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
	)	

REPLY COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. ("SBI"), by counsel and pursuant to the Commission's Public Notice, DA 14-116, hereby files these Reply Comments regarding the Petition for Waiver ("Petition") filed by TracFone Wireless, Inc. ("TracFone").[1] In its Petition, TracFone requested the Commission to grant it a waiver "to allow [TracFone] to retain copies of documentation of income-based and program-based eligibility produced by applicants for enrollment in the Lifeline program …."[2]

Any modifications to the Lifeline program should be addressed in a comprehensive, rather than piecemeal, fashion. As part of such comprehensive modifications, SBI does not object to a rule revision that would permit ETCs to retain a copy of customer eligibility documentation. However, the Commission should not adopt a rule mandating that ETCs retain a copy of such documentation.

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[1] Petition for Waiver of Lifeline Rules Prohibiting Retention of Income-Based and Program-Based Eligibility Documentation, filed Jan. 22, 2014. *See* Public Notice, DA 14-116 (released, Jan. 31, 2014).

[2] TracFone Petition at p. 1.

I. Introduction.

SBI operates as an ETC, receiving high-cost and low-income support in Arizona, New Mexico, and Utah, providing service in both tribal and non-tribal lands. Within its service territory, SBI serves the Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo tribal lands. Most of its tribal service territory is very sparsely populated (less than 10 persons per square mile) and economically challenging.[3] When SBI began its Lifeline outreach, the 2000 U.S. Census reported that less than 40% of Navajo households had access to a telephone.[4] By 2011, Navajo household telephone penetration had increased to 74.7%.[5] The FCC's policy of creating Tier 4 Lifeline support and encouraging carriers like SBI to reach out to remote areas was largely responsible for this significant increase in telephone penetration.[6]

SBI supports the Commission's 2012 reforms to the Low Income program, as well as the ongoing efforts by the Wireline Competition Bureau and the Universal Service Administrative Company ("USAC") to implement various components of these reforms. Since the adoption of the *Lifeline Reform and Modernization Order*,[7] SBI has worked diligently and conscientiously to ensure full compliance with the rules and to help preserve the integrity of the Lifeline program.

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[3] *See, e.g.,* SBI Petition for Waiver, WC Dockets No. 11-42 et al. (filed June 26, 2012) at p. 3; SBI *ex parte* notice, WC Dockets No. 11-42 and 03-109 (filed Dec. 15, 2011); SBI Comments, WC Dockets No. 11-42 and 03-109 and CC Docket No. 96-45 (filed April 21, 2011).

[4] Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands, U.S. Government Accountability Office (Jan. 2006) at p. 13 and Fig. 3.

[5] Selected Housing Characteristics, 2011 American Community Survey 1-year Estimates, Table DP04.

[6] *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,* CC Dkt. No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking,* 15 FCC Rcd 12208 (2000).

[7] *In the Matter of Lifeline and Link Up Reform et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) *("Lifeline Reform and Modernization Order").*

As part of these efforts, SBI has fully automated its subscriber enrollment process so that all retail locations utilize the same electronic data entry system. Customer contracts and certifications are electronically stored at the point of purchase so that they are immediately accessible for internal or external audit purposes. This has enabled the company to facilitate the required disclosures and collection of additional data points and certifications, while also adding safeguards to ensure that applications with missing certifications or data are not processed. As a result of its efforts to comply with the letter and spirit of the Low Income program rules, SBI's audit track record has so far been excellent, both before and after the Commission's reforms.

II. Further Modifications to the Lifeline Program Should be Addressed in a Comprehensive Fashion.

As SBI has argued previously, any further modifications to the Lifeline program should be addressed in a comprehensive fashion.[8] TracFone's Petition continues the trend of filing requests for rule changes, major and minor, to address issues that individual carriers or groups of carriers deem important. Some of the pending mini-rulemaking and waiver requests have sought changes that were already considered and rejected in a prior comprehensive rulemaking, and some seek to effectuate changes that are unnecessary in light of systems and processes that have been set up, or are in development, as a result of the reforms already adopted by the Commission.

To avoid adopting rule revisions that interact poorly with other recently adopted rules and with rulemakings already under way, it is both more efficient and efficacious to address any

[8] *See, e.g.,* SBI Comments in Response to Petition for Rulemaking filed on behalf of the Lifeline Reform 2.0 Coalition ("Coalition")("Lifeline 2.0 Coalition Petition"), WC Docket No. 11-42, DA 13-1576, rel. July 15, 2013 (filed Aug. 14, 2013) at p. 3; Letter from David A. LaFuria and Steven M. Chernoff to Marlene H. Dortch in WC Dockets No. 11-42 and 03-109 (June 4, 2013) at p. 1; SBI Comments in WC Docket No. 11-42 (filed June 17, 2013) at p. 3.

serious concerns with the reformed Lifeline program as part of a comprehensive rulemaking. Moreover, SBI is constrained to note that a piecemeal approach made necessary by TracFone's multiple filings that suit TracFone's business model is extraordinarily difficult for small companies to operationalize.

III. The Commission Should Permit, but not Require, ETCs to Retain Copies of Customer Eligibility Documentation, Subject to Privacy Safeguards.

As part of such comprehensive modifications to the rules governing the Lifeline program, SBI does not object to a rule revision that would *permit* all ETCs to retain a copy of customer eligibility documentation. However, SBI does not support a rule that would *require* all ETCs to retain a copy of such documentation. All of the parties filing Comments supported TracFone's Petition, so long as the waiver relief is provided to all Lifeline providers and not just to TracFone.[9]

SBI does not support a rule that would require ETCs to retain copies of such documentation.[10] Such a rule would be unduly burdensome for small businesses, and in SBI's case it would be extraordinarily burdensome, coming on the heels of prior reforms. In the wake of the FCC's 2012 reforms, SBI completely overhauled its Lifeline enrollment, tracking, and verification systems and procedures to ensure full compliance with the revamped rules. The

[9] Comments of the Lifeline Reform 2.0 Coalition, Comments of COMPTEL, Comments of Nexus Communications, Inc. ("Nexus"), and Comments of the Free State Foundation. All Comments were filed on March 3, 2014.

[10] Other parties filing comments and reply comments on this matter agree that retention of such documentation should be optional. *See* Reply Comments of Lifeline Reform 2.0 Coalition, filed Aug. 29, 2013 ("ETCs should be permitted to retain copies of applicants' documentation of eligibility ….") at p. i; Comments of Budget PrePay, Inc., filed June 17, 2013 ("Budget … supports proposals to allow ETCs to retain proof of consumer eligibility.") at p. 6; and Comments of Cincinnati Bell Inc., filed Aug. 14, 2013 ("[w]hile Cincinnati Bell does not support … requiring an ETC to retain copies of … eligibility documentation, Cincinnati Bell supports allowing retention of this information on an optional basis") at pp. 3 - 4.

company worked with a vendor to fully automate its intake and verification processes so that enrollments in all field locations would use uniform data formats and information would be immediately retrievable, searchable, and verifiable. This automated process is specifically designed to comply with the FCC's new rules, including the requirement that customers present documentation of eligibility and that an ETC maintain accurate records of the data sources that were relied upon in making the eligibility determination.[11]

Changing the rules again to require that the customer's documentation be copied and stored by the company would require another complete overhaul of SBI's document collection and retention systems and procedures. The company would have to upgrade or replace its automated intake system to add a capability to scan eligibility documents, store them in a document management database, and archive them so they can be identified with customer accounts and accessed during internal and external audits. Further system upgrades would be necessary to add a capability to encrypt the scanned documents to ensure the security of confidential customer information.

For all these burdens, requiring the retention of customer eligibility documentation would add little in the way of ensuring program integrity. SBI knows this to be true, because its existing procedures have resulted in very few compliance problems. Essential to these results is the company's ongoing and substantial investment in training its sales staff in compliance procedures, and not selling service through fly-by-night agents. SBI requires the presentation of eligibility documents, and requires sales staff to indicate, in a designated box on the application form, the type of documentation relied upon in making the eligibility determination for each applicant. Applicants are required to certify under penalty of perjury that they meet the

[11] 47 C.F.R. §§ 54.410(b)(iii), (c)(iii).

eligibility criteria and that all of the information they have provided is accurate and correct. SBI's training procedures, training materials, and application forms are all subject to review in USAC or OIG audits, as are its quality control procedures.

Moreover, the Commission's 2012 reforms included a commitment to develop a capability for Lifeline providers to verify customer eligibility using a database. Specifically, in the *Lifeline Reform and Modernization Order*, the Commission directed the Wireline Competition Bureau and USAC "to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline."[12] Once a database is in place, any document retention rule would be mooted as document review and collection would be unnecessary. As a result, if the FCC were to mandate the retention of customer eligibility documentation, after the eligibility database goes live, the FCC would have to change its rules, yet again, to delete the requirement to retain such documentation.

In light of the requirements for Lifeline providers to obtain customer certifications under penalty of perjury and to maintain records concerning the documentation reviewed in each enrollment, there would be little if any benefit to requiring the storage and archiving of the actual customer documentation. In addition, any benefit of retaining scanned documents will be further diminished, if not eliminated altogether, when an eligibility database becomes available. Accordingly, the Commission should not make such document retention mandatory.

[12] *See Lifeline Reform and Modernization Order* at ¶ 403.

The rule revision that SBI supports would be a simple deletion:

§ 54.410 Subscriber eligibility determination and certification.

. . .

(b) Initial income-based eligibility determination. (1) Except where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline or using the income-based eligibility criteria provided for in § 54.409(a)(1) or (a)(3) an eligible telecommunications carrier…

~~*(ii) Must not retain copies of the documentation of a prospective subscriber's income-based eligibility for Lifeline*~~*.*

. . .

(c) Initial program-based eligibility determination. (1) Except in states where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's program-based eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based criteria set forth in § 54.409(a)(2), (a)(3) or (b), an eligible telecommunications carrier:

~~*(ii) Must not retain copies of the documentation of a subscriber's program-based eligibility for Lifeline services*~~*.*

Under this change, Lifeline providers would have the option to retain copies of eligibility documents as a means of ensuring quality control within their systems and processes. ETCs choosing to retain copies of eligibility documentation would already be subject to the FCC's CPNI requirements, which are more than sufficient to protect customer privacy.

IV. Conclusion.

SBI respectfully requests that further modifications to the Lifeline program be addressed in a comprehensive, rather than piecemeal, fashion. As part of such comprehensive modifications, SBI does not object to a rule revision that would permit all ETCs to retain a copy of customer eligibility documentation. However, the Commission should not adopt a rule mandating that ETCs retain a copy of such documentation.

Respectfully submitted,

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March 18, 2014