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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding
Revisions to the California Universal
Telephone Service (LifeLine) Program.

Rulemaking 11-03-013
(Filed March 24, 2011)

**REPLY COMMENTS OF TRACFONE WIRELESS, INC. (U-4231-C) TO ASSIGNED
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING
COMMENTS ON WORKSHOPS AND FEDERAL COMMUNICATIONS
COMMISSION'S THIRD REPORT AND ORDER, ISSUING DATA REQUESTS**

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TracFone Wireless, Inc. (“TracFone”) respectfully provides the following reply comments in response to the September 22, 2016, Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Workshops and Federal Communications Commission’s Third Report and Order, Issuing Data Requests (“ACR”).

TracFone notes there is a significant amount of agreement on many issues but substantial disagreement regarding the most important issues: port freezes, eligibility criteria, and federal-state consistency.¹ These concerns are particularly important to TracFone and are the focus of its reply comments.

A. Port Freezes

1. Summary of Port Freeze Recommendations

TracFone urges the Commission to adopt the following recommendations:

- Adopt federal port freeze rules for California LifeLine with only one additional state-specific exception as described below.

¹ For example, there is agreement on conforming state rules to the federal program. ORA at 18 (Commission should have “goal of aligning the California and federal programs as much as possible”); LifeLine Coalition at 8, 15 (Commission must “mirror” federal eligibility criteria and port freezes); Small LECs at 33 (“should align the state LifeLine program with the federal eligibility criteria and the port freeze protocol”); AT&T at 22 (“should mirror the federal exceptions so there is no difference between the federal and state programs.”); Cox at 28 (“should focus on adopting rules and processes that are aligned and consistent with the FCC’s rules and processes.”); Consolidated at 1 (“should . . . align California’s LifeLine program with the federal Lifeline program.”); Frontier at 3 (“align as much as possible with the federal program”).

- Adopt an exception for when a carrier is found to be in violation of state law or the Commission’s rules during the benefit year and the subscriber is impacted by such violation.
- Federal exceptions should not be applied more broadly when adopted at the state level. To do so would have the same effect as creating a new exception.
- To the extent the Commission adopts an unconditional return period or cancellation right for “inadequate” service, it should impose effective verification and cost control measures.

The Commission should reject most, if not all, of Joint Consumers’ recommendations on port freezes. Although well-intentioned, Joint Consumers fail to consider the negative consequences for consumers if the Commission does *not* adopt the federal rules. The following Joint Consumers recommendations should be rejected:

- No port freezes longer than “30-60 days.”²
- No port freezes on any customer transferring service “because of price increases caused by a loss of the federal subsidy.”³
- Different components of bundled services should be subject to different port freeze rules.⁴
- A port freeze exception if a consumer makes an “affirmative attempt” to cancel his service by contacting both the “losing and gaining carrier.”⁵
- A port freeze exception for the first 14 days of service without verification requirement or cost controls.⁶
- A port freeze exception for “if the service is not delivered as promised to the customer or if service quality is inadequate,” broadly interpreted, and without verification requirement or cost controls.⁷
- Prohibition on the ability of carriers to make a “material change” to service during a port freeze.⁸

² Joint Consumers at 16, 18.

³ *Id.* at 10.

⁴ *Id.* at 18.

⁵ *Id.* at 19.

⁶ *Id.*

⁷ *Id.*

- Ignore federal port freeze rules until the California program “links into” the National Verifier⁹ and adopt “alternatives” to the federal 12-month port freeze.¹⁰

Unlike Joint Consumers, ORA recommends adoption of port freezes.¹¹ However, several of ORA’s proposals would unnecessarily increase costs or frustrate the attainment of federal objectives. TracFone therefore recommends that the Commission decline several of the ORA recommendations as they are currently presented:

- Different components of bundled services should be subject to different port freeze rules.¹²
- Consumers may “return their wireless device in good condition” and “within 3 business days of service activation” and receive a port freeze exception, full refund of service activation charges, and no early termination or restocking fees.¹³
- Wireless customers should be able to transfer to a fixed service at any point if the “wireless voice service is not suitable for their needs.”¹⁴
- 60-day port freeze for mobile voice, whether bundled or standalone.¹⁵
- 12-month port freeze only for federally-supported broadband, regardless of whether bundled with California-supported voice.¹⁶
- Adopt exceptions authorized in D.14-01-036.¹⁷

2. Response to Joint Consumers and ORA Regarding Port Freezes

a. The Commission cannot adopt Joint Consumers’ recommendations and also comply with federal law

As a preliminary matter, the Commission should reject any suggestion that it has authority to interfere with the application of federal port freeze rules. Joint Consumers provide

⁸ *Id.*

⁹ *Id.* at 16.

¹⁰ *Id.* at 18.

¹¹ *See, e.g.*, ORA at 18 (“It is logistically simpler and more effective to align the California and federal programs port freezes to mirror one another as they relate to wireless voice service.”).

¹² *Id.* at 22-23.

¹³ *Id.* at 7, 20-21.

¹⁴ *Id.* at 3, 7, 21.

¹⁵ *Id.* at 22-23.

¹⁶ *Id.* at 22.

¹⁷ *Id.* at 7.

no analysis to support their claim that California “will only be obligated to implement a freeze for federal discounts if and when the Commission links into the National Verifier system.”¹⁸ Indeed, the claim is simply wrong. The 12-month port freeze is unambiguously a condition of receiving federal Lifeline support.¹⁹ Moreover, the Federal Communications Commission (“FCC”) made clear that the 12-month port freeze would go into effect *prior* to the deployment of the National Verifier.²⁰ Unless the FCC delays or waives application of the federal port freeze rules, the 60-day and 12-month port freezes will go into effect on December 2, 2016. The Commission should conform the California rules to the federal program.

b. Joint Consumers and ORA ignore the FCC’s rationale for port freezes

Though the purpose of the port freeze was apparently ignored by Joint Consumers and ORA, the FCC had good reason to impose a 12-month port freeze. In addition to incentivizing investment in improved offerings and conditioning federal support on broadband,²¹ the FCC Order also requires carriers to provide Wi-Fi-enabled devices with hotspot functionality.²² These features represent substantial improvements over the vast majority of LifeLine devices currently on the market. Many low-income households can only access the Internet through mobile broadband, which typically does not provide the sort of functionality needed to engage in important online activities such as homework or job hunting.²³ However, with a Wi-Fi- and hotspot-enabled device, low-income households can access the Internet in the same way other

¹⁸ Joint Consumers at 17.

¹⁹ 47 C.F.R. § 54.411(a) (“A provider shall not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who has used the Lifeline benefit to enroll in a qualifying Lifeline-supported broadband Internet access service offering with another Lifeline provider within the previous 12 months.”).

²⁰ *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 418 (rel. Apr. 27, 2016) (“FCC Order”) (“Prior to the implementation of the National Verifier in a state, to prevent the enrollment of ineligible customers, we require providers to conduct an initial eligibility determination for every enrolling customer, regardless of whether that customer had previously received Lifeline-discounted service from another provider. That provider must then recertify the customer’s eligibility 12 months after the subscriber’s service initiation date with that provider.”).

²¹ *Id.* at ¶¶ 78-98 (minimum service standard for broadband); ¶ 389 (“allowing broadband providers the security of a longer term relationship with subscribers will incentivize greater up-front investments from providers.”).

²² *Id.* at ¶¶ 366-78.

²³ *Id.* at ¶ 377.

consumers do. A student can “do research for a homework assignment at the same time her parents send emails or apply for jobs.”²⁴

The benefits of these technological improvements should not be understated. As the FCC Order explains, a Wi-Fi-enabled device with hotspot functionality “assists in bridging the homework gap for those students, helping make them competitive academically and better preparing them for the challenges of the 21st Century. A hotspot enabled device also helps bridge the digital divide, and efficiently maximizes the value of a single mobile broadband connection.”²⁵

Such devices are considerably more expensive than those devices which are provided with current LifeLine offerings. Without a separate device subsidy or a significant increase in the service support amount, carriers cannot recover the cost of providing these devices if customers are allowed to transfer their Lifeline support to a different carrier within a short period. Without cost recovery, these devices would remain unaffordable. In response, the FCC determined that a twelve month port freeze for broadband Lifeline services would incentivize carriers to improve the quality of their device offerings and provide a reasonable opportunity to recover the cost.²⁶

Joint Consumers and ORA never acknowledge the problem of device cost. They likewise do not explain how to ensure consumers will continue to see improved offerings. Joint Consumers instead focus on consumers’ out-of-pocket costs and the number of plan and device options on the market but completely ignore the *value* of those options. Until Joint Consumers and ORA explain how carriers will be able to recover their costs of providing improved devices and plans, the Commission should view their proposals with skepticism.

If the Commission wants consumers to continue to receive improved offerings such as Wi-Fi-enabled and hotspot-capable devices, then it should adopt the federal program’s 60-day port freeze for voice-only plans and 12-month port freeze for broadband plans.

c. The primary beneficiaries of a port freeze are LifeLine participants

The port freeze is a pro-consumer policy. With a port freeze, consumers receive improved mobile devices at zero cost, and as carriers bring better devices and plans to market,

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at ¶¶ 389, 392 & n.974..

market forces will “spur competition among providers to offer more innovative services.”²⁷ These additional improvements enable carriers to continue to enhance and improve their offerings and results in a virtuous cycle whereby carriers continuously innovate to remain competitive.²⁸

d. Joint Consumers fail to consider the anti-consumer effects of weak or nonexistent port freezes

Joint Consumers argue against port freezes longer than “30-60” days.²⁹ Anything longer, they claim, would impose “limits to customer choice.”³⁰ Again, Joint Consumers are wrong. The most severe limit on consumer choice is not a port freeze; it is affordability.³¹

If wireless providers are not able to recover their costs, they will not be able to provide improved devices or broadband at affordable prices. Wireless LifeLine participants would instead have to pay out of pocket or opt out of the program. Based on prior experience, TracFone strongly believes that most consumers could not afford to pay for even heavily-subsidized devices or services and would drop out of the program instead. Similarly, FCC pilot studies indicate that few low-income consumers will enroll in broadband plans that require out-of-pocket payments and, of those who enroll, even fewer will make the required payments.³² To maximize enrollment and keep devices affordable, the Commission should therefore adopt the federal port freezes.

e. Joint Consumers and ORA propose overbroad exceptions

The Commission should also reject Joint Consumers’ recommended exceptions, which are so broad as to make port freezes unenforceable. For example, Joint Consumers recommend that if a customer makes an “affirmative attempt” to transfer service by calling or emailing “both

²⁷ *Id.* at ¶ 389.

²⁸ *Id.*; *see also* ¶¶ 336-37, 355.

²⁹ Joint Consumers at 18.

³⁰ *Id.*

³¹ FCC Order at ¶¶ 2, 20.

³² *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Comments of TracFone Wireless, Inc., 20-21& n.32 (Aug. 31, 2015); *see also Wireline Competition Bureau Low-Income Broadband Pilot Program Staff Report*, WC Docket No. 11-42 (rel. May 22, 2015).

the losing and gaining carrier,” then no port freeze should apply.³³ Such an exception would reduce a 60-day or 12-month port freeze to a mere procedural requirement that the customer “attempt” to contact both carriers.

Nearly as overbroad is Joint Consumers’ open-ended exception for service quality that is “inadequate.”³⁴ ORA also appears to support such an exception.³⁵ Although TracFone agrees that LifeLine participants should receive service that actually works and meets their needs, Joint Consumers provide no examples of when service is “inadequate,” who is to make that determination, or how long consumers have to invoke the exception. Indeed, what would be the standard for “inadequacy?”

Similarly problematic is the recommendation made by both ORA and Joint Consumers that the Commission should continue to impose a 14-day unconditional return policy.³⁶ While TracFone does not challenge the premise of a return policy, TracFone believes in all cases there must be an attempt to objectively verify that service is inadequate or otherwise limit how frequently consumers can invoke the return policy. TracFone proposed several such verification methods in its opening comments.³⁷

The problem with an open-ended return policy for “inadequate” service or with an unconditional 14-day return policy is the lack of cost controls. Even if consumers return a device associated with inadequate service “in good condition,” that device can no longer be sold as new and will have lost most of its value.³⁸ Carriers also incur activation costs related to “account acquisition, setup and training; compliance and audit; order fulfillment labor; network activation and provisioning; and customer support and operational support systems.”³⁹ These costs are significant and, if left unregulated, could wipe out the benefits of port freezes. Thus, while carriers can and should absorb the cost for consumers who genuinely experience service difficulties, it is fiscally prudent and only fair that the Commission adopt policies to limit waste.

³³ Joint Consumers at 19.

³⁴ *Id.* at 20-21.

³⁵ *See, e.g.*, ORA at 7 (exception for when a carrier “fails to provide adequate service”).

³⁶ Joint Consumers at 19; ORA at 7.

³⁷ TracFone Comments at 22-23.

³⁸ ORA at 7.

³⁹ LifeLine Coalition at 3.

f. Applying different port freeze periods to different components of bundled service is not operationally feasible

Joint Consumers and ORA recommend that “different benefit transfer freezes apply to the different elements of the bundle.”⁴⁰ The Commission should reject any such recommendation. Doing so is infeasible and legally doubtful. If a plan includes federally-supported broadband and California LifeLine voice, both the voice and broadband components should be subject to the 12-month port freeze.

Joint Consumers and ORA’s proposal cannot be operationalized. Would consumers have a federally-supported smart device that provided wireless broadband but at the same time have a second, California-supported device, likely a basic handset, that only offered voice? Or would the consumer receive federally-supported voice and broadband service from one carrier and state-supported voice from another carrier all on the same device? If a federally-supported device provides redundant voice service, should the carrier disable voice telephony? Would disabling a seemingly redundant voice service create a safety risk? If a consumer has two devices capable of voice, might they sell one of them? Although these questions do not have obvious solutions, all parties should agree that consumers should not use two devices to receive service normally provided with a single device.

In any case, carriers could not operate and consumers would not benefit in such an environment. Wireless LifeLine plans with voice and broadband service are viable only when the carrier combines the state and federal subsidies. A wireless bundled voice and data plan will include a smart device, the cost of which can only be recovered if the carrier combines the state and federal subsidies for upwards of 12 months. Transferring only part of a bundle, however, would eliminate a critical funding source and make cost recovery prohibitively difficult. Moreover, given the need for both federal and state subsidies, allowing partial transfers of a bundle would create legal risk by frustrating “the accomplishment and execution” of federal objectives.⁴¹

⁴⁰ Joint Consumers at 18 (“The freeze for voice services, even if part of a bundle, should be 60 days maximum.”) ORA likewise argues that if a customer chooses a bundled package such as California LifeLine voice with federally-supported broadband, “then the 60-day port freeze should still apply for California LifeLine wireless voice . . . [but the] 12-month port freeze should be applicable only to BIAS.” ORA at 22.

⁴¹ The FCC may preempt a state rule that “stands as an obstacle to the accomplishment and execution” of federal objectives. *See Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

g. The Commission should reject any prohibition or exception for a “material change” in service

Joint Consumers recommend that the Commission “make clear that a material change to an offering would be prohibited during a freeze period, or in the alternative, such a change would trigger an exception to the freeze rules.”⁴² This recommendation is redundant. As a condition of the 12-month port freeze, the FCC Order already expressly forbids carriers from making material changes.⁴³ The Commission should therefore reject Joint Consumers’ proposal.

B. Eligibility Criteria and Federal-State Consistency

1. Summary of Eligibility Criteria Recommendations

TracFone recommends that the Commission adopt the federal eligibility criteria. The Commission should reject the following recommendations:

- ORA’s recommendation that California LifeLine retain state public assistance programs for program-based eligibility through December 1, 2021, at which time the Commission may “consider harmonizing” with the federal program.⁴⁴
- Joint Consumers’ recommendation to keep current eligibility criteria until the Commission decides how to respond to the federal changes⁴⁵

2. Response to Joint Consumers and ORA Regarding Eligibility

a. Eligibility based on state program participation will increase administrative complexity, confuse customers, and jeopardize the ability of carriers to combine the federal and state subsidy

ORA and Joint Consumers recommend that the Commission defer any decisions about changes to LifeLine program-based eligibility. ORA recommends that the Commission “maintain its own list of public assistance programs under categorical program eligibility through

⁴² *Id.* at 19.

⁴³ ¶ 391 states: “A provider . . . cannot materially change the initial terms or conditions of that service offering without the consent of the subscriber until the end of the 12 months, except to increase the offering’s speeds or usage allowances. Changes that lower the quality or speed of service, lower the offering’s usage allowance, or increase the service’s price are presumptively material changes to the terms or conditions of service, even if such changes are made in response to an amendment to the Commission’s rules or a change to the Lifeline program’s minimum service standards.”

⁴⁴ ORA at 11.

⁴⁵ Joint Consumers at 8-9.

December 1, 2021, and consider harmonizing its requirements with the FCC's at that point."⁴⁶ Joint Consumers similarly recommend that the Commission maintain the current criteria for program-based eligibility "at least until the Commission has had time to conduct additional analysis and take more detailed comments on the impacts of developing a more robust state only program."⁴⁷

Joint Consumers and ORA focus too much on the potential ineligibility of a very small percentage of LifeLine participants and ignore the negative impact of inconsistent rules on *all* consumers. The current and planned level of wireless benefits *requires* both the state and federal subsidy. Without either, consumers on wireless LifeLine plans will not receive unlimited voice, broadband, and Wi-Fi- and hotspot-capable devices. The Commission must ensure these funds remain available by adopting consistent rules.

Inconsistent eligibility rules will also increase complexity. LifeLine rules are already arcane, and inconsistency will confuse consumers. A LifeLine subscriber is unlikely to know what conditions will trigger the loss of the federal subsidy and result in out-of-pocket payments, which, as discussed above, usually leads to disenrollment.

C. Minimum Communications Needs

ORA proposes that the Commission require wireless service to include unlimited nationwide voice and text.⁴⁸ TracFone requests that the Commission reject this recommendation. The California LifeLine subsidy cannot support unlimited voice service by itself. According to ORA, wireless unlimited voice plans are available for "as low as \$15"⁴⁹ but the California subsidy is only \$13.20.⁵⁰ Obviously, carriers cannot provide a \$15 service with a \$13.20 subsidy. Doing so would result in a *loss* of \$1.80 per month. ORA's recommended changes are not financially feasible and should be rejected.

The Commission should likewise disregard Joint Consumers' proposal that California LifeLine support broadband.⁵¹ California LifeLine support for broadband would be legally

⁴⁶ ORA at 11.

⁴⁷ Joint Consumers at 2.

⁴⁸ ORA at 16.

⁴⁹ *Id.*

⁵⁰ *Id.* at 17.

⁵¹ Joint Consumers at 23.

premature and require significant increases in the California subsidy to cover the additional cost of broadband services.

D. Conclusion

While California LifeLine should remain voice-focused, the Commission would best serve low-income Californians by ensuring that carriers have the necessary resources to provide devices with advanced functionality. The 12-month port freeze for broadband and 60-day freeze for voice will allow wireless providers to recover the cost of improved devices and service plans. Moreover, the exceptions adopted by the FCC ensure that wireless consumers will receive service adequate to their needs. Given the program's persistently high levels of churn, the Commission should adopt the federal program's port freezes and exceptions as described above.

Respectfully submitted,

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