

**Before the
Federal Communications Commission
Washington, DC 20544**

In the Matter of)
)
Lifeline and Link-Up) **WC Docket No. 03-109**
)

**COMMENTS OF
THE NATIONAL CONSUMER LAW CENTER,
ON BEHALF OF GREATER BOSTON LEGAL SERVICES**

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I. Introduction and Summary

The National Consumer Law Center (“NCLC”)¹, on behalf of Greater Boston Legal Services (“GBLS”),² files these comments in response to Tracfone’s Request For Clarification Of Universal Service Lifeline Program “One-Per-Household” Rule As Applied To Group Living Facilities (DA 09-2257, rel. October 21, 2009). The Commission seeks comments on:

- The effects of the one-per-household rule for Lifeline support in the context of group living facilities;
- Ways the ETCs may offer Lifeline service to qualified residents of group living facilities while continuing to comply with the one-per-household rule; and
- Whether and how ETCs that provide Lifeline service to homeless individuals who do not use shelters could comply with the one-per-household rule.

NCLC, on behalf of GBLS, supports the narrow clarification that the Lifeline benefit applies to households in group living facilities. This is consistent with the public policy reasons for universal service, as telecommunications connectivity is essential for those in group living facilities, who are among the most vulnerable and fragile households in society. In these

¹ The National Consumer Law Center (NCLC) is a nonprofit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income consumer access to energy, water, and telecommunication services and publishes *Access to Utility Service* (4th edition) as part of its Debtor Rights Series of legal manuals, as well as NCLC’s *Guide to The Rights of Utility Consumers* and *Guide to Surviving Debt*.

² Greater Boston Legal Services (GBLS) provides free civil (non-criminal) legal assistance to low-income people in Boston and thirty-one additional cities and towns in eastern Massachusetts. The services provided by GBLS range from legal advice to full case representation, depending on client need. GBLS serves individuals and families whose yearly income does not exceed 125% of Federal Poverty Income Guidelines (\$27,562.50 for a family of four). GBLS’ staff of approximately 72 attorneys and 25 paralegals is divided into areas of legal expertise to best address the problems faced by people living in poverty. A national leader in poverty law, GBLS also undertakes systemic representation and legal advocacy to address the root causes of poverty.

comments, we have provided examples of consumers in group living arrangements who are affected by the current application of the “one-per-household” rule.

In the Telecommunications Act of 1996,³ Congress directed the Commission and the Joint Board to:

base policies for the preservation and advancement of universal service on the following principles . . . Quality services should be available at just, reasonable, and affordable rates. . . Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonable comparable to rates charged for similar services in urban areas. . . Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience and necessity and are consistent with this chapter.⁴

Households in group living facilities are often low-income and their need for telecommunications connectivity is as great, if not greater, than the other Lifeline eligible low-income households. For example, those in homeless shelters need a phone to find work and more permanent housing, as well as to stay connected to family, friends and their greater support network. Victims of domestic violence who live in shelters are there because their home is no longer safe for them. They, too, need a phone to restart their lives as a phone is essential to finding more permanent housing and a job, for making arrangements with the children’s school, for staying connected to a support network, etc. Lifeline-eligible households in group living situations should not be precluded from Lifeline service due to the nature of their housing situation. Such a result is inconsistent with the Universal Service policies set forth for the program by Congress.

³ Pub. L.No. 104-104, codified at 47 U.S.C. §§ 151 *et seq.*

⁴ 47 U.S.C. § 254(b).

Lifeline regulations implementing the low-income affordability component of the Universal Services Programs established by the Telecommunications Act of 1996 were established before wireless phone companies were participating in the Lifeline program. Due to the emerging nature of pre-paid wireless Lifeline and the role of wireless phone service within the Universal Services programs, we urge the FCC to avoid wholesale changes to the Lifeline program at this time, but instead to limit the scope of this proceeding to clarifying the applicability of Lifeline benefits to those in group living facilities. As described below, oftentimes in group living facilities residents are not permitted to obtain landline service in their rooms. The advent of prepaid wireless Lifeline service in some states has highlighted the need for this Commission to take a fresh look at the barriers to the provision of Lifeline phone service to such households.

II. The Effects Of The One-Per-Household Rule For Lifeline Support In The Context Of Group Living Facilities

A. Who is affected by the “One-Per-Household” Rule as Applied to Group Living Facilities?

It is difficult to estimate the number of eligible households who are homeless or in group living situations. However, those living in transitional housing may stay for extended periods of time, highlighting their need to have access to telephone service. The U.S. Conference of Mayors in 2008 estimated that the duration of stays in transitional housing can range from around 50 days to over 600 days. USA Today has estimated that more than 1.6 million people used transitional housing or emergency shelters, and that one third were families with children. The National Law Center on Homelessness and Poverty estimates that approximately 3.5 million

people, 1.35 million of them children, are likely to experience homelessness in a given year.⁵ Many homeless women are the victims of domestic,⁶ often with children to care for and in need of telephone service to contact schools, doctors, and family members.

While we do not have solid statistics on of the actual number of homeless people, there is no doubt that a large number of Americans experience homelessness in any year, and that many of them spend extended periods of time in shelters, transitional housing, and other types of group living facilities.

Tracfone's request touches on the rights of homeless people and those in shelters and transitional housing. Current rules, as applied by Tracfone, also affect the rights of elderly people living in nursing homes. According to the Center on Disease Control, there are approximately 1.5 million residents of nursing homes with an average length of stay of 835 days.⁷ Consumers in other forms of group housing could also be affected by the Commissions clarification as noted in the Commission's notice for this request for comment.⁸

B. Additional Barrier to Lifeline Regarding Residential Versus Commercial Addresses

In addition to the "one-per-household" rule that in practice bars multiple individuals in a group living facility from getting Lifeline assistance, there is the additional problem in Massachusetts that Tracfone requires an applicant for its Safelink Lifeline service to live at an

⁵ National Coalition for the Homeless, *How Many People Experience Homelessness?* (July 2009) available at http://www.nationalhomeless.org/factsheets/How_Many.html. See also, National Coalition for the Homeless, *Who is Homeless?* (July 2009) (provides several federal definitions of homelessness) available at <http://www.nationalhomeless.org/factsheets/who.html>.

⁶ National Alliance to End Homelessness, *Fact Checker: Domestic Violence* (June 2007) available at <http://www.endhomelessness.org/content/article/detail/1647>.

⁷ Center on Disease Control, FastStats, Nursing Home Care available at <http://www.cdc.gov/nchs/fastats/nursingh.htm>.

⁸ "In addition to homeless shelters, the clarification and guidance sought by TracFone may be applicable to other group living facilities, such as nursing homes, assisted-living facilities, apartment buildings, trailer-home communities, halfway houses, and group homes."

address classified as residential. Tracfone's request for clarification does not bring this particular issue to the FCC's attention; however, the residential address requirement causes many of the same problems as application of the one-per-household rule.

The aim of the residential address requirement is to prevent businesses, instead of private persons, from benefitting from Lifeline. However in Massachusetts, the consequence of this rule is that shelters and group living facilities, many of which are classified as commercial property in listings that Tracfone uses, cannot be listed as an applicant's address. For the numerous residents in need that would otherwise be eligible for Lifeline, this rule has an unintended and adverse impact. NCLC respectfully asks the Commission to clarify that group housing is a special form of housing whose income-eligible residents may still be eligible for Lifeline despite the fact that the property may be listed as "commercial" by the post office or by any directories the ETC may use.

The implementation of the unintended consequences of the residential address requirement could be remedied in much the same ways as the one-per-household requirement. Carriers and consumers could sign self-certifications, under penalty of perjury, that the address listed on the application is the applicant's place of residence, and not a workplace.

C. Affect of the Rule on Group Home Residents

The implementation of the "one-per-household" rule unfairly prohibits Lifeline-eligible households in shelters from getting Lifeline service. Shelter residents may share an address, with no separate apartment or room numbers, with the entire shelter's population. In such instances, only the first eligible Lifeline applicant will be eligible for Lifeline service. Clearly this is not achieving the goal of universal access for low income consumers.

The following are brief descriptions of some of the categories of low-income consumers who have been denied access to Safelink's Lifeline cell phone service in Massachusetts due to the "one-per-address" practice, plus the "commercial v. residential classification" problem. These descriptions are provided by Greater Boston Legal Services (GBLS) based on client experiences, plus scenarios from numerous other advocates who have contacted GBLS about this very problem:

1) People living in SRO/rooming houses, including places such as YMCAs, YWCAs, etc., who may live at the same street address, but who have separately numbered rooms, and separate tenancies. Many people in these types of housing situations have various types of individual subsidies attached to their tenancies, which further underscores that each tenant is "separate" from other tenants in the buildings. Moreover, most of these buildings do not have or do not permit landline phones in the individual rooms/apartments, so the only type of phone service that the tenants can arrange must be cell phone service. Since these are all very low-income tenants, they need Lifeline services such as Tracfone/Safelink. Finally, many of these buildings are arbitrarily classified (via the post office or other data base) as "commercial" instead of "residential", despite the fact that the buildings are full of residential programs and tenants -- which has created another layer of barriers for people living in these buildings to qualify for Tracfone's Safelink Lifeline service.

2) People living in staffed group home/congregate living/supported housing programs, many of whom are placed in these programs by various state agencies (such as state departments of mental health, mental retardation, head injury programs, addiction

recovery programs, etc.), who may all share the same address, but who are unrelated to each other, and not a part of the same economic "household" or "family". This highlights the inequity of the application of “one-per-household” rule in group homes. Whether one person living in such a group home may have Lifeline wireless service has zero bearing on whether another person living in the same residential program financially qualifies and requires such service.

3) People living in homeless and/or domestic violence shelters, who are obviously unrelated to each other and not in the same "family" or "household", despite being temporarily sheltered in the same location. As stated in #1 above, many of these types of shelters do not permit residents to have access to landline phone service. Yet, as discussed above, these are exactly the consumers that need affordable telephone service provided through the Lifeline program for their health, safety and well-being.

4) People living in settings such as assisted living facilities, nursing homes, rest homes, and other long term care facilities, who may have the same "address", but who are not within the same "family" or "household".⁹

These descriptions above highlight the problem in allowing only one household per address to get Lifeline service. While it may be reasonable to limit a single family to having only one Lifeline-subsidized phone line, there is no reason to apply a "one-per-address" rule that arbitrarily excludes Lifeline-eligible and distinct families in group housing from obtaining this

⁹ For example, we have heard an anecdote about of group of elderly retired nuns in a Catholic retirement setting who could not qualify for Safelink Lifeline because of the “one-per-household” rule.

service. It is imperative for the Commission to clarify that financially eligible individuals must be able to apply and qualify for these services, irrespective of which of the myriad types of low income housing programs they may live in.

III. Ways ETCs May Offer Lifeline Service To Qualified Residents Of Group Living Facilities While Continuing To Comply With The One-Per-Household Rule

Traditionally, the Lifeline benefit provides eligible low-income consumers with discounts off the monthly cost of telephone service for a single telephone line in their principal residence.¹⁰ The Commission, in granting TracFone's petition for forbearance so it could offer wireless prepaid service as a Lifeline service also stated "in order to further strengthen the head of household requirement, we require that TracFone track its Lifeline customer's primary residential address and prohibit more than one supported TracFone service at each residential address."¹¹ We support the Commission providing a clarification that eligible consumers in group housing situations can receive Lifeline service. We also support the continued application of the Commission's or, where applicable, the state's certification and verification procedures in addition to the existing requirement for the pre-paid wireless ETCs to obtain customer certification that they are the head of the household and do not receive more than one Lifeline-supported service.

¹⁰ See 47 CFR § 54.401(a)(2); 1997 Universal Service Order, 12 FCC Rcd at 8957, para 341; 2004 Lifeline Order, 19 FCC Rcd at 8306, para 4.

¹¹ In the Matter of Federal-State Joint Board on Universal Service Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i) (rel. Sept. 2005) at para. 18.

IV. Whether And How ETCs That Provide Lifeline Service To Homeless Individuals Who Do Not Use Shelters Could Comply With The One-Per-Household Rule

Truly homeless families or individuals are as in need of a clarification to the “one-per-household” rule as those temporarily living in shelters or group living facilities. The difficulty in providing Lifeline service to homeless people lies in their lack of a traditional street address. Homelessness takes on many forms from residing with friends, families and neighbors for short periods of time to living out of structures that are not meant to be residential housing. However, the need for communicating by telephone is just as great, if not greater, for this population. We urge the Commission to reach out to community-based, non-profit groups and veteran’s organizations who have front-line interaction with the homeless, as well as those at HUD, the Veterans Administration and FEMA, which administers the Emergency Food and Shelter Program, to identify modifications to the administration of Lifeline that would remove barriers to Lifeline for those without a traditional residential street address.

V. Conclusion

In conclusion, NCLC, on behalf of GBLS, supports the narrow clarification that the Lifeline benefit applies to eligible households in group living facilities. This is consistent with the public policy reasons for universal service, as telecommunications connectivity is essential for those in assisted living facilities, who are among the most vulnerable and fragile households in society.

Respectfully submitted,

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