

March 9, 2012

Marlene Dortch, Secretary
Office of the Secretary
Federal Communication Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Communication on TracFone Wireless, Inc. Emergency Petition for Declaratory Ruling and Interim Relief; WC Docket Nos. 11-42, 03-109; CC Docket No. 96-45

Dear Ms. Dortch:

The undersigned submit this letter to urge the Commission to clarify that consumers in Puerto Rico and other states, who are found to have duplicate enrollment in Lifeline, remain eligible to maintain service through one Lifeline enrollment per household. We fully support the the Comments of the National Association of State Utility Consumer Advocates (NASUCA),¹ and similarly ask the Commission to adopt a declaratory ruling that the Puerto Rico Telecommunications Regulatory Board's (Board's) actions were unlawful and contrary to universal service program policy when it directed TracFone, and possibly other ETCs, to de-enroll customers from Lifeline when they are found to have duplicate enrollments.²

The Board's policy penalizes low-income customers that it determines to have duplicate Lifeline enrollments by excluding them from the Lifeline benefit for a period of one year or four months.³ In one letter to TracFone accompanied by a compact disc (CD) containing

¹ See generally Comments of the National Association of State Utility Consumer Advocates (March 9, 2012) (Comments of NASUCA).

² TracFone identified additional carriers receiving similar instructions: Claro, T-Mobile, Sprint, Open Mobile and AT&T. See TracFone Emergency Petition for Declaratory Ruling and for Interim Relief (Feb. 22, 2012) (TracFone Emergency Petition) at 3.

³ See TracFone Emergency Petition at 9.

beneficiaries' information, the Board explained that it identified duplicate beneficiaries by their social security number.⁴ In a second, similar letter with CD to TracFone, the Board stated that it had identified duplicate Lifeline enrollments based upon "physical address (family unit)".⁵ Based on this information, it appears that the Board instructed TracFone to de-enroll each of these identified customers and exclude them from Lifeline benefits as of March 1, 2012.⁶ The Board's action must not be allowed to stand. The Board's summary decision severely penalizes eligible low-income Lifeline customers and appears to be based upon an assumption that these customers must be guilty of fraud or are otherwise at fault for the duplicate enrollment. As noted by NASUCA, "even if the duplicative review process identifies a consumer with duplicate service, it is not possible to determine whether the Lifeline consumer has more than one Lifeline service based on mistake or intent."⁷ The Board's directive fails to acknowledge that duplicate enrollments may be caused by factors including error of the telecommunications service provider in failing to de-enroll a customer, or inadequate consumer education and outreach regarding the one-per-household rule.⁸

Historically, universal service programs have focused on bringing voice service to everyone in the country at reasonable charge. Ensuring that low-income consumers are connected through Lifeline increases subscribers to the network and ensures that the network is valuable to all users.⁹ It also ensures that access to public safety resources such as 911 and other

⁴ TracFone Emergency Petition at Attachment 1.

⁵ TracFone Emergency Petition at Attachment 2.

⁶ TracFone Emergency Petition at 3.

⁷ Comments of NASUCA at 6.

⁸ The Commission has recognized the need for additional outreach to consumers regarding duplicate enrollments. *See* Lifeline and Link Up Reform and Modernization, Advancing Broadband Availability Through Digital Literacy Training, WC Docket Nos. 11-42 et al., 77 FR 12952-01 (Mar. 2, 2012) at ¶ 22; Lifeline and Link Up Reform and Modernization, Report and Order at ¶13, WC Docket No. 11-42, et al., 26 FCC Rcd 9022, 9026 (June 21, 2011). *See also* Comments of NASUCA at 6.

⁹ *See* Comments of NASUCA at 3-4 (quoting Federal-State Joint Board on Universal Service).

emergency services is available.¹⁰ However, the Board's action is inconsistent with this policy, because it broadly suspends a significant number of low-income consumers from their essential voice service and removes them from the network that connects them to emergency services, employers, job opportunities, medical professionals, and the support of friends and family.

The Commission has already established the start of a far more reasonable method for addressing duplicate enrollments than what is used by the Board, and unlike the Board's process, it includes a dispute resolution procedure.¹¹ The Commission has also stated that "the consumer will be permitted to maintain a single Lifeline service with one of the ETCs."¹² Where the Board's de-enrollment procedures are in conflict or pose an obstacle to the Commission's implementation of a uniform de-enrollment process, the Board's procedures must be preempted.¹³

Additionally, the Commission's Order of March 2, 2012 establishes a uniform floor for Lifeline eligibility.¹⁴ As a floor, the states may include more permissive enrollment criteria, but cannot impose greater restrictions on eligibility.¹⁵ In adopting uniform eligibility criteria as a floor, the Commission stated, "Given that we permit states to adopt more permissive Lifeline eligibility criteria on top of the base of federal Lifeline eligibility criteria, no ETCs will face a smaller Lifeline subscriber base because of the change in eligibility criteria."¹⁶ The Board's determination, to suspend from Lifeline service consumers who under the Commission's rulings are eligible to maintain Lifeline service from an ETC, imposes a barrier to eligibility which is not

¹⁰ See Comments of NASUCA at 4.

¹¹ Comments of NASUCA at 5-6.

¹² Lifeline and Link Up Reform and Modernization, Report and Order at ¶ 7, WC Docket No. 11-42, et al., 26 FCC Rcd 9022, 9026 (June 21, 2011).

¹³ Lifeline and Link Up Reform and Modernization, Report and Order at ¶ 17, WC Docket No. 11-42, et al., 26 FCC Rcd 9022, 9026 (June 21, 2011).

¹⁴ See Lifeline and Link Up Reform and Modernization, Advancing Broadband Availability Through Digital Literacy Training, Report and Order at ¶ 8, WC Docket Nos. 11-42, et al., 77 FR 12952-01 (March 2, 2012).

¹⁵ Id.

¹⁶ Id at ¶ 62.

permitted under the Commission's uniform policy. As such, the Board's penalizing low-income Lifeline consumers by withholding Lifeline service cannot stand.

We urge the Commission to adopt the recommendations of NASUCA. The Commission should rule that the Board's suspension of eligible Lifeline customers is unlawful and contrary to universal service policy.¹⁷ The Commission should clarify that eligible customers, whom the Board has determined to be have duplicate Lifeline enrollments, remain eligible to maintain one Lifeline service per household. The Commission should also clarify that in the case of de-enrollment for duplicate benefits, all states must have a fair process with adequate safeguards in place, such that eligible consumers can maintain one Lifeline service per household.¹⁸

Respectfully submitted,

/s/ Darlene R. Wong

Darlene R. Wong
Staff Attorney
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110-1245
Tel: 617-542-8010
Email: darlenewong@nclc.org

Ellis Jacobs
Senior Attorney
Advocates for Basic Legal Equality

Michael R. Smalz
Senior Attorney
Joseph V. Maskovyak
Staff Attorney
Ohio Poverty Law Center

¹⁷ See Lifeline and Link Up Reform and Modernization, Advancing Broadband Availability Through Digital Literacy Training, Report and Order at ¶¶ 8-16, WC Docket Nos. 11-42, et al., 77 FR 12952-01 (March 2, 2012) (the Commission's Order establishes uniform eligibility criteria).

¹⁸ Lifeline and Link Up Reform and Modernization, Report and Order at ¶¶ 16-17, WC Docket No. 11-42, et al., 26 FCC Rcd 9022, 9026 (June 21, 2011)(adopting a uniform de-enrollment rule allowing a subscriber with duplicate enrollment to maintain a single Lifeline service).

Melissa W. Kasnitz
Legal Counsel
Center for Accessible Technology

Jennifer Brandon
Executive Director
Community Voice Mail National

Marcy Shapiro
Executive Director
Open Access Connections
(formerly Twin Cities Community Voice Mail)

Irene E. Leech
President
Virginia Citizens Consumer Council

amalia deloney
Associate Director
Center for Media Justice

Linda Sherry
Director, National Priorities
Consumer Action

Harry S. Geller
Executive Director
Pennsylvania Utility Law Project

Allen Cherry
Senior Attorney
Low Income Utility Advocacy Project

Timothy J. Funk
Utility Consumer Advocate
Crossroads Urban Center

Stephanie Chen
Senior Legal Counsel
The Greenlining Institute