

**Before the  
UTAH PUBLIC SERVICE COMMISSION**

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Utah Administrative Code R746-8,  
Proposing to Repeal R746-360, T746-341,  
and R746-343

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)     Docket No. 17-R008-01  
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**REPLY COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”) files this reply to the comments that were filed in response to the Commission’s Request for Comments issued in this docket (“Request”). In the Request, the Commission sought comments on proposed rules governing the Utah Universal Service Fund (“UUSF”) that implement recent amendments to Utah Code § 54-8b-15, as published in this docket on July 5, 2017. In addition to TracFone, CenturyLink Communications, LLC (“CenturyLink”), CTIA – The Wireless Association® (“CTIA”), Utah Division of Public Utilities (“DPU”) and Utah Rural Telecom Association (“URTA”) filed comments. Certain aspects of the proposed rules and positions advocated by some commenters, if adopted, would exceed the Commission’s statutory authority, would be unjustifiably burdensome, and would unnecessarily delay the effective date of a provision in Section 54-8b-15.

Pursuant to Section 54-8b-15, as amended, all wireless telecommunications providers, whether they are facilities-based or resellers, are eligible for distributions from the UUSF to support their Lifeline service. The statute further provides that the Commission “may impose reasonable conditions for providing a distribution to a wireless telecommunications provider under the lifeline program.”<sup>1</sup> However, conditions that exceed the Commission’s statutory authority or that impose unnecessary burdens and delays on wireless ETCs’ ability to seek UUSF

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<sup>1</sup> Utah Code § 54-8b-15(15)(b).

support are inconsistent with the statutory mandate that any conditions for distribution of UUSF support to wireless carriers be reasonable.

TracFone's initial comments focused on the proposed requirement that an Eligible Telecommunications Carrier ("ETC") seeking to participate in the state Lifeline program (*i.e.*, receive UUSF support) must hold a certificate of public convenience and necessity ("CPCN") from the Commission, as well as be designated as an ETC in accordance with 47 U.S.C. § 214(e). TracFone explained that requiring a wireless ETC to obtain a CPCN exceeds the Commission's statutory authority under Utah law which only requires public utilities, such as telephone corporations (which exclude wireless providers), to obtain a CPCN.<sup>2</sup> Moreover, imposition of a CPCN requirement on wireless Lifeline providers would be inconsistent with federal law, specifically, 47 U.S.C. § 332(c)(3)(A). That provision explicitly prohibits states from regulating entry or rates of wireless carriers. CTIA similarly stated that the CPCN requirement is "inappropriate" under Utah law because wireless providers are not subject to a certification requirement and "inconsistent with the [federal] bar on state regulation of CMRS carriers."<sup>3</sup> TracFone also agrees with CTIA's position that a CPCN is unnecessary because all Lifeline providers face "rigorous vetting by the Commission to obtain [ETC] status" and the Commission "retains oversight authority over ETCs in Utah."<sup>4</sup>

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<sup>2</sup> See Utah Code § 54-4-25 (establishing a CPCN requirement for public utilities, including "telephone corporations") and § 54-2-1(31)(b)(i) (excluding wireless providers from the definition of "telephone corporation").

<sup>3</sup> See CTIA Comments, at 4-5. TracFone also supports CTIA's position that monthly reports on the number of Lifeline subscribers who have changed addresses, switched carriers or dropped service is an unnecessary administrative burden on the UUSF and ETCs given that the same data is available in the National Lifeline Accountability Database. See *id.* at 4.

<sup>4</sup> *Id.*

Both DPU and URTA support a CPCN requirement, but neither provides any justification for the requirement nor addresses the Utah and federal laws discussed in comments filed by TracFone and CTIA. DPU simply states that defining an ETC, in part, as a company that holds a CPCN is an “appropriate requirement.”<sup>5</sup> Similarly, URTA “believes” that a wireless ETC seeking UUSF support for Lifeline service should hold a CPCN, but fails to state any justification for its belief.<sup>6</sup> TracFone urges the Commission to carefully review Utah law regarding the CPCN requirement and the federal law’s prohibition on state regulation of market entry by wireless carriers before adopting final rules governing disbursements from the UUSF.<sup>7</sup>

In addition to supporting a CPCN requirement for wireless carriers, URTA proposes that a wireless ETC that seeks UUSF support for Lifeline service should be required to demonstrate that its receipt of support is in the public interest.<sup>8</sup> URTA offers no basis for this requirement nor explains why a separate public interest determination should be required for wireless carriers, but not for wireline carriers, to receive UUSF support. Requiring wireless carriers to make showings beyond those required for wireline carriers violates the federal prohibition in 47 U.S.C. § 332(c)(3)(A) on imposing market entry barriers on wireless carriers. Moreover, any concerns about a wireless ETC’s receipt of UUSF support can be thoroughly addressed during a Commission proceeding that considers an ETC’s request. As TracFone stated in its initial comments, during a Commission proceeding, all interested parties have the opportunity to seek

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<sup>5</sup> DPU Comments, at 1.

<sup>6</sup> URTA Comments, at 10.

<sup>7</sup> Section 254(f) of the federal Communications Act (47 U.S.C. § 254(f)), allows states to adopt their own regulations to preserve and advance universal service (including state Lifeline programs), provided that such regulations are not inconsistent with the Federal Communications Commission’s rules. A CPCN requirement imposed in Utah would be facially inconsistent with federal rules which contain no such requirement, and which is explicitly forbidden by 47 U.S.C. § 332(c)(3)(A).

<sup>8</sup> *See id.* at 10.

information from the applicant, the applicant submits evidence of its qualifications to provide Lifeline service supported by the UUSF, and the Commission makes a decision based on the record.

CenturyLink and URTA also suggest that the Commission allow or require ETCs to deduct the per connection UUSF surcharge for Lifeline service from the UUSF support received for that connection.<sup>9</sup> TracFone does not support the Commission's decision to impose the UUSF surcharge on access lines that serve Lifeline customers for the reasons CTIA detailed in its application for rehearing filed in Docket No. 17-R360-01. However, the scope of this proceeding does not include the surcharge methodology.<sup>10</sup> As such, this proceeding also is not the appropriate forum for addressing CenturyLink and URTA's recommendation that the UUSF support disbursed to ETCs be offset by the surcharge. Nevertheless, in the event the Commission decides to consider the UUSF offset proposal, TracFone requests the Commission to be mindful that any offset to UUSF support directly impacts the amount of the Lifeline support available to ETCs to provide enhanced benefits to Utah Lifeline customers. Moreover, a UUSF surcharge deduction from UUSF support received by ETCs, in practice, would only be relevant to prepaid ETCs because they have no means to collect the UUSF surcharge from their

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<sup>9</sup> See CenturyLink Comments, at 6; URTA Comments, at 7. In a separate rulemaking proceeding regarding the UUSF surcharge methodology, the Commission denied a request by CTIA to exempt from the UUSF surcharge access lines that receive a Lifeline subsidy. The Commission also "declined to accept the suggestion to delay implementation of the \$0.36 per month, per access line, Utah Universal Service Fund ("UUSF") surcharge until such time as the Legislature may choose to implement a point-of-sale requirement for some forms of prepaid wireless service, but ... clarified that those providers are required to remit the UUSF surcharge." See *Utah Administrative Code R746-360 Universal Public Telecommunications Service Support Fund*, Notice of Rule Filing, Docket No. 17-R360-01, October 24, 2017. Although CTIA filed an application for rehearing, the Commission recently notified CTIA that its application would be denied by operation of law. *Id.* Notice Application for Rehearing Will Be Denied by Operation of Statute and Order Denying Request for Stay, November 30, 2017.

<sup>10</sup> See Request, at 1.

customers. In contrast, a UUSF surcharge deduction from UUSF support would be inapplicable to postpaid Lifeline providers because they are able to collect the surcharge from their customers. This highlights the fact that a surcharge methodology that obligates prepaid Lifeline providers to remit the UUSF surcharge by accepting a lower amount of UUSF surcharge while postpaid providers collect USF surcharge form customers and receive the full amount of UUSF support unfairly discriminates against low-income Utah households that choose prepaid Lifeline service.

Finally, TracFone opposes any Commission actions or rules that would further delay the effectiveness of the amendment to Section 54-8b-15 that expressly allows wireless telecommunications providers to be eligible for distributions from the UUSF under the Lifeline program. First, the proposed rules provide that an ETC approved to participate in the state Lifeline program shall “provide service to any customer who is verified as eligible for participation through the FCC’s national verifier system.”<sup>11</sup> In the Notice of Proposed Rulemaking issued in this docket, the Commission noted the following: “as of the effective date of the rule, ILECs would be able to continue serving existing Lifeline subscribers, but no new subscribers would be allowed to enter the program until the national verifier is operational.”<sup>12</sup> When the notice was issued, the Commission anticipated that the National Verifier would be operational by the end of January 2018, but recognized that the date “is not guaranteed.”<sup>13</sup> At the time TracFone filed initial comments, it was expected that the Universal Service

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<sup>11</sup> Draft R746-8-403(3)(b).

<sup>12</sup> Notice of Proposed Rulemaking and Request for Comments, July 5, 2017, at 3.

<sup>13</sup> *Id.*

Administrative Company would deploy the National Verifier in Utah by December 31, 2017.<sup>14</sup> However, on December 1, 2017, the Federal Communications Commission's Wireline Competition Bureau announced that the launch of the National Verifier will be postponed until early 2018 due to security issues.<sup>15</sup> Thus, the National Verifier launch date continues to be unknown. In fact, the Commission recently acknowledged that the National Verifier will not be operational in Utah until early 2018 and has stayed an August 24, 2017 order directing ETCs to be prepared to use the National Verifier on January 1, 2018.<sup>16</sup> Given the uncertainty of the launch date of the National Verifier, it is unfair and indefensible to tie wireless ETCs' eligibility for UUSF support to the launch date while allowing ILECs to continue to receive UUSF support for current Lifeline. Moreover, to impose the National Verifier requirement on wireless ETCs would indefinitely prevent Lifeline-eligible Utah households that want wireless service from receiving enhanced Lifeline benefits funded by the UUSF.

Second, TracFone opposes the suggestion by CenturyLink and URТА that the Commission conduct workshops on certain issues before issuing final rules.<sup>17</sup> There has already been significant delay in this proceeding and the commenters provide no basis for extending the delay. Indeed, CenturyLink and URТА have already sought and received an extension in this proceeding. The Commission initially set August 2, 2017 as the date for filing comments.

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<sup>14</sup> See *Wireline Competition Bureau Announces Initial Launch of the National Lifeline Verifier*, Public Notice, 32 FCC Rcd 6727 (WCB 2017).

<sup>15</sup> See *Wireline Competition Bureau Announces Postponement of Initial Launch Date of the National Lifeline Eligibility Verifier*, DA 17-1167, released Dec. 1, 2017.

<sup>16</sup> See *Stay of Order Requiring USAC Verification of Lifeline Eligibility*, Docket No. 17-R008-01, December 5, 2017

<sup>17</sup> CenturyLink recommends a workshop to discuss the Lifeline benefit wireless carriers would need to provide to qualify for UUSF support. See CenturyLink Comments, at 5-6. URТА supports a workshop to address the additional value wireless providers should give end users and asserts that more time is needed. See URТА Comments, at 10.

CenturyLink, joined by URTA, requested additional time to file comments. The Commission granted the request, and on October 11, 2017, issued a Request for Comments that established November 16, 2017 as the deadline for filing comments and December 7, 2017 as the deadline for filing reply comments. All interested parties have had more than an adequate amount of time to thoroughly determine and present their positions on the proposed rules. The CenturyLink and URTA workshop request should be seen for what it is – a dilatory tactic that would serve no purpose other than to continue to delay the advent of competitive UUSF-supported Lifeline offerings which will afford low-income Utah households alternative Lifeline service options to those available from CenturyLink and URTA members.

Furthermore, there is insufficient time to schedule and conduct workshops given relevant Utah law regarding rulemaking proceedings. In the Request for Comments, the Commission recognized that pursuant to Utah Code § 63G-3-301(13)(b) it is required “to submit proposed rules for publication in the Utah State Bulletin implementing all aspects of S.B. 130, Universal Service Fund Amendments (2017 GS), within 180 days after July 1, 2017 (the effective date of S.B. 130).” As noted by the Commission in its Request for Comments, draft rules were published in this docket, but have not been submitted for publication in the Utah State Bulletin. Therefore, to comply with the statutory deadline governing rulemakings, the Commission must submit proposed rules for publication in the Utah State Bulletin within 180 days of July 1, 2017, *i.e.*, no later than December 28, 2017. Although there is not enough time to hold a workshop prior to the end of December, the commenters still have additional time to present their positions. In accordance with Utah Code § 63G-3-301(11), after the proposed rule is published in the Utah State Bulletin, the Commission shall allow at least 30 days for public comment. Thus, all

interested parties, including the commenters in this proceeding, can offer further comments for the Commission's consideration prior to the Commission's adoption of a final rule.

### CONCLUSION

TracFone respectfully requests that the Commission consider TracFone's views and recommendations set forth in these reply comments and its initial comments as it determines how to revise its rules governing the UUSF.

Respectfully submitted,



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December 7, 2017



## CERTIFICATE OF SERVICE

I certify that on December 7, 2017, a true and correct copy of the foregoing Reply Comments of TracFone Wireless, Inc. was served on the following as indicated below:

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