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VIA ECFS

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Marlene H. Dortch
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: *Ex Parte* Submission; WC Docket Nos. 11-42, 20-445

Dear Ms. Dortch:

TracFone Wireless, Inc. (“TracFone”), through its counsel, submits this *ex parte* letter in support of the *ex parte* letter submitted by the National Lifeline Association (NaLA) dated April 21, 2021¹ and to further elaborate on the proposal contained in the NaLA filing regarding the non-usage rules for the Lifeline universal service program and the Emergency Broadband Benefit (“EBB”) program. TracFone urges the Commission to ensure that the non-usage rules and requirements for these programs are appropriately harmonized to foster program participation, take advantage of efficiencies between the two programs, and avoid unnecessary burdens for the Universal Administrative Service Company (“USAC”), subscribers, and providers alike. In particular, TracFone asks that the Commission partially suspend the Lifeline non-usage rule so as to conform that requirement to the EBB non-usage rule for the duration of the EBB program.

Problem: the Upcoming Expiration of the Commission’s Non-Usage Rule Waiver Will Result in Massive De-Enrollment of Lifeline Subscribers Just as the EBB Program Commences, Causing Unnecessary Confusion and Significant Administrative Inefficiencies

Although the Commission has issued numerous orders waiving and extending the waivers of various rules and requirements for the Lifeline program,² the agency’s *Seventh COVID-19 Waiver Order* declined to continue extend prior waivers of the Lifeline non-usage rule beyond

¹ See National Lifeline Association, *Ex Parte* Submission, WC Docket Nos. 11-42, 20-445 (April 21, 2021).

² *Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 20-285 (rel. March 17, 2020) (issuing a temporary waiver of annual recertification and reverification requirements); *Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 20-354 (rel. March 30, 2020) (Lifeline usage and general de-enrollment requirements; periodic reviews) (“*Non-Usage Order*”); *Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 20-462 (rel. April 29, 2020) (income eligibility documentation requirement); *Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 20-577 (rel. June 1, 2020) (documentation requirements for subscribers in rural areas on Tribal lands); *Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 20-891 (Aug. 17, 2020) (extending waivers through November 30, 2020); *Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 20-1357 (rel. Nov. 16, 2020) (extending waivers through February 28, 2021).

May 1, 2021.³ Accordingly, pursuant to the rule and the *Waiver Order*, eligible telecommunications carriers (“ETC”) must send cure notices to all Lifeline subscribers who, as of May 1, 2021, have not used their service in the previous 30 days.⁴ According to USAC, this means that those subscribers will enter their 15-day cure period provided by the rule on May 1, and service providers must send notice to provide impacted subscribers the opportunity to cure their non-usage starting that date. The cure period will end on May 15, and subscribers that do not cure must be de-enrolled on May 16.⁵ Therefore, it is expected that hundreds of thousands, if not millions, of existing Lifeline subscribers will be de-enrolled from the program on May 16.

This mass Lifeline de-enrollment will likely be occurring within days of the Commission announcing or having announced the commencement of the EBB program, which will make available to millions of low-income consumers subsidies for monthly broadband services and one-time device purchases to help Americans stay connected during the COVID-19 pandemic. Although the EBB is a separate program with its own funding mechanism, Congress recognized the efficiency gains and public interest benefits of making the program available to existing Lifeline subscribers, and thus expressly included Lifeline eligibility as one means by which a household can qualify for the EBB program.⁶ Consistent with that approach, in its *EBB Report and Order* the Commission found that existing Lifeline subscribers need not apply for the EBB program or submit new eligibility documentation for the National Verifier, instead allowing such subscribers to receive EBB benefits by opting in or requesting enrollment from any Lifeline carrier that has submitted an election notice to USAC to be an EBB provider.⁷

The timing of the expiration of the Lifeline non-usage waiver and the commencement of the EBB program threatens to create significant confusion for consumers and administrative inefficiencies. Many current Lifeline participants who face de-enrollment from Lifeline due to non-usage might nevertheless be interested in applying for the EBB program. If those subscribers are de-enrolled from Lifeline just as EBB benefits become available, then they will have to either apply to enroll directly with EBB, or re-enroll in the Lifeline program and opt into EBB. In either instance, applicants will be required to submit eligibility documentation and have their eligibility confirmed by the National Verifier. These applications—for subscribers that, as of right now are already eligible for EBB and duly verified—will add to the high volume of applications the National Verifier will likely need to process at the start of the new program, thus increasing the likelihood that the National Verifier and its related systems might be overwhelmed by processing demands.⁸

Moreover, the unfortunate timing created by the *Seventh COVID-19 Waiver Order* is likely to cause significant consumer confusion. Existing Lifeline customers impacted by the end of the non-usage rule waiver will receive multiple communications from their service providers informing them that they must begin using their Lifeline service or risk de-enrollment prior to

³ *Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 21-229, ¶¶ 9-10 (rel. Feb. 24, 2021).

⁴ *Id.* ¶ 10; 47 C.F.R. § 54.405(e).

⁵ See NaLA *Ex Parte*.

⁶ Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong., § 904(a)(6)(A) (2020).

⁷ *Emergency Broadband Benefit Program*, Report and Order, WC Docket No. 20-445, FCC 21-29 ¶ 52 (rel. Feb. 26, 2021).

⁸ TracFone estimates that approximately six million of its customers will be eligible for the new EBB program.

May 15th, while at the same time being informed of their eligibility for EBB program and invited to opt-in to the new service, in reliance of their Lifeline eligibility. Some might assume that by opting into EBB, they have fulfilled the requirement to use their existing Lifeline service, resulting in their Lifeline de-enrollment. Others might believe that their de-enrollment from Lifeline render them ineligible for EBB program and thus mistakenly decide to forego the benefits of the new program altogether. USAC will have to address a variety of possible scenarios where Lifeline participants are de-enrolled right before, during, or after their election to participate in EBB is processed. In short, de-enrolling millions of Lifeline subscribers at the time when they need to rely on that eligibility to participate in EBB will distract from and undermine what is hopefully an otherwise successful launch of the EBB program.

As one of the first Lifeline providers to call for the termination of the COVID-19 Lifeline waiver on non-usage rules,⁹ TracFone supports the Commission's decision to cease extending such waiver so that carriers can no longer claim subscribers who do not actively use the service for reimbursement. At the same time, the massive de-enrollment from Lifeline that is expected to occur just as the EBB program begins its initial stages of launching will likely create consumer confusion and introduce unnecessary administrative burdens on USAC, carriers, and subscribers.

Solution: the Commission Should Harmonize Lifeline Non-Usage Requirements with EBB Requirements for the Duration of the EBB Program

To limit consumer confusion and avoid unnecessary administrative burden, while continuing to ensure the integrity of the Lifeline program by guarding it from waste, fraud, and abuse, TracFone recommends that the Commission partially suspend the Lifeline non-usage rules so as to conform them to the EBB non-usage rules for the duration of the EBB program. Under the EBB program requirements, providers are required to certify that the households receiving a fully subsidized service have used the service during the relevant period.¹⁰ This proposal will not result in additional billing to USAC, *i.e.*, if a household has not used their service during the relevant period, the provider may not submit a reimbursement claim for service provided to that household until the service is used and the non-usage is cured.¹¹ *The household that is not using the service is, however, not required to be de-enrolled from the EBB program.* Rather, providers may only seek reimbursement for a service month in which a household meets the usage requirements even if the household failed to meet the usage requirements in prior months.¹²

Applying the EBB's non-usage rule to the Lifeline program as TracFone proposes, Lifeline providers would not be permitted to claim a household on the first-of-the-month "snapshot date" if the household has not used the service in the 30 days prior to the snapshot date. However, the household would be permitted to remain in the Lifeline program, and if the household opts into the EBB program and later on began to use the EBB and Lifeline-subsidized service, the

⁹ See Letter from Shawn Chang, Counsel to TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42 and 20-445 (filed Feb. 4, 2021).

¹⁰ *EBB Report and Order* ¶ 92.

¹¹ *Id.*

¹² *Id.*

household's non-usage would be considered cured, and the provider would again be able to claim the household for reimbursement.

Such harmonization will not only avoid the massive de-enrollment discussed above while ensuring no Lifeline subsidy is inappropriately claimed by a service provider, it will also avoid the confusion that might be generated by the absence of a notice and cure requirement for non-usage under the EBB rules. For a service that is subsidized by both the Lifeline program and the EBB program, the service provider is required to send a cure notice followed by a 15-day cure period after 30 days of non-usage, but is not required to send such notice under the EBB program. It is possible that after a month of non-usage, a household begins to use the service after the 15-day cure period is expired, but before the second month is over, thus requiring the carrier to de-enroll the subscriber under the Lifeline rules, but still provide the EBB-qualifying service and claim the household as an EBB subscriber for that second month. So even though in reality that household would indeed be using the service and meeting EBB's usage requirements, they will have to be de-enrolled and re-enrolled in order to maintain their Lifeline subsidies.

By conforming the Lifeline program's non-usage rules to the non-usage rules of the EBB program, the Commission can continue to safeguard Lifeline from waste, fraud, and abuse while avoiding consumer confusion and administrative burden that would be created from a massive, simultaneous de-enrollment of millions of Lifeline subscribers in the midst of the FCC's launch for the EBB program. There is no reason why the EBB's non-usage rules cannot be equally applied to the Lifeline program during the pendency of the EBB program.

Please contact the undersigned with any questions.

Respectfully Submitted,

/s/ Shawn H. Chang

Shawn H. Chang

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