

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	WC Docket No. 11-42
Lifeline and Link Up Reform and	)	
Modernization	)	

**COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments in response to the Public Notice issued in this proceeding.<sup>1</sup>

**INTRODUCTION**

In the Lifeline Reform Order,<sup>2</sup> the Commission adopted comprehensive reforms to the Universal Service Fund’s (“USF”) Lifeline program. The purpose of the reforms was, in part, to strengthen protections against waste, fraud, and abuse of USF resources and improve program administration and accountability.<sup>3</sup> Among the rules established in the Lifeline Reform Order is “a requirement that every ETC [Eligible Telecommunications Carrier] providing Lifeline services and drawing \$5 million or more in the aggregate on an annual basis ... from the low-income program hire an independent audit firm to assess the ETC's overall compliance with the program's requirements.”<sup>4</sup> The Commission explained that this remedial measure is necessary

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<sup>1</sup>Public Notice – Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan, DA 13-2016, released September 30, 2013.

<sup>2</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (“Lifeline Reform Order”).

<sup>3</sup> See *id.* ¶ 1.

<sup>4</sup> *Id.* ¶ 291.

“due to the significant growth of the program; the known instances of waste, fraud, and abuse; and the critical importance of ensuring this program effectively serves those most in need . . . .”<sup>5</sup>

The Commission directed the Universal Service Administrative Company (“USAC”) to prepare proposed audit guidelines and directed the Wireline Competition Bureau (“WCB”) and the Office of Managing Director (“OMD”) to review USAC’s proposal and “finalize a uniform and standard audit plan.”<sup>6</sup> The Commission also described the objective of the audit as follows:

Rather than performing an audit at the individual study area level, we expect these audits to focus on the company’s overall compliance program and internal controls regarding Commission requirements as implemented on a nationwide basis. For instance, when an ETC has an automated system to verify initial and ongoing eligibility, the biennial independent audit should focus on whether the methods and procedures of such automated systems are appropriately structured to ensure compliance with program rules.<sup>7</sup>

Thus, the goal of the audit is to confirm that an ETC has effective systems in place that ensure compliance with the Lifeline program rules, not to review numerous subscriber records on an individual basis. As required by the Lifeline Reform Order, WCB and OMD developed a proposed Lifeline Biennial Audit Plan set forth in the Public Notice.

TracFone, as the nation’s leading provider of Lifeline service, is subject to the biennial audit and has a substantial interest in the procedures governing the audit. TracFone also has significant experience in responding to audits conducted by USAC. As such, TracFone is aware of the information that it is already providing to USAC and the resources required to respond to the types of questions set forth in the proposed Lifeline Biennial Audit Plan. TracFone fully supports the Commission’s efforts to protect the USF from waste, fraud, and abuse by subjecting recipients of significant amounts of Lifeline support to audits to review those companies’

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<sup>5</sup> *Id.* ¶ 295.

<sup>6</sup> *Id.* ¶ 292.

<sup>7</sup> *Id.*

“overall compliance program.” However, the Lifeline Biennial Audit Plan diverges from that goal in several important respects. In these Comments, TracFone urges the Commission to revise the proposed Lifeline Biennial Audit Plan to conform the scope of the audit to the parameters set forth in the Lifeline Reform Order, eliminate aspects of the audit that duplicate audits currently being conducted by USAC, and remove requests for information that are contrary to Commission rules or that do not provide meaningful insight into companies’ compliance systems. TracFone also encourages the Commission to carefully consider the usefulness of the audit in identifying waste, fraud, and abuse of USF resources.

The proposed Lifeline Biennial Audit Plan asserts that “the audits will focus on a company’s overall compliance with the Lifeline rules and assess whether the company has internal controls necessary to comply with the Lifeline rules.”<sup>8</sup> However, the information requested from ETCs indicates that the audits will exceed the limited scope of the audits mandated by the Commission, fail to provide meaningful information to the Commission, and create unnecessary work for ETCs. TracFone’s comments focus on specific sections of the Biennial Audit Plan about which TracFone has concerns.

## **I. Fieldwork Testing Procedures**

### Objective II: Consumer Qualification for Lifeline

Objective II of the audit relates to whether an ETC has procedures in place to limit Lifeline service to qualifying low-income consumers and ensure that Lifeline service is limited to a single subscribership per household.<sup>9</sup> The audit procedures require the auditor to obtain an ETC’s National Subscriber List for all study areas for a certain month and to compare the number of subscribers on that list to the number of subscribers claimed on the ETC’s FCC Form

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<sup>8</sup> Biennial Audit Plan, ¶ 4 (Public Notice, Attachment 2)

<sup>9</sup> *Id.* at 15.

497s for all study areas for the same month. A comparison of the number of subscribers on an ETC's National Subscriber List to the total number of subscribers on FCC Form 497s submitted to USAC in a given month will not yield any useful information regarding whether an ETC has procedures in place to limit Lifeline service to qualifying low-income consumers. There may be immaterial discrepancies between the number of subscribers in an ETC's records and the number of subscribers on FCC Form 497 due to an ETC's decision not to seek reimbursement for certain subscribers, a subscriber's request to terminate service after the ETC submitted FCC Form 497, or for other legitimate reasons. Also, such a comparison does not take into account the fact that an ETC has a period of twelve months to file revisions to FCC Form 497 with USAC.<sup>10</sup> As such, any discrepancy in the number of subscribers is not indicative of an ETC's overall compliance with Lifeline rules at any given time. Rather, given that the audit reports will not be confidential,<sup>11</sup> any discrepancy between an ETC's National Subscriber List and its Form 497s could be wrongly interpreted as evidence of waste, fraud, or abuse of the USF and provide a basis for Lifeline program opponents to issue unwarranted and inaccurate criticisms of the program.

The audit procedures to assess consumer qualification for Lifeline also direct the auditor to use computer-assisted audit techniques to examine an ETC's National Subscriber List and note whether there are any duplicate subscribers.<sup>12</sup> An audit of an ETC's entire National Subscriber List to determine whether there are any duplicate subscribers is beyond the scope of the audit contemplated by the Commission. As stated by the Commission, it expects the audits to focus on "the company's overall compliance program and internal controls." When an ETC

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<sup>10</sup> See Lifeline Reform Order, ¶ 305.

<sup>11</sup> See *id.* ¶ 294.

<sup>12</sup> See Biennial Audit Plan, at 15.

has an automated system to verify initial eligibility, such as by checking whether a Lifeline applicant is already an existing Lifeline subscriber, the Commission instructed that the biennial audit should “focus on whether the methods and procedures of such automated systems are appropriately structured to ensure compliance with program rules.”<sup>13</sup> A detailed review of the records of all subscribers does not assess whether an ETC has an appropriately structured system; it is an audit at the individual study area level and at the individual subscriber level, contrary to the Commission’s specific direction that such an audit not be performed.

The proposed process for assessing whether an ETC has a system that effectively identifies when an applicant or someone in the applicant’s household is an existing customer would be unnecessarily duplicative of the in-depth validations (“IDVs”) being conducted by USAC on a state-by-state basis to identify instances when a subscriber or a subscriber’s household is receiving more than one Lifeline service. In addition, a review of an ETC’s National Subscriber List for duplicate entries will not be necessary because the National Lifeline Accountability Database (“NLAD”) will be available commencing on January 27, 2014 for certain states and nationwide by March 20, 2014. The NLAD will be accessed by all ETCs to check whether an applicant for Lifeline service is already receiving Lifeline service from that ETC or from another ETC. Thus, if the Commission is concerned about whether the NLAD is effectively identifying duplicate subscribers, then it can conduct its own audit of the NLAD, rather than do piecemeal audits of ETCs’ subscriber lists.

If the Commission nevertheless concludes that the biennial audit must check the effectiveness of an ETC’s procedures regarding consumer qualification for Lifeline (*e.g.*, compliance with the one-per-household rule), TracFone recommends that the audit look at a

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<sup>13</sup> Lifeline Reform Order, ¶ 292.

sample of subscribers, such as an ETC's subscribers from a particular state, and check whether there are duplicates in that sample. Such a process is similar to that proposed to evaluate whether an ETC has procedures in place to make subscriber eligibility determinations.<sup>14</sup> For purposes of evaluating whether an ETC has procedures to identify duplicate subscribers, TracFone recommends that if there is an error rate of higher than 5 percent (*i.e.*, more than 5 percent of the total number of subscribers for a state are duplicates), then the auditor should review a list of subscribers for an additional state.

Objective IV: Annual Certifications and Recordkeeping by Eligible Telecommunications Carriers

Objective IV of the audit relates to whether an ETC has submitted to USAC the required annual certifications and maintained recordkeeping requirements.<sup>15</sup> The audit procedures require the auditor to examine an ETC's FCC Form 555s filed during the audit period and verify that the ETC completed the forms and that the corporate officer responsible for reviewing the forms also signed the forms. The audit procedures further require that the auditor review the ETC's recertification results and non-usage results for the individual subscribers reported on FCC Form 555 as having recertified or not re-certified their Lifeline eligibility or as having been de-enrolled from Lifeline due to non-usage.<sup>16</sup> Like the proposed audit procedures that purportedly check whether an ETC has an effective procedure for preventing duplicate enrollments, this procedure exceeds the bounds of the audit as outlined in the Lifeline Reform Order and is unnecessarily

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<sup>14</sup> See Biennial Audit Plan, at 17-18 (Auditors are instructed to randomly select at least 100 subscribers from the National Subscriber List and check whether 50 of those subscribers in the sample have subscriber certification forms that comply with the Commission's Lifeline rules. If the error rate is higher than 5 percent, then the auditor is instructed to review the certification forms associated with the remaining 50 subscribers in the sample).

<sup>15</sup> *Id.*, at 20.

<sup>16</sup> *Id.*, at 20-21.

burdensome to the ETCs. The purpose of the audit is to ascertain whether an ETC has a compliance program that addresses the Commission's rules. The audit is not aimed at the individual study area level nor is it aimed at the individual subscriber level. Therefore, including a subscriber-by-subscriber review of records concerning re-certification of eligibility and non-usage has no place in the biennial audit. Moreover, even if the Commission contemplated such a review, it would not provide any meaningful information. For example, there is no way to confirm whether a particular subscriber was included in a total listed on FCC Form 555. In accordance with the Lifeline Reform Order, the audit regarding an ETC's filing of FCC Form 555 should be limited to a review of the form itself and the procedures the ETC follows to complete the form.

## **II. Appendix A – Requested Documentation**

Appendix A lists documentation that ETCs are required to provide to the auditor. The documentation includes: (1) a subscriber list for all study areas for a month identified by the auditor (Request 1); (2) a list of the subscribers that were reported on FCC Form 555 identifying for each subscriber whether the subscriber de-enrolled prior to a re-certification attempt, was re-certified or de-enrolled as a result of direct contact from the ETC, or was re-certified or de-enrolled as a result of the ETC reviewing a database (Request 9); and (3) a list of the subscribers that were reported as de-enrolled for non-usage on FCC Form 555 (Request 10). As detailed above, these document requests are beyond the scope of the audit in that they seek information at the subscriber level, rather than looking at whether an ETC has implemented procedures to ensure compliance with program rules. Furthermore, providing the requested information in the format detailed in the proposed audit plan would create unnecessary burdens for ETCs with no countervailing benefit relevant to the prevention of waste, fraud, and abuse of USF resources. TracFone has over 4.1 million Lifeline customers for whom it maintains various records.

Reformatting those records to respond to a biennial audit would require TracFone to dedicate a significant amount of time and effort to provide information that would not meaningfully assist the auditor in determining whether TracFone has an effective compliance program.

### **III. Appendix B – Background Questionnaire**

Appendix B is a list of questions that an ETC is required to complete as part of the proposed audit plan. While many of the questions seek information relevant to whether an ETC has a compliance program and internal controls to ensure that it is providing Lifeline service in accordance with the Commission's rules, there are a few questions that have no bearing on this subject or that seek information outside the knowledge of an ETC. Questions A.4. and B.4. refer to states in which a state commission, third party administrator, or other intermediary determines subscribers' initial or continued eligibility. Those questions ask about the methods used by these third parties. ETCs do not have knowledge about how those third parties determine eligibility.

TracFone is also concerned about Question A.7. which states: "What types of documentation and/or information are maintained as evidence of a subscriber's income- or program-based eligibility (e.g., certification forms, proof of income- or program-based eligibility, etc.?)" This question implies that ETCs are required to maintain proof of income- or program-based eligibility. TracFone agrees that the only effective way to audit whether an ETC has reviewed documentation demonstrating that a prospective subscriber qualifies for Lifeline is to require an ETC to maintain copies of the documentation and to produce those copies in response to an audit. However, the Commission's rules prohibit ETCs from retaining copies of the documentation of a subscriber's income- or program-based eligibility. TracFone urges the Commission to change its rules to require ETCs to retain documents from consumers proving

Lifeline eligibility, rather than prohibit such a practice.<sup>17</sup> In the meantime, TracFone asks that the Commission clarify that an ETC is not required to produce proof of income- or program-based eligibility for any subscriber unless and until the Commission's rules are amended to require ETCs to retain such documentation of consumer Lifeline eligibility.

#### **IV. Appendix C – Internal Control Questionnaire**

Appendix C is a list of questions an ETC is required to complete as part of the proposed audit plan. The majority of the questions ask the ETC to confirm that its employees who work on Lifeline service have knowledge about the Lifeline rules, that it engages in risk assessment, and that it has controls in place to ensure that its procedures comply with Lifeline rules. While TracFone does not object to completing the questionnaire, it notes that the questionnaire is virtually identical to the questionnaire provided to ETCs when they are subject to an audit by USAC. TracFone has been audited by USAC related to the Lifeline service it provides in several states. For each of those audits, TracFone has completed a questionnaire like the one proposed for the Lifeline Biennial Audit Plan. Given that all ETCs are periodically audited by USAC and are required to complete a questionnaire like the one in Appendix C, there is no need for ETCs to complete the form again.

The questionnaire also includes several questions that do not reflect requirements in the Commission's rules. For example, Question 20 asks about a formal fraud policy and Question 21 asks about a whistleblower program. While it is important for all companies to prohibit

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<sup>17</sup> 47 U.S.C. § 54.410(b)(ii) and (c)(ii). TracFone has asserted to the Commission that ETCs should be required to retain such documentation as a means to reduce waste, fraud and abuse of USF resources. On May 30, 2012, TracFone filed a petition with the Commission requesting that the Lifeline rules be amended to require retention of documents proving program-based eligibility. See Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based Eligibility Documentation, filed by TracFone in WC Docket No. 11-42, May 30, 2012. That petition remains pending.

fraudulent activities and not to punish employees who advise a company about suspected fraudulent activities, neither is a Lifeline program requirement. The biennial audit should be limited to a review of an ETC's overall compliance program regarding the Lifeline program requirements, in accordance with the Commission's mandate in the Lifeline Reform Order. The biennial audit not ask ETCs to respond to questions or certify to standards that are not included in the Commission's rules governing the Lifeline program.

### CONCLUSION

TracFone respectfully requests the Commission to direct WCB and OMB to revise the Lifeline Biennial Audit Plan in accordance with the recommendations set forth in these comments.

Respectfully submitted,

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