

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
TracFone Petition to Prohibit In-Person)	WC Docket No. 11-42
Distribution of Handsets to Prospective)	
Lifeline Customers)	

COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. (“SBI”) pursuant to Section 1.3 of the Commission’s Rules, 47 U.S.C. § 1.3, hereby files these Comments in opposition to TracFone Wireless, Inc.’s (“TracFone”) Petition for Rulemaking filed May 13, 2013 (“Petition”).¹ For the reasons set forth below, the Commission should reject TracFone’s proposal to prohibit the in-person distribution of handsets to prospective Lifeline customers.

I. Introduction and Summary.

SBI operates in Arizona, New Mexico, Utah and Colorado, 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 the demographics of most of its tribal lands are extraordinary.²

¹ Public Notice, DA 13-1109, rel. May 16, 2013.

² 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).

Shortly after becoming an ETC in Arizona in 2001, SBI launched its VisionOne® service, providing tribal citizens with Lifeline service at an end user cost of \$1.00 per month. SBI quickly realized that the vast size and sparse populations on tribal lands made it impossible to build company stores throughout the areas where people live. Many eligible citizens lacked transportation needed to travel in excess of one hundred miles to SBI stores. Many areas were beyond the reach of the landline telephone network. It quickly became apparent that the only way to reach these remote populations was to bring the stores out to the people.

SBI created the idea of holding activation events at tribal chapter houses located in remote areas. SBI deployed mobile stores, housed in large recreational vehicles, to visit a chapter house over a weekend, where it set up customer service tables. The company offered full-service to consumers, including activation, service, educational clinics on how to use the phone, and anything else customers needed to begin or continue phone service. In the absence of these outreach efforts, it is unlikely that many remote areas would have received access to any telephone service.

When SBI began its Lifeline outreach, the 2000 U.S. Census reported that less than 30% of Navajo households had access to a telephone. By 2010, Navajo household telephone penetration increased to 72.1%.³ 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.⁴

³ Sources: Selected Economic Characteristics, 2010 American Community Survey 1-year Estimates; Poverty Status in the Past 12 Months, 2010 American Community Survey 1-year Estimates; Selected Population Profile in the United States, 2010 American Community Survey 1-year Estimates.

⁴ *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).

Today, SBI continues to bring service out to remote areas to provide consumers with critical telephone services, albeit not on the same scale as when the program commenced. In addition, SBI appears at tribal events such as the Navajo Fair, setting up temporary stores, to reach places where tribal citizens travel to. SBI offers a full range of services at these locations. Moreover, temporary stores at such events have been critical in SBI's efforts to recertify its customers for Lifeline eligibility.

TracFone's proposal would prohibit the very types of consumer outreach activities that have helped bring critical telecommunications service to unserved and underserved populations on Tribal lands. Because innovative, in-person outreach is an essential part of bringing service to qualified individuals in remote, impoverished areas, SBI opposes TracFone's petition.

II. Discussion.

SBI submits that the best way to adjust Lifeline program rules is in a rulemaking proceeding, pursuant to which the FCC develops a thorough record and takes informed actions that are effective, while providing regulated entities with appropriate notice. As discussed below, TracFone has failed to demonstrate a need for a prohibition on in-person distribution on handsets to prospective Lifeline customers, and it certainly has not established the existence of an emergency justifying interim action by the Commission. That said, to the extent that the Commission may be contemplating interim action, similar to recent practice in the Lifeline program,⁵ SBI provides the following information for the Commission's consideration.

SBI is aware that some fly-by-night Lifeline providers have been selling Lifeline service without properly evaluating prospective customers' qualifications and without making the

⁵ See, e.g., *Lifeline and Link Up Reform and Modernization et al, Report and Order*, 26 FCC Rcd 9022 (2011).

necessary disclosures that would put applicants on notice of Commission requirements. The Commission's public notices concerning program waste certainly indicate that there are problems in the system. However, overbroad solutions such as those proposed by TracFone are not the answer.

TracFone's Petition cites the Commission's statement that "ETCs should have the flexibility to market their Lifeline-supported services in innovative and creative ways."⁶ Yet TracFone seeks a solution that would have the opposite effect by restricting Lifeline enrollment to a mail-delivery system and precluding numerous innovative and creative approaches that have increased subscribership in remote and impoverished areas.

TracFone's proposal would greatly limit many tribal citizens' ability to receive phone service. SBI would not be able to use its mobile stores to go out to remote areas. Any citizen living in such an area who could make the trip to an SBI store would find out that they could sign up, but not receive a phone. Presumably, SBI would have to mail the phone separately at a later date. Many remote tribal areas do not have regular delivery service from the U.S. Postal Service, which means citizens will need to travel again, perhaps many miles, to pick up phones at the nearest post office.

SBI is supportive of measures that are effectively targeted at improving the administration of the Lifeline program and ensuring that only eligible consumers will benefit. However, a one-size-fits-all approach such as TracFone's fails to account for the very difficult circumstances existing today on many Tribal and near-reservation lands. Prohibiting SBI from reaching out to remote populations and confining its business to its storefront locations would be harmful to tribal citizens, for whom traveling dozens or hundreds of miles to conduct business is an extraordinary hardship. To the extent that the Commission seriously considers any of these

⁶ TracFone Petition at p. 5, citing *Lifeline Reform Order* at ¶ 277.

approaches as a way to minimize program waste, they must be calibrated. Tribal residents, who depend on carriers such as SBI to provide critical telecommunications services, must not be prejudiced by regulatory reforms designed to resolve problems elsewhere in the program.

TracFone makes the nonsensical claim that “grass roots marketing” is somehow less susceptible to fraud than enrolling customers in person. TracFone, sensibly, endorses the use of community-based organizations to reach out to potentially qualifying populations. These approaches can indeed be effective in boosting enrollment, and indeed SBI has worked with tribal entities to assist in its outreach.

However, TracFone’s argument that grassroots marketing prevents fraud is a non sequitur. A process that relies on outreach by groups and individuals unrelated to the company, without additional safeguards, can be more susceptible to fraud than a process that uses company employees. SBI’s outreach events have always been manned by company employees, and SBI does not use third-party agents to sell its services from mobile or temporary facilities. The exclusive use of company employees enables SBI to control every aspect of outreach and enrollment, and to institute and adjust procedural safeguards as needed. Thus, at best, TracFone’s “grass roots” argument is a red herring.

Given the numerous instances in which TracFone customers have recently been issued citations for duplicate Lifeline subscriptions, it is clear that TracFone’s mail-order-only approach is far from a cure for fraud.⁷ TracFone’s overly broad prohibition would stifle innovative

⁷ See, e.g., Order and Citation, File No. EB-13-IH-0954 (DA 13-1146); File No. EB-13-IH-0955 (DA 13-1147); File No. EB-13-IH-0956 (DA 13-1149); File No. EB-13-IH-0957 (DA 13-1150); File No. EB-13-IH-0958 (DA 13-1151); File No. EB-13-IH-0959 (DA 13-1152); File No. EB-13-IH-0961 (DA 13-1154); File No. EB-13-IH-0962 (DA 13-1155); File No. EB-13-IH-0963 (DA 13-1156); File No.: EB-13-IH-0852 (Redacted DA 13-909); File No.: EB-13-IH-0853 (Redacted DA 13-910); File No.: EB-13-IH-0854 (Redacted DA 13-911); File No.: EB-13-IH-0855 (Redacted DA 13-913); File No.: EB-13-IH-0863 (Redacted DA 13-921); File No.: EB-13-IH-0869 (Redacted DA 13-927); File No.: EB-13-IH-0870 (Redacted DA 13-928); File No.: EB-13-IH-0871 (Redacted DA 13-929); File No.: EB-13-IH-0872 (Redacted DA 13-930); File No.: EB-13-IH-0873 (Redacted DA 13-932); File No.: EB-13-IH-0874 (Redacted DA 13-933); File No.: EB-13-IH-0875 (Redacted DA 13-934); File No.: EB-13-IH-0881

outreach methods without addressing the core issue, which is an ETC's use of appropriate procedures and controls at all levels of the enrollment process. SBI submits that USAC's audit program, as well as the soon-to-be-launched biennial independent audit requirement, are the appropriate mechanisms for identifying weaknesses in an ETC's process and enforcing the Commission's Lifeline rules. It would be jumping the gun to institute ad hoc fixes before these mechanisms are allowed to work.

III. Conclusion.

For all of the reasons set forth above, SBI opposes TracFone's Petition and urges the Commission to continue to encourage carriers to use innovative methods to bring Lifeline service to populations that need it most.

Respectfully submitted,

Smith Bagley, Inc.



By: _____

David A. LaFuria
Steven M. Chernoff
LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102
(703) 584-8669

Its Attorneys

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(Redacted DA 13-940); File No.: EB-13-IH-0882 (Redacted DA 13-941); File No.: EB-13-IH-0883 (Redacted DA 13-942); File No.: EB-13-IH-0884 (Redacted DA 13-943); File No.: EB-13-IH-0885 (Redacted DA 13-944); File No.: EB-13-IH-0886 (Redacted DA 13-945); File No.: EB-13-IH-0887 (Redacted DA 13-946); File No.: EB-13-IH-0888 (Redacted DA 13-947); File No.: EB-13-IH-0889 (Redacted DA 13-948).