Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform And Modernization	)	WC Docket No. 11-42
	)	
	)	WC Docket No. 03-109
Lifeline and Link Up	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Advancing Broadband Availability Through Digital Literacy Training	)	WC Docket No. 12-23
	)	

PETITION FOR WAIVER OF LIFELINE RULES PROHIBITING RETENTION OF INCOME-BASED AND PROGRAM-BASED ELIGIBILITY DOCUMENTION

TracFone Wireless, Inc. ("TracFone"), by its attorneys, pursuant to Section 1.3 of the Commission's rules,[1] respectfully requests that the Commission grant TracFone a waiver of Commission rules 54.410(b)(1)(ii) and 54.410(c)(1)(ii) (47 C.F.R. § 54.410(b)(1)(ii), (c)(1)(ii)). Specifically, TracFone requests the Commission to allow it to retain copies of documentation of income-based and program-based eligibility produced by applicants for enrollment in the Lifeline program for low-income consumers. Permitting TracFone to retain copies of Lifeline customers' documentation supporting Lifeline eligibility will prevent fraudulent Lifeline enrollments and waste, fraud and abuse of Universal Service Fund ("USF") resources, ensure that all qualified low-income households have access to Lifeline service, and enable TracFone to have auditable evidence available for inspection by Universal Service Administrative Company ("USAC") and Commission auditors. As described in this Petition, good cause exists for the

[1] 47 C.F.R. § 1.3.

Commission to waive its rules prohibiting the retention of documentation demonstrating Lifeline eligibility.

BACKGROUND

In the Lifeline Reform Order,[2] the Commission adopted comprehensive reforms to the USF's 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.[3] The rules adopted in the Lifeline Reform Order provide that in states where a state Lifeline administrator or other state agency is not responsible for the intial determination of Lifeline eligibility and an Eligible Telecommunications Carrier ("ETC") does not have access to a database containing information about a prospective subscriber's income-based or program-based eligibility, an ETC must "review documentation that establishes that the prospective subscriber meets the income-eligibility [or program-eligibility] criteria."[4]

Although the Commission's rules require that ETCs "review" program-based eligibility documentation produced by applicants, there is no requirement that ETCs be able to demonstrate that they have reviewed such documentation. Indeed, Commission rules 54.410(b)(1)(ii) and 54.410(c)(1)(ii) specifically prohibit ETCs from retaining copies of the documentation of income-based or program-based eligibility produced by applicants for Lifeline enrollment. However, the Commission's rules also require ETCs to "keep and maintain accurate records detailing the data source a carrier used to determine a subscriber's eligibility or the

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[2] *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").

[3] *See id.* ¶ 1.

[4] 47 C.F.R. § 54.410(b)(1)(i)(B), (c)(1)(i)(B).

documentation a subscriber provided to demonstrate his or her eligibility for Lifeline."[5] Thus, the Commission's rules only require ETCs to maintain a record that they reviewed documentation provided by consumers, but prohibit the ETCs from keeping copies of the documentation that they claim to have reviewed. The result of this rule loophole is that there is no means either for the Commission or USAC to verify whether ETCs have, in fact, reviewed eligibility documentation purportedly provided by Lifeline applicants.

On May 30, 2012, TracFone filed an Emergency Petition to Require Retention of Program-Based Eligibility Documentation asking the Commission to amend its rules to require all ETCs receiving documentation of program-based eligibility during the Lifeline enrollment process to retain such documentation for not less than three years.[6] TracFone explained in that petition that the Commission's requirement that Lifeline applicants produce documentation of program-based eligibility solely for review by ETCs creates opportunities for ETCs to generate records indicating that they have reviewed documentation, even though they have not actually reviewed any documentation or have reviewed documentation appearing to be fraudulent.[7] TracFone further explained that, unless ETCs are required to retain copies of documentation of Lifeline eligibility and have them available for inspection by USAC or Commission auditors, a

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[5] 47 C.F.R. § 54.410(b)(1)(iii); *see also* 47 C.F.R. § 54.410(c)(1)(iii) (requiring ETCs to "keep and maintain accurate records detailing the data source a carrier used to determine a subscriber's program-based eligibility or the documentation a subscriber provided to demonstrate his or her eligibility for Lifeline.")

[6] Supplement to Petition for Reconsideration and Emergency Petition to Require Retention of Program-Based Eligibility Documentation, WC Dkt. Nos. 12-23, 11-42, 03-109, CC Dkt. No. 96-45, filed May 30, 2012 ("TracFone Petition to Amend").

[7] *See id.* at 3-4.

rule that ETCs "review" documentation proving their applicants' eligibility for the Lifeline program is not an effective means to prevent waste, fraud and abuse of USF resources.[8]

The Commission sought comment on TracFone's Petition to Amend, and with the exception of one entity, all commenters supported the document retention proposal. Indeed, one commenting party called the current rule which requires ETCs to have viewed documentation but prohibits ETCs from retaining the documentation they claim to have viewed, "toothless."[9] As of the date of this Petition for Waiver, the Commission has not acted on TracFone's Petition to Amend, which was filed more than a year and a half ago. As a result, there remains no opportunity for the Commission or USAC to audit whether ETCs have, in fact, viewed the program-based eligibility documents they claim to have viewed and no opportunity for ETCs, including TracFone, to demonstrate that they have enrolled only those Lifeline applicants who have produced documentation of their eligibility as required by the rules.

TracFone continues to assert that a requirement that all ETCs retain copies of Lifeline eligibility documentation which they purport to have viewed will protect the USF from waste, fraud, and abuse and enable ETCs to provide auditable evidence that they have complied with the Commission's rules regarding certification of Lifeline eligibility. TracFone deems retention of eligibility documentation to be essential to its provision of Lifeline service, and to its ability to demonstrate that its customers are qualified for Lifeline-supported service. Accordingly, TracFone requests the Commission to waive its rules prohibiting retention of such

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[8] *See id.* at 5.

[9] Comments of Sprint Nextel Corporation, filed July 24, 2012, at 2 (" . . . in the absence of a retention requirement for audit purposes, the documentation requirement is toothless as a means for ensuring that carriers enroll only customers who present proof of eligibility.").

documentation. Recent events relevant to TracFone also provide good cause for grant of this waiver request.

ARGUMENT

TracFone asks the Commission to waive its rules that prohibit retention of documentation of income-based and program-based eligibility so as to allow TracFone to retain (subject to appropriate consumer privacy safeguards) copies of the documentation.[10] TracFone is mindful that Lifeline eligibility documentation contains individuals' personal and private information. As such, TracFone will maintain the documentation on a secure server that only a few specifically-authorized employees will be allowed to access. These authorized employees will only be permitted to access the secure server and review proof of eligibility documentation for the limited purposes of responding to USAC or Commission audits and inquiries, offering proof to USAC or the Commission that certain consumers are qualified to receive Lifeline benefits, and conducting internal quality assurance reviews of customers' records to ensure that persons responsible for approving applicants are complying with the Commission's rules and with TracFone's enrollment processes. In addition, all applicants for TracFone Lifeline service will be informed when they apply that TracFone will retain copies of the documentation provided, subject to privacy protection, and all applicants will have provided informed consent before any documentation provided by them is retained.

Two significant events have occurred during the twenty months that TracFone's Petition to Amend has remained pending: (1) on September, 30, 2013, the Commission notified

[10] TracFone's Petition to Amend requested the Commission to amend its rules to require all ETCs to retain copies of documentation proving program-based eligibility. In contrast, TracFone's Petition for Waiver relates to both income-based and program-based eligibility documentation.

TracFone of an apparent liability for a forfeiture in the unprecedented amount of $4,573,376 for allegedly requesting and receiving support from the Lifeline program for ineligible consumers;[11] and (2) the National Lifeline Accountability Database ("NLAD") has been developed and will become operational in February 2014. The impact of both of these events on TracFone provides good cause for waiver of the Commission's prohibition of retaining Lifeline eligibility documentation.

The NAL alleges that TracFone violated the "one-per-household" rule (*i.e.*, 47 C.F.R. § 54.409(c)) by enrolling individuals in Lifeline when those individuals or members of their households were already receiving Lifeline service from TracFone. TracFone denies that it has violated any Commission rules governing the Lifeline program and has presented detailed factual and legal reasons as to why the Commission should cancel or significantly reduce the proposed forfeiture.[12] Those reasons will not be repeated here. However, the Commission's issuance of the NAL to TracFone, as well as similar NALs to other ETCs, indicates that USAC and the Commission are closely examining ETCs' compliance with Lifeline rules. The threat of such enforcement actions makes it imperative that ETCs be allowed to retain evidence that they comply with all applicable rules and only enroll qualified households in their Lifeline programs.

Subsequent to issuance of the NAL, TracFone has continued to examine its procedures for determining whether Lifeline applicants are eligible to receive Lifeline benefits. Indeed, TracFone has already implemented modifications to its processes, such as performing additional manual reviews of the data in its subscriber base to prevent inclusions of intra-company

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[11] *In the Matter of TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, File No. EB-IHD-13-00010668 ("NAL").

[12] *In the Matter of TracFone Wireless, Inc.*, File No. EB-IHD-13-00010668, Response of TracFone Wireless, Inc., filed December 4, 2013.

duplicates on its FCC Form 497s submitted to USAC to receive reimbursement from the USF for providing Lifeline service. TracFone is also developing other computerized methods to identify potential duplicate enrollments so they can be more thoroughly examined before applicants are approved.

In addition, TracFone has determined that having access to applicant eligibility documentation will enable it to conduct more comprehensive reviews of applicants' qualifications prior to TracFone submitting FCC Form 497s to USAC. By retaining copies of eligibility documentation submitted by applicants, TracFone will be able to conduct additional quality assurance reviews of the documentation to ensure that the persons who are responsible for approving applicants are only approving eligible applicants.

Moreover, retention of that eligibility documentation will enable TracFone to review and produce the documentation in the event that USAC or the Commission questions any enrolled customer's eligibility for Lifeline as a result of an in-depth validation ("IDV") review. IDV reviews are used by USAC to identify inter-company and intra-company duplicate Lifeline enrollments or other Lifeline audits regularly conducted by USAC. For example, a review of the eligibility documentation produced by two customers who have been alleged by USAC to be members of the same household, *i.e.*, duplicates, could prove that those customers are separate persons, and that they are not the same person or members of the same household. Given the substantial penalties that the Commission has contemplated for alleged violations of its Lifeline rules, TracFone requests that it be allowed to retain such information as necessary to defend itself against such allegations.

USAC's development of NLAD, as mandated in the Lifeline Reform Order, also provides good cause for grant of TracFone's waiver request. USAC developed NLAD to identify

duplicate claims for Lifeline service by enabling ETCs to check whether a Lifeline applicant is already receiving Lifeline service.[13] NLAD will be available for ETCs to check Lifeline applicants from Maryland starting on February 13, 2014. NLAD will be available for additional states on a rolling basis, and as of March 27, 2014, ETCs will be able to check NLAD for Lifeline applicants in all states to ensure that applicants or members of their households are not currently receiving Lifeline service.[14]

When an ETC queries NLAD about a Lifeline applicant, it may receive an error message for various reasons, including, for example, that the applicant's mailing address was not recognized by the United States Postal Service's Address Matching System or the applicant failed the Third Party Identity Verification. In such situations, ETCs are permitted to collect documentation from the applicant to confirm the applicant's address or identity.[15] This documentation could include pay stubs (which an applicant may produce when applying for Lifeline as proof of income-based eligibility under 47 C.F.R. § 54.410(b)(1)(i)(B)) or a notice or letter of participation in a qualifying assistance program (which an applicant may produce when applying for Lifeline as proof of program-based eligibility under 47 C.F.R. § 54.410(c)(1)(i)(B)). Under the current rules, TracFone would not be allowed to retain such documentation and would need to contact the applicant to receive additional copies of the previously-viewed documentation that could provide proof of the applicant's address or identity. This process would take time and delay the initiation of Lifeline service to qualified low-income consumers. However, if TracFone already had documentation that could be provided to USAC, then the

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[13] *See* 47 C.F.R. § 54.404.

[14] NLAD Migration, at http://usac.org/li/tools/nlad/nlad-migration.aspx, viewed on Jan. 19, 2014.

[15] Getting Started, National Lifeline Accountability Database, at http://usac.org/li/about/getting-started/faq-nlad.aspx#error, viewed on Jan. 19, 2014.

approval process could proceed more quickly and qualified applicants could receive essential Lifeline service as soon as possible. The waiver requested by TracFone is necessary to ensure that eligible low-income consumers receive Lifeline benefits on a timely basis. Given that NLAD will become operational in a few weeks, TracFone requests that the Commission consider this Request on an expedited basis.

CONCLUSION

Accordingly, TracFone respectfully requests that the Commission grant TracFone's request for a waiver to allow TracFone to retain, subject to appropriate privacy protection safeguards, copies of documentation of Lifeline eligibility. The requested waiver will enable TracFone to enhance its ability to ensure that it provides Lifeline service only to qualified households, to respond to audits and other inquiries from USAC and the Commission regarding its customers, to appeal IDV results, and to resolve NLAD errors on a timely basis. Furthermore, grant of the waiver will protect USF resources by allowing TracFone to maintain auditable documentation regarding its Lifeline customers.

Respectfully submitted,

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