

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

In the Matter of)	
)	
)	
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 Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

**INITIAL COMMENTS OF NALA/PCA TO THE
PETITION FOR WAIVER OF LIFELINE RULES PROHIBITING RETENTION OF
INCOME-BASED AND PROGRAM-BASED ELIGIBILITY DOCUMENTATION**

The National ALEC Association/Prepaid Communications Association (hereafter “NALA/PCA”) is an organization of telecommunications providers that focus their marketing efforts on prepaid and low income consumers. The telecommunications company members include wireless providers as well as CLECs providing wireline services. Several companies hold Eligible Telecom Carrier (ETC) designations from various state commissions and are experienced providers of Lifeline services to qualified consumers.

NALA/PCA provides the following comments in response to the Petition of TracFone Wireless, Inc. (“TracFone”) for Waiver of Lifeline Rules Prohibiting Retention of Eligibility Documentation and reserves the opportunity to provide reply comments on issues it does not address in these initial comments.

If the Commission grants TracFone’s requested waiver, the resulting exemption should be extended to all Eligible Telecommunications Carriers.

If the Commission decides to grant TracFone’s request for waiver, NALA/PCA urges the Commission to make the waiver applicable to all ETCs. TracFone’s petition presents arguments in support of its requested waiver, none of which are exclusively applicable to TracFone.

All ETCs are subject to audits by the Universal Service Administrative Company (USAC) and the Federal Communications Commission (“Commission” or “FCC”). The Commission has not promulgated specific rules regarding the definition of “duplicate” subscribers. Nonetheless, enforcement actions regarding duplicates are proceeding, in some cases involving phenomenal penalties. For example, the Commission’s Enforcement Bureau proposed \$18.4 million in fines for Conexions Wireless; \$8.8 million in fines for i-wireless; and \$5.5 million in fines for True Wireless – all for alleged violations occurring over a period of seven to eight months.

Because ETCs cannot currently retain copies of the eligibility documentation, full defense of company practices and systems is impeded. Even the Commission has stated, “Without proper documentation, it is difficult to conduct effective audits of Lifeline service providers.”¹ If TracFone is permitted to retain such copies, it may have an unfair advantage in being able to prove to USAC and/or Commission auditors that its methods are accurate. If one ETC is permitted to retain copies for use in audits, all ETCs should be so allowed. If the prohibition is maintained, auditing and enforcement procedures should be considerate of the fact

¹ *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, FCC 12-11 (FCC rel. Feb. 6, 2012) (“*Lifeline Reform Order*”) at para. 505.

that full information cannot be provided because of compliance with the retention prohibitions of Rule 54.417.

Internal quality control would also be facilitated by permitted retention of copies of proof of eligibility. Again, TracFone is not alone in its interest to ensure that its employees and systems are functioning in full compliance with federal regulations. Indeed, all ETCs are required to maintain operation systems that prevent waste, fraud, and abuse. However, ETCs' capacity to do so is impeded by the prohibition on retaining full documentation of applicants' proof of eligibility. If the Commission deems this impediment necessary in order to protect other interests, it should be maintained throughout the industry. Granting an individual company relief from such an impediment would give it an advantage in its ability to serve its customers and maintain full compliance with FCC rules. The Commission's ability to detect true waste, fraud, and abuse by being able to conduct effective audits of Lifeline service providers is clearly increased by extending any waiver on proof retention to all ETC providers.

The Lifeline Reform Order² made clear that the FCC's opinion is that the requirement to examine documentation proving eligibility as "necessary to protect the integrity of the program."³ If, in response to TracFone's petition, the Commission decides that allowing retention of copies of eligibility documentation is also necessary to protect the integrity of the program, it should be necessary for all carriers providing Lifeline service.

² Lifeline Reform Order.

³ *Id.* at para. 102.

Privacy Concerns

The prohibition on ETCs retaining copies of applicants' eligibility documentation is rooted in an interest in protecting applicants' privacy.⁴ The Commission has determined that the need to prevent waste, fraud, and abuse outweighs the privacy concerns raised by *verifying* the documentation proving eligibility.⁵ Similarly, in order to reap the benefits of a national database, the Commission required that the database "have sufficient safeguards to maintain the proprietary or personal nature of the information in the database by protecting it from theft or loss."⁶ It is possible, as TracFone argues, that with the implementation of safeguards to protect the documents that may be retained if the waiver is granted, the interest of protecting the Lifeline program against waste, fraud, and abuse will outweigh the privacy concerns of document retention. If the Commission so decides, the safeguards can and should be standardized and implemented by all ETCs in order to assuage privacy concerns. Any ETC that can show it systematically protects applicants' sensitive information should also be allowed to retain copies of eligibility documentation. Furthermore, since participation in the Lifeline program by any end user is entirely voluntary, an ETC's retention of proof of eligibility should be viewed as one additional step to guard against waste, fraud, or abuse by any party—end user or ETC provider.

Conclusion

Granting TracFone's Request for Waiver of the Lifeline Rules prohibiting retention of eligibility documentation, and specifically permitting TracFone to retain copies of documents used to verify applicants' eligibility to receive Lifeline discounts, would provide TracFone with access to more information for use in audits and internal quality control processes. It is possible

⁴ Lifeline Reform Order at para. 101.

⁵ Lifeline Reform Order at para. 109.

⁶ Lifeline Reform Order at para. 207.

that sufficient safeguards can be implemented to ensure the privacy of applicants' sensitive information. If the Commission agrees that there is value in granting TracFone's requested waiver and that privacy concerns can be adequately addressed, the same analysis can be applied to all ETCs. Therefore, NALA/PCA urges that if the Commission grants TracFone's request, it also extend the waiver to all ETCs.

Respectfully submitted,

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