶ 399-415.

¹² In the meantime, the Commission of course should continue to identify and take enforcement action against carriers and consumers that are not complying with the rules under the Industry Duplicate Resolution Process.

¹³ *Lifeline Reform Order*, 27 FCC Rcd at 6813 ¶ 368.

plan rule to continue operations pending Bureau review of their compliance plans.¹⁴ As T-Mobile has pointed out, non-facilities-based carriers can risk violating FCC rules without jeopardizing valuable licenses or infrastructure investments.¹⁵ The Commission should therefore expedite review of the pending compliance plans to address bad actors in the program, and the Bureau should promptly move to reject compliance plans where the review process raises questions about the applicant’s capacity or inclination to comply with the new rules.¹⁶

The practice that TracFone seeks to address – signing up Lifeline customers in person without properly verifying their eligibility¹⁷ – already is a violation of the rules. It is therefore unclear why the adoption of TracFone’s proposed rule would be a useful response, particularly when the proposed rule would negatively affect the ability of fully eligible – and properly verified -- consumers to obtain Lifeline services. Accordingly, T-Mobile submits that the more systemic solutions discussed above, combined with effective enforcement activity, would be more productive means of eliminating waste, fraud, and abuse in the Lifeline program.

II. WIRELESS CARRIERS SHOULD BE ABLE TO ACTIVATE SERVICE FOR ELIGIBLE CUSTOMERS AT RETAIL STORES AND AT APPROPRIATELY MANAGED COMMUNITY OUTREACH EVENTS

T-Mobile agrees that some non-facilities-based Lifeline providers’ in-person distribution practices – “unscrupulous providers and irresponsible agents who have been recorded literally

¹⁴ *Lifeline Reform Order*, 27 FCC Rcd at 6928 ¶ 56.

¹⁵ Letter from Kathleen O’Brien Ham, T-Mobile, to Marlene H. Dortch, FCC, WC Docket No. 11-42 (filed Dec. 16, 2011) (“T-Mobile Dec. 16, 2011 Ex Parte”) at 7.

¹⁶ T-Mobile notes that it previously has advocated, and the Commission has considered, the adoption of a minimum charge for qualified consumers to receive Lifeline benefits as a measure to protect the fund from waste, fraud and abuse. T-Mobile Dec. 16, 2011 *Ex Parte* at 3; *Lifeline Reform Order*, 27 FCC Rcd at 6771-6774 ¶¶ 264-68. T-Mobile continues to believe that that the very act of requiring payment (whether in advance or in arrears) would create a significant barrier to the provision of phones to ineligible or duplicate customers.

¹⁷ TracFone Petition at 6.

handing out handsets on street corners with no apparent efforts to verify the customers' Lifeline eligibility"¹⁸ – have undermined the credibility of the Lifeline program as a whole. T-Mobile agrees that those practices must be stopped. However, TracFone's proposed solution would eliminate beneficial practices along with harmful ones. Specifically, it would prevent Lifeline-eligible customers from leaving a wireless carrier's retail location with an activated phone.

As several commenters point out, TracFone's proposal would preclude the normal retail sale of Lifeline service at wireless carrier retail locations.¹⁹ All customers – including low-income consumers – appreciate the benefits and convenience of being able to leave a retail store with a working phone. Customers also benefit from being able to return to a carrier retail location to address issues that may arise with the device, service, or billing. Again, the distribution of handsets in a retail store setting does not preclude proper verification of the customer's eligibility in advance.²⁰ Retail customer service representatives are trained to review eligibility documentation, or can immediately transmit the documentation electronically to centralized carrier personnel who are trained to review it. There is, in short, no reason that a proper Lifeline customer enrollment should require mail order distribution of handsets and delayed service activation.

As commenters observe, TracFone's proposed rule would require all Lifeline ETCs to adopt TracFone's business model of distributing Lifeline handsets only by mail or courier.²¹

¹⁸ *Id.* at 1.

¹⁹ *See, e.g.*, Leap/Cricket comments at 3-4; Budget Prepay comments at 1, 4; Nexus comments at 4-5.

²⁰ *See, e.g.*, Smith Bagley comments at 4-5; Leap/Cricket comments at 3-4; Budget comments at 3-4.

²¹ *See, e.g.*, Budget comments at 3; Q Link comments at 3-4; Nexus comments at 3 n.6.

But, in fact, distribution of handsets by mail has inherent risks too, however, including (but not limited to) handsets being requested online or by phone by ineligible customers with forged eligibility documents; handsets intercepted and used by unauthorized individuals; and misdirected, damaged, or delayed deliveries.²² And while ETCs employ sales practices to guard against these and other risks, it is unlikely that the unscrupulous providers demonstrating the behaviors TracFone seeks to curtail would be so cautious with their mail delivery practices. Again, as discussed above, it will be more effective to focus the Commission's energy on implementing the other reforms in the *Lifeline Reform Order*, including particularly the duplicates and eligibility databases, screening out questionable ETCs in the compliance plan review process, and enforcing the existing rules.

For similar reasons, responsible Lifeline ETCs should not be precluded from participating in properly structured community outreach events designed to reach Lifeline-eligible consumers. The Commission's rules require Lifeline ETCs to “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”²³ As TracFone itself acknowledges, “‘grass-roots’ efforts involv[ing] community-based organizations who are familiar with the portion of the population within their communities which is likely to be Lifeline-eligible . . . , if conducted with meaningful safeguards, enable low-income consumers to become aware of Lifeline services.”²⁴ T-Mobile's experience suggests that community outreach events can be valuable ways to help Lifeline-eligible customers obtain the benefits of the program. For example, outreach events can be very effective for populations that otherwise

²² See, e.g., Budget comments at 3;

²³ 47 C.F.R. § 54.405(b).

²⁴ TracFone Petition at 5.

might have difficulty traveling to a retail location, such as the elderly or residents of remote Tribal lands. TracFone presents no evidence to support the idea that in-person distribution of handsets is inherently riskier than other distribution methods, and the comments supporting the petition are similarly devoid of evidence.²⁵

CONCLUSION

T-Mobile strongly supports the prevention of waste, fraud, and abuse in the Lifeline program. Other approaches would be more effective, however, than TracFone's proposed rulemaking effort. While T-Mobile agrees that some ETCs' Lifeline handset distribution practices have undermined this valuable program and that those practices must be stopped, efforts to address such unlawful practices should not also prevent responsible facilities-based ETCs from providing eligible Lifeline customers with active handsets in retail stores or at properly structured community outreach events.

Respectfully submitted,

T-Mobile USA, Inc.

By: /s/ Kathleen O'Brien Ham
Kathleen O'Brien Ham
Luisa L. Lancetti

T-Mobile USA, Inc.
601 Pennsylvania Ave., N.W.
North Building, Suite 800
Washington, D.C. 20004
(202) 654-5900

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²⁵ See, e.g., State Commission comments at 2-3; Community Action Partnership *et al.* comments at 2; National Grange comments at 1-2.