

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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| Petition of Tracfone Wireless, Inc. For Approval |) | |
| to Participate in State Lifeline Program and Receive |) | Case 18-C-1025 |
| Distributions from the Targeted Accessibility Fund) | | |

Comments of the Public Utility Law Project of New York

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On February 13, 2018 Tracfone Wireless, Inc. (“Tracfone”) submitted a petition to the Public Service Commission (“PSC” or “Commission”) seeking authorization to provide wireless Lifeline telecommunications services pursuant to New York’s Lifeline Program,¹ and to receive distributions of \$11 per subscriber-household per month from New York’s Targeted Accessibility Fund (“TAF”).² If the Commission were to grant the Tracfone Petition, the company would become the first wireless provider of Lifeline services to pay into and receive distributions from the TAF. The company would also set a precedent for allowing non-facilities-based providers to take part in New York’s Lifeline Program at a time when federal support for the provision of Lifeline services by such providers is in jeopardy,³ potentially creating a fiscal obligation for the TAF that is as yet unknown, and not yet contained within the record of this proceeding. The Public Utility Law Project (“PULP”) therefore respectfully requests that the Commission grant the Tracfone Petition with regard to allowing the company’s entry into the TAF, but forebear from ordering the \$11.00 monthly payment sought by Tracfone until an additional proceeding has been held to determine what amount of monthly subsidy is reasonable,

¹ See, Case 18-C-0125, Petition of TracFone Wireless, Inc. for Approval to Participate in State Lifeline Program and Receive Distributions from Targeted Accessibility Fund, filed on February 13, 2018 (“Tracfone Petition”); at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={15B89488-8B81-45BB-9371-8A8A407DEA11}>.

² See, Opinion 98-10, OPINION AND ORDER ESTABLISHING ACCESS CHARGES FOR NEW YORK TELEPHONE COMPANY AND INSTITUTING A TARGETED ACCESSIBILITY FUND, issued and effective June 2, 1998 (“Opinion 98-10”).

³ See, FCC proceeding 17-55, dockets WC-17-2827, 11-42, 09-147, collectively the FOURTH REPORT AND ORDER, ORDER ON RECONSIDERATION, MEMORANDUM OPINION AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF INQUIRY, adopted November 16, 2017 (“Lifeline NPRM & Order”), at pg. 25.

what the effect might be upon the TAF of one or more non-facilities-based carriers seeking subsidies for Lifeline service, and what other changes might be reasonable or necessary for the TAF given the continuing changes – and proposed federal changes – in the Lifeline market.

Tracfone, as its petition notes, provides Lifeline service to approximately 328,000 households in New York.⁴ The company has provided Lifeline service in New York since 2008, and currently offers a product that includes 350 voice minutes, unlimited text messages, one gigabyte (“1GB”) of data, and a free phone (since 2016, “smartphones” are offered),⁵ all of which is supported by a \$9.25 per month contribution from the federal Universal Service Fund (“USF”). For the additional \$11.00 per month in New York State funding the company is seeking, it proposes offering unlimited voice service minutes, 2GB of data, and the ability to use the included smartphone as a “hotspot” or tether, to support other devices in a household such as tablets, laptops (or presumably desktop computers).⁶ Tracfone asserts in its petition that the “unsubsidized retail rate” for the proposed service(s) would be \$20.25 per month.⁷

Tracfone’s ability to become a wireless provider-member of the TAF is predicated upon the passage of a bill in 2017 that created a new section 92-h of the public service law and allowed wireless carriers to receive Lifeline support via the TAF,⁸ provided however that such carriers must be designated eligible telecommunications carriers (“ETCs”) in the State of New York. Tracfone received such a designation in 2008,⁹ and is therefore presumptively eligible to receive Lifeline support.

In addition to the question of eligibility, there is the important question of whether or not Tracfone and the potential entry of other wireless carriers entry into the TAF furthers the public interest. As Department of Public Service staff (“DPS” or “DPS Staff”) noted in its assessment of telecommunications in Case 14-C-0370, wireline Lifeline service peaked in or around 1996 at just short of 800,000 lines, but had dropped to only approximately 138,000 lines by 2014.¹⁰ At

⁴ Service is provided through Tracfone’s “SafeLink Wireless” brand. See, Tracfone Petition, at p. 3.

⁵ See, Tracfone Petition, at pp. 3-4; and see, Tracfone Petition, Table 1 on p. 5.

⁶ See, Tracfone Petition at p. 5.

⁷ Id.

⁸ Although inclusion of wireless carriers was contemplated by the original TAF working group in 1998, the Commission found that Ch. 684 of 1997 suspended its jurisdiction over wireless companies, exempting them from TAF charges and precluding such carriers from recovery from the TAF. See, Opinion 98-10, at pp. 30-37.

⁹ See, In the Matter of Federal-State Joint Board on Universal Service: Tracfone Wireless, Inc. Petition for designation as an Eligible Telecommunications Carrier in the State of New York, et al., 23 FCC Rcd. 6206 (2008).

¹⁰ See, Staff Assessment of Telecommunications Services, in Case 14-C-0370, In the Matter of a Study on the State of Telecommunications in New York State, at pp. 29-30.

the same time, wireless Lifeline had grown to approximately 1 million subscribers.¹¹ It is indisputable therefore that by 2014, wireless Lifeline services were a key service for low-income households in New York. Focusing upon the sort of services provided by Tracfone – costs limited to the \$9.25 monthly provided by the federal USF (i.e., free to the subscriber) – for those New Yorkers unable to pass a credit check, or pay the cost of purchasing a smartphone, or pay for “post-paid” or pre-paid wireless service, Tracfone’s service(s) and those of other “free” providers arguably fill a vital niche. This is particularly true for those New Yorkers that have no access to affordable broadband in their homes, or are otherwise necessitated to rely upon using wireless/smartphone access to the Internet as their only access to broadband. Tracfone’s petition, therefore, makes a compelling case that allowing the company’s entry into the TAF is in the public interest.

Relying upon the seminal work of the Pew Research Center and many of the intervenors in the FCC’s Lifeline NPRM and Order, Tracfone points out that most low-income households are “more dependent upon wireless technology” as their sole provider of telephony and broadband.¹² This is particularly true for families that move often (i.e., are “housing unstable”), or have impaired credit, or whose finances are impaired. Tracfone’s proposal to increase the amount of data service to the amount required by the FCC in 2019, and to maintain the provision of “hotspot” capability despite the FCC’s proposal to abandon such a feature in the Lifeline NPRM and Order, are both laudable therefore. However, Tracfone notes that average smartphone data usage in 2016 was approximately 3.9GB per month, or approximately twice the amount of data it is proposing to supply. And, obviously, such an average takes into account many households that use broadband on multiple platforms in addition to smartphone. For low-income households that presumably would use Tracfone’s offering as their only access to the Internet, and would be sharing such access for employment searches, homework, digital government and other average uses, it would appear that providing 4GB might be a better direction for Tracfone and, for that matter, it would be useful for the record to reflect the proposed per gigabyte cost for overages Tracfone is proposing. Similarly, Tracfone’s petition says nothing about the proposed privacy/confidentiality policies for the services provided over its

¹¹ Id. See, also, Comments of the Public Utility Law Project in Case 14-C-0370, at pp. 14-16. Since 2015 the number of wireless Lifeline subscribers has dropped.

¹² Id. at pp. 7-8.

Lifeline product, and nothing about how it might help consumers block robocalls and engage in at least minimal cybersecurity protections. All of these issues are worth considering in the context of Tracfone's petition, and if the Commission grants the petition, should become part of the consideration of a broader proceeding.

In conclusion, PULP supports Tracfone's petition requesting the ability to participate in the TAF. However, PULP believes that the second request made by Tracfone in its petition – the receipt of \$11 monthly per household for its proposed services – is not supported by the record in this proceeding to this point, which only contains a conclusory statement with regard to a supposed retail cost for the proposed services. Consequently, PULP respectfully submits that the Commission take the action contemplated in its Order Directing Tariff Filings Regarding Lifeline Eligibility, which is to “commence a new phase in [Case 17-C-0171] to examine the nature and level of future state support for Lifeline service.”¹³ As part of such a proceeding, PULP respectfully suggests that the Commission charge the parties with determining what amount of monthly subsidy is reasonable, what the effect might be upon the TAF of one or more non-facilities-based carriers seeking subsidies for Lifeline service, and what other changes might be reasonable or necessary for the TAF given the continuing changes – and proposed federal changes – in the Lifeline market.

Respectfully submitted,

/s/

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¹³ See, Case 17-C-0171, Order Directing Tariff Filings Regarding Lifeline Eligibility, issued and effective April 19, 2018.