

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
TracFone Wireless, Inc.
File No.: EB-IHD-18-00027738
NAL/Acct. No.: 202032080017
FRN: 0006855639

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: April 1, 2020

Released: April 2, 2020

By the Commission: Commissioners Rosenworcel and Starks issuing separate statements.

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I. INTRODUCTION

1. The Commission’s Lifeline program plays a critical role in closing the digital divide for low-income Americans. With this Notice of Apparent Liability, we continue our commitment to curb waste, fraud, and abuse of this program and ensure that limited Universal Service Fund dollars are directed only toward qualifying low-income consumers.

2. This is a simple case: Under the Commission’s rules, Lifeline providers must submit claims for reimbursement only for eligible subscribers. In 2018, agents of TracFone Wireless, Inc., doing business as SafeLink Wireless (TracFone), apparently fabricated subscriber data in Florida and sought reimbursement for ineligible subscribers in Texas, causing TracFone to return \$1,272,754 in improperly received Lifeline support.

1 See USAC Disbursement Tool at https://apps.usac.org/li/tools/disbursements/default.aspx, True-Ups filed for 2018 Lifeline support claims in SAC 219003 (Florida) (last visited Mar. 11, 2020); USAC Disbursement Tool at https://apps.usac.org/li/tools/disbursements/default.aspx, True-Ups filed for 2018 Lifeline support claims in SAC

made between June and December of 2018 in those two states. As a result of that investigation, we find that TracFone apparently made thousands of improper claims for reimbursement. Specifically, TracFone apparently sought and obtained federal Lifeline support for several hundred improper claims for ineligible subscribers in Florida from June to September 2018 and sought and obtained federal Lifeline support for thousands of improper claims for ineligible subscribers in Texas in every month from June to December 2018.

3. For these apparent violations of the Commission's rules, we propose a \$6,013,000 forfeiture penalty. Based on our review of the facts and circumstances surrounding these apparent violations, we find that this proposed forfeiture penalty appropriately reflects the scope, duration, and seriousness of TracFone's apparent violations.

II. BACKGROUND

A. Federal Lifeline Program

4. The Lifeline program was originally established in 1985 to ensure that low-income consumers had access to affordable, landline telephone service.² Today, the Lifeline program provides qualifying low-income consumers discounts on voice or broadband Internet access service, as well as on bundled service, to ensure that all Americans can take advantage of the benefits that voice and broadband Internet access service bring, including being able to connect to jobs, family, education, health care providers, and emergency services.³

5. Under the Communications Act of 1934, as amended (Act), a service provider that seeks to participate in the Lifeline program and receive federal universal service support for providing Lifeline service must be designated as an eligible telecommunications carrier (ETC) by either a state commission or the Commission if the ETC is not subject to the state commission's jurisdiction.⁴ Once designated, an ETC may receive federal Lifeline support in an amount of up to \$9.25 per month, per subscriber.⁵ ETCs are required to pass these discounts along to eligible low-income consumers.⁶ Pursuant to section 54.407 of the Commission's rules, in order to receive reimbursement for offering Lifeline service, an ETC must, among other things, certify "as part of each request for reimbursement that it is in compliance with all of the [Commission's] rules"⁷ for the program.

449058 (Texas) (last visited Mar. 11, 2020); *see also* USAC Report on TracFone Florida Reimbursements (Jan. 31, 2020) (on file in File No. EB-IHD-18-00027738); USAC Report on TracFone Texas Reimbursements (Jan. 30, 2020) (on file in File No. EB-IHD-18-00027738).

² *See MTS and WATS Market Structure and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985).

³ *See* 47 CFR § 54.400(n) ("Voice Telephony services and broadband Internet access services are supported services for the Lifeline program.").

⁴ 47 U.S.C. § 254(e) ("[O]nly an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.").

⁵ 47 CFR § 54.403(a); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order, 27 FCC Rcd 6656, 6760, para. 241 (2012) (*2012 Lifeline Reform Order*) (noting that the costs of wireless handsets are not supported by Lifeline). An ETC may receive up to an additional \$25 per month if the qualifying low-income consumer resides on Tribal lands. *See* 47 CFR § 54.403(a).

⁶ *See* 47 CFR § 54.403(a); *2012 Lifeline Reform Order*, 27 FCC Rcd at 6681, para. 53.

⁷ 47 CFR § 54.407(d).

6. The Commission’s Lifeline rules establish certain requirements that ETCs must fulfill in order to claim and receive federal Lifeline support.⁸ Section 54.407(a) of the Commission’s rules states that Lifeline support shall be paid to an ETC “based on the number of actual qualifying low-income consumers it serves directly as of the first day of the month.”⁹ And the key elements of our rules prescribing which customers can be claimed by ETCs for reimbursement for providing discounted Lifeline service are the following: (1) disbursements of Lifeline support can only be based on the number of “actual qualifying low-income consumers” served by an ETC as that term is defined in our rules,¹⁰ (2) such qualifying low-income consumers must be served directly by the ETC as of the first day of the month, and (3) such consumers must have been determined to be eligible.¹¹

7. ETCs are required to “implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.”¹² In particular, ETCs must confirm that a consumer is an actual “qualifying low-income consumer” meeting the eligibility criteria set forth in section 54.409 of the Commission’s rules.¹³ Section 54.409 requires either a household income at or below 135% of the Federal Poverty Guidelines (income-based eligibility), or that someone in the consumer’s household receives benefits from one of the following federal assistance programs (program-based eligibility): Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit.¹⁴ To qualify, the consumer “must not already be receiving a Lifeline service” and cannot receive more than one Lifeline-supported service at a time, either individually or within a group of individuals who live together at the same address as one economic unit (defined in our rules as a “household”).¹⁵ In other words, the Commission’s rules prohibit a consumer from receiving duplicate support.¹⁶ Moreover, pursuant to section 54.410(d) of the rules, ETCs must ensure that a prospective subscriber has certified his/her eligibility to receive Lifeline

⁸ See 47 CFR §§ 54.400–54.422.

⁹ 47 CFR § 54.407(a).

¹⁰ *Id.*; see also 47 CFR §§ 54.409 (establishing the criteria to constitute a “qualifying low-income consumer”); 54.410(b)–(c) (establishing procedural requirements for determining whether a consumer is a qualifying low-income consumer).

¹¹ See 47 CFR §§ 54.400(a), 54.407(a), 54.409.

¹² 47 CFR § 54.410(a).

¹³ 47 CFR § 54.409(c).

¹⁴ 47 CFR §§ 54.400(a), 54.409.

¹⁵ 47 CFR § 54.409(c).

¹⁶ 47 CFR §§ 54.400(h); 54.409(c). Since 2011, the Commission has addressed potential waste, fraud, and abuse in Lifeline by preventing duplicate payments for multiple Lifeline-supported services to the same individual. See, e.g., *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order, 26 FCC Rcd 9022–23, 9026, paras. 1, 7 (2011) (*Lifeline Duplicates Order*) (clarifying that each eligible Lifeline consumer is entitled to only one Lifeline benefit); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 28 FCC Rcd 9057 (WCB 2013) (*2013 Lifeline Reform Order*) (codifying the requirement that ETCs verify a Lifeline subscriber’s eligibility before activating service); *2012 Lifeline Reform Order*, 27 FCC Rcd at 6662–67, paras. 11–18, and 6689, para. 74, n.192 (emphasizing the restriction on duplicates and moving the rule from section 54.401(a) to revised section 54.409(c)); see also *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 17-287, 11-42, 09-197, Fifth Report and Order, 34 FCC Rcd 10886, 10922–24, paras. 87-91 (2019) (*2019 Lifeline Reform Order*) (adopting enrollment process improvements to assist USAC’s efforts to detect improper duplicate addresses among Lifeline subscribers in the NLAD).

service.¹⁷ The Commission's rules strictly prohibit an ETC from seeking reimbursement for a subscriber unless the ETC has confirmed that subscriber's eligibility to receive Lifeline service.¹⁸

8. As the administrator of the federal universal service programs, including the Lifeline program, the Universal Service Administrative Company (USAC), collects and distributes universal service funds.¹⁹ In the *2012 Lifeline Reform Order*, the Commission established the National Lifeline Accountability Database (NLAD), a system used by USAC to receive and process subscriber data and prevent ETCs from enrolling a new subscriber without first confirming that the subscriber's household does not already receive Lifeline service.²⁰

9. In states using the NLAD, ETCs submit claims for Lifeline reimbursement to USAC based on subscriber data contained in the NLAD.²¹ To promote efficiency and ease of administration of the Lifeline eligibility rules,²² support payments are based on the number of actual qualifying low-income customers being served by an ETC on the "snapshot date" for that month, which is taken on the first of the month and shows the ETC's subscriber count for the prior month.²³ Before the ETC provides this data to USAC, it must review the data to validate the subscribers for which it is requesting reimbursement.²⁴ Thus, an ETC may only make claims for subscribers actually determined to be eligible, and not for those it knows or should have known are ineligible.

10. In adopting regulations governing the NLAD in the *2012 Lifeline Reform Order*, the Commission recognized that a number of states had developed their own systems to check for ineligible and duplicate Lifeline support and did not want to inhibit those efforts.²⁵ The Commission therefore provided a mechanism for a state to "opt out" of the NLAD by certifying to the Commission that it has "a comprehensive system in place to prevent duplicative federal Lifeline support that is at least as robust as

¹⁷ 47 CFR § 54.410(d).

¹⁸ See 47 CFR §§ 54.410(b)(i), (c)(i).

¹⁹ 47 CFR § 54.702. See <https://www.usac.org/about/> (last visited Mar. 11, 2020).

²⁰ See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6734, para. 179; 47 CFR § 54.404(b) (prescribing steps for ETCs to check the NLAD to determine whether providing a prospective subscriber with a Lifeline benefit would result in duplicative support); see also *Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking to Opt Out of National Lifeline Accountability Database*, Public Notice, 27 FCC Rcd 12321 (WCB 2012).

²¹ *Wireline Competition Bureau Provides Guidance on the Lifeline Reimbursement Payment Process Based on NLAD Data*, Public Notice, 33 FCC Rcd 128 (WCB 2018) (*Reimbursement Process PN*).

²² See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7898, paras. 241-42 (*2015 Lifeline Reform Order*).

²³ *Reimbursement Process PN*, 33 FCC Rcd at 128; 47 CFR § 54.407(a).

²⁴ *Id.*

²⁵ See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6752, para. 221. As the Wireline Competition Bureau recently announced, these systems remained intact as the Lifeline National Eligibility Verifier launched in Texas in December 2019, but with additional validations performed by the National Verifier prior to disbursing funds to the ETCs. See *Wireline Competition Bureau Announces the Next National Lifeline Eligibility Verifier Launch in Three States*, Public Notice, DA 19-1290 (WCB Dec. 18, 2019). During the time period at issue in this Notice of Apparent Liability (*i.e.*, June to December 2018), the National Verifier was not yet operational in Texas or Florida.

the system adopted by the Commission,” and that incorporates information from all ETCs receiving Lifeline support within the state.²⁶

11. In accordance with section 54.410, where a state agency or state Lifeline administrator is responsible for the determination of a subscriber’s eligibility, before an ETC may seek Lifeline reimbursement for providing Lifeline-supported service to a customer, it must receive from the state Lifeline administrator or other state agency either: (1) notice that the prospective subscriber meets the income-based eligibility criteria and a copy of the individual’s eligibility certification,²⁷ or (2) notice that the prospective subscriber meets the program-based eligibility criteria and a copy of the individual’s eligibility certification.²⁸ Furthermore, the ETC must securely retain all information and documentation provided by the state Lifeline administrator or other state agency consistent with the Commission’s Lifeline recordkeeping requirements in section 54.417.²⁹

12. For ETCs in NLAD opt-out states, either the state or ETC submits to USAC a file containing the required subscriber data.³⁰ If the state provides the data file to USAC, the ETC is required to review the data file and remove those subscribers from the data file for which it is not requesting reimbursement and provide a reason code to USAC for subscribers who are not being claimed.³¹ ETCs in NLAD opt-out states are also required to review and certify the requested reimbursement amount associated with each subscriber.³²

B. Texas Lifeline Eligibility Oversight

13. The Public Utility Commission of Texas oversees the state system to guard against improper state and federal Lifeline support claims and determine subscriber eligibility.³³ Texas opted out of the NLAD by providing the required certification to the Commission and receiving Commission approval.³⁴ In Texas, during the time period covered by this NAL, consistent with the Commission’s rules, the state Lifeline administrator had its own comprehensive system in place to determine subscriber eligibility for the federal Lifeline program and its own state Lifeline program.³⁵ Under that system and the Commission’s rules, an ETC may only make claims for actual qualifying low-income customers, as

²⁶ 47 CFR § 54.404(a). The Commission has been able to build and expand its relationship with state commissions, which play a key role in enhancing Lifeline program integrity. See *2019 Lifeline Reform Order*, WC Docket No. 11-42, 34 FCC Rcd at 10910, 10913, paras. 58, 62.

²⁷ 47 CFR § 54.410(b)(2).

²⁸ 47 CFR § 54.410(c)(2).

²⁹ 47 CFR §§ 54.410(b)(2)(iii) and (c)(2)(iii).

³⁰ See *Reimbursement Process PN*, 33 FCC Rcd at 128.

³¹ *Id.*

³² *Id.* at 129.

³³ Tex. Util. Code Ann. § 52.002 (West) (Public Utility Regulatory Act or PURA); 16 Texas Admin. Code § 26.412. In Texas, participating carriers are designated as eligible to receive Texas Universal Service Funds pursuant to section 26.412 of the Texas Administrative Code. 16 Tex. Admin. Code § 26.412(c). Texas uses the term “Eligible Telecommunications Providers” instead of “eligible telecommunications carriers” or “ETCs” to describe participating providers in the state Lifeline program. For convenience, we refer herein to such providers as ETCs.

³⁴ See Amendment to the Petition to Opt-Out of the National Database Pursuant to CFR 47 § 54.404(a) by the Public Utility Commission of Texas, WC Docket Nos. 11-42 *et al.*, CC Docket No. 96-45 (filed Nov. 16, 2012) (amending Petition to Opt-Out of the National Database Pursuant to 47 CFR § 54.404(a) by the Public Utility Commission of Texas; WC Docket Nos. 11-42 *et al.*, CC Docket No. 96-45 (filed Sept. 16, 2012)) (automatically granted after 90 days).

³⁵ See 47 CFR §§ 54.410(b)(2), (c)(2).

confirmed by the Texas state administrator, that the ETC serves directly as of the first day of the month, and not for those it knows or should have known are ineligible or de-enrolled.³⁶

14. On behalf of the Public Utility Commission of Texas, Texas's Low-Income Discount Administrator (LIDA) determines whether the consumer meets both Texas's and the Commission's eligibility criteria for Lifeline support.³⁷ LIDA uses two review processes to make this eligibility determination: automatic enrollment and self-enrollment.³⁸ Under automatic enrollment, ETCs submit eligibility data for current and prospective Lifeline enrollees to LIDA each month.³⁹ This submission, which includes eligibility-related data such as customer names, addresses, dates of birth, Social Security numbers, and dates of service initiation, is also known as the LIDA "input file." LIDA compares the input file against state data (e.g., a monthly file from the Texas Health and Human Services Commission) identifying participants in qualifying programs or showing income eligibility.⁴⁰ Under the self-enrollment process, LIDA reviews applications received directly from individual applicants to ensure compliance with program requirements.⁴¹ LIDA reviews supporting documentation such as proof of qualifying program eligibility or income documentation and obtains self-enrolling customers' certifications of eligibility. LIDA then combines the two lists resulting from the automatic and self-enrollment processes and executes a matching process to identify and remove any duplicates.⁴² As part of its duplicate resolution processes, LIDA also checks the subscriber lists of ETCs in Texas against each other to eliminate duplicates.⁴³

³⁶ See 47 CFR §§ 54.407(a); 54.410(a), 54.410(b)(2), (c)(2).

³⁷ See Pub. Util. Comm'n of Tex., Contract No. 473-15-00330 Between The Public Utility Commission of Texas and Solix, Inc., www.puc.texas.gov/agency/resources/reports/fiscal/contracts/473-15-00330_Solix_LIDA.pdf (last visited Mar. 11, 2020) (LIDA Contract) (contract dated Sept. 31, 2015, designating Solix, Inc. Low-Income Discount Administrator responsible for managing the telephone discount matching processes). Texas requires that: "(1) The customer's household income is at or below 150% of the federal poverty guidelines as published by the United States Department of Health and Human Services and updated annually; (2) A customer who receives benefits from or has a child that resides in the customer's household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance, Low Income Home Energy Assistance Program, [Veterans Pension and Survivors Benefit Program], or health benefits coverage under the State Child Health Plan under Chapter 62, Health and Safety Code, National School Lunch Program--Free Lunch Program, Temporary Assistance for Needy Families; or (3) A customer is an eligible resident of Tribal lands" 16 Tex. Admin. Code § 26.412(d). See also "LITE-UP Texas TSP Requirements," from Jay Stone, LIDA Program Administrator, to Telephone Companies Participating in the LITE-UP Texas Program at 2 (Oct. 6, 2015) (*Texas TSP Instructions*); "LITE-UP Texas TSP Requirements – Pre-Paid Lifeline Supplement," from Jay Stone, LIDA Program Administrator, to Telephone Companies Providing Lifeline Support Via pre-paid Cell Service at 2 (Feb. 17, 2016) (*Texas TSP Instructions Supplement*) (on file in File No. EB-IHD-18-00027738). LIDA determines whether the customer is approved for the Texas state Lifeline program (household income of between 136%-150% of the Federal Poverty Guidelines), or both state and federal guidelines (household income of between 0% - 135% of the Federal Poverty Guidelines). See *Texas TSP Instructions Supplement* at 2.

³⁸ 16 Tex. Admin. Code §§ 26.412(a), (e) and (g); LIDA Contract at Attach. A (Statement of Work), available at www.puc.texas.gov/agency/resources/reports/fiscal/contracts/473-15-00330_Solix_LIDA.pdf (last visited Mar. 11, 2020). See also Comments of Solix, Inc., Lifeline and Link Up Reform and Modernization, WC Dkt. No. 11-42, et al., at 3-8 (filed Aug. 31, 2015).

³⁹ See 16 Tex. Admin. Code § 26.412(g)(2)(iii).

⁴⁰ See *Texas TSP Instructions* at 2; *Texas Pre-paid Supplement* at 2.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Texas Pre-paid Supplement* at 2.

15. After LIDA confirms the eligibility of individuals on each ETC's input file and completes its duplicate resolution processes, it provides each ETC with an end-of-month "discount eligibility file," or list, of its company-specific subscribers that LIDA has determined are eligible to receive a Lifeline discount for the next month.⁴⁴ LIDA explicitly instructs every Texas ETC that this "discount eligibility file will be made available to the Telephone Companies via the LIDA . . . site. . . . no later than 11:00 a.m. CST on the last working day of the month."⁴⁵ By providing the end-of-month list, LIDA specifically identifies the customers that it has determined meet all of the eligibility criteria, including that the customer has either met the income requirements or participates in a qualifying program, and that the customer does not already receive Lifeline service. In other words, the primary purpose of the end-of-month list is to identify the customers for whom the ETC may claim for Lifeline support.

16. The Texas process dovetails with USAC's procedures. Specifically, after LIDA provides the end-of-month list to the ETC, the ETC submits to USAC the subscribers from that list that the ETC actually served during the month at issue.⁴⁶ LIDA's end-of-month list not only contains subscribers deemed eligible, but is also scrubbed for duplicates. Accordingly, LIDA's end-of-month list represents the universe of subscribers that an ETC in Texas could submit to USAC's Lifeline Claims System in a given month. Thus, a Texas ETC may only make claims for subscribers actually determined to be eligible, as per the LIDA end-of-month list, and not for those it knows or should have known do not appear on that list.⁴⁷

C. TracFone's 2018 Lifeline Service in Florida and Texas

17. TracFone provides wireless Lifeline service under the SafeLink Wireless brand⁴⁸ to millions of low-income households in 42 states, including Florida and Texas, as well as the District of

⁴⁴ 16 Tex. Admin. Code § 26.412(g)(2)(iv) (ETCs' service obligation is triggered by receiving the monthly update provided by the LIDA). This list is made available according to the schedule posted by LIDA on the Texas website. See Public Util. Comm'n of Tex., *Prepaid Schedule – 2018/19*, http://www.puc.texas.gov/industry/communications/forms/Lifeline/TSP_FY_19_Prepaid.pdf (last visited Mar. 11, 2020) (announcing dates for ETCs to submit customer data to LIDA and availability of lists of customers approved for Lifeline discounted service); Pub. Util. Comm'n of Tex., "2017-18 TSP Schedule" (on file in File No. EB-IHD-18-00027738) (same); *Texas TSP Instructions* at 3; *Texas TSP Instructions Supplement* at 3 (providing overview of eligibility process and "dates of importance"). LIDA also maintains an application programming interface (API) that enables ETCs to conduct "near real-time" verifications of Lifeline customer eligibility and to check whether a customer is receiving a Lifeline discount from another service provider. See *LIDA Contract*, Attach. A, Statement of Work. These "near real-time" eligibility checks are informational in nature and do not authorize the ETC to make any claims. The end-of-month list, which is produced by LIDA and is placed in the ETCs' folder on the LIDA website, is determinative and supersedes the near real-time checks made throughout the month using the API. See *Texas TSP Instructions to ETCs* at 1 ("The LIDA will notify the Telephone Company when the list of customers eligible for the discount is available").

⁴⁵ 16 Tex. Admin. Code § 26.412(g)(2)(iv).

⁴⁶ See 47 CFR § 54.407(a) ("Universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month.")

⁴⁷ See 47 CFR §§ 54.410(b)(2), (c)(2) (before an ETC may seek Lifeline reimbursement, it must receive from the state Lifeline administrator or other state agency, *inter alia*, either (1) notice that the prospective subscriber meets the income-based eligibility criteria or (2) the program-based eligibility criteria set forth in 47 CFR § 54.409).

⁴⁸ TracFone is a Delaware corporation headquartered in Miami, Florida. See Delaware Secretary of State, Division of Corporations, TracFone Wireless, Inc., File No. 2782013 (formed July 30, 1997). A wholly-owned subsidiary of the ninth largest phone company in the world, América Móvil S.A.B. de C.V., TracFone Wireless is the largest "no contract" cellular service provider in the U.S. with over 20 million subscribers. SafeLink Wireless, *About Us*,

Columbia and Puerto Rico.⁴⁹ In Florida, TracFone submits claims for Lifeline reimbursement to USAC based on subscriber data contained in the NLAD. In Texas, TracFone submits its monthly claims to the USAC's Lifeline Claims System and must do so based on the end-of-month list provided by LIDA.

18. In May 2018, USAC identified a group of claims made by TracFone in January 2018 that were potentially fraudulent or erroneous duplicates of existing Florida subscribers.⁵⁰ On August 31, 2018, USAC notified the Commission's Enforcement Bureau (Bureau) that TracFone's claims for subscribers in Texas that appeared to seek more Lifeline support than was authorized by the Public Utility Commission of Texas' LIDA.⁵¹ The Bureau launched an investigation into TracFone's Lifeline service in both states.⁵²

1. TracFone's Lifeline Service in Florida

19. In its Letter of Inquiry (LOI) responses, TracFone admitted that its sales agents had improperly enrolled subscribers in Florida into the Lifeline program.⁵³ TracFone's admission confirmed USAC's allegation that certain TracFone "subscribers" appeared to be fictitious accounts created by manipulating the eligibility information of existing TracFone subscribers.⁵⁴ Specifically, TracFone discovered that several agents had found a way to misuse Lifeline enrollees' dependents' information to populate other enrollment applications.⁵⁵ These agents apparently altered portions of the dependents' beneficiary data, such as individual digits in dates of birth or Social Security numbers.⁵⁶ The agents apparently used the dependents' identifying information to enroll multiple members of the same household to generate additional sales.⁵⁷ And TracFone apparently compensated its Lifeline sales agents

<https://www.safelinkwireless.com/Enrollment/Safelink/en/Web/www/default/index.html#!/aboutUs> (last visited Mar. 11, 2020) (SafeLink Website Description).

⁴⁹ See e.g., Letter from Mitchell F. Brecher, Counsel for TracFone, to Mindy Littell, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, at 7-8 (Nov. 20, 2018) (Nov. 20 LOI Response) (on file in File No. EB-IHD-18-00027738); *SafeLink Website Description*; "TracFone Wireless, Inc.'s Petition for Designation as a Lifeline Broadband Provider," WC Docket No. 09-197 at 3 (Oct. 31, 2016); Fla. Pub. Svc. Comm'n, Order No. PSC-08-0418-PAA-TP (June 23, 2008); Pub. Util. Comm'n of Texas, Dkt. No. 36646 (June 18, 2009).

⁵⁰ See Letter from Erica Myers, Deputy General Counsel, USAC, to Keith Morgan, Deputy Bureau Chief, FCC Enforcement Bureau, at 1 (May 14, 2018) (on file in File No. EB-IHD-18-00027738) (*USAC Florida Referral*).

⁵¹ See Letter from Erica Myers, Deputy General Counsel, USAC, to Kalun Lee, Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau, at 2 (Aug. 31, 2018) (on file in File No. EB-IHD-18-00027738) (*USAC Texas Referral*). We note that while USAC's review of Texas support claims covered twelve months, the Bureau ultimately focused its inquiry on reimbursement claims TracFone made for customers from June through December 2018 to stay within the applicable one-year statutory limitations period.

⁵² See Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Stephen Athanson, Senior Attorney – Regulatory, TracFone (Sept. 21, 2018) (on file in File No. EB-IHD-18-00027738) (LOI). TracFone submitted a response to the LOI on November 20, 2018. See Nov. 20 LOI Response at 5-6.

⁵³ See Nov. 20 LOI Response at 12-13; March 15 LOI Response at 3. Bureau staff requested additional information about the apparently improper claims for support in Florida, which TracFone provided in a letter dated March 15, 2019. Letter from Mitchell F. Brecher, Counsel for TracFone, to Mindy Littell, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, at 5-6 (Mar. 15, 2019) (March 15 LOI Response) (on file in File No. EB-IHD-18-00027738).

⁵⁴ *USAC Florida Referral* at 1; Nov. 20 LOI Response at 12-13; March 15 LOI Response at 2-4.

⁵⁵ *Id.*

⁵⁶ Nov. 20 LOI Response at 13.

⁵⁷ March 15 LOI Response at 4.

during the relevant time period by paying a commission on new enrollments.⁵⁸ Thus, the agents apparently earned money by fabricating the new enrollments and TracFone benefited by receiving Lifeline support by submitting claims for them. TracFone

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20. On November 19, 2018, the day before their initial LOI Response to the Enforcement Bureau, TracFone . In November 2018, TracFone also submitted amended reimbursement claims,⁶⁰ returning to USAC \$101,143 in Lifeline disbursements for those apparently ineligible Florida subscribers it claimed during 2018.⁶¹

2. TracFone's Lifeline Service in Texas

21. In January 2018, USAC began requiring use of its Lifeline Claims System for NLAD opt-out states,⁶² and began performing checks to compare data from state agency-approved subscriber lists against claims and disbursement data from its Lifeline Claims System. For each month in 2018, USAC compared TracFone's federal Lifeline claims submitted to the Lifeline Claims System for Texas customers against the end-of-month determinative lists of TracFone's customers provided by LIDA.⁶³ Through this process, USAC determined that TracFone had received federal Lifeline payments for thousands more Texas subscribers per month in 2018 than had been approved by LIDA.⁶⁴ After working with Texas to identify claims for customers who were not on the LIDA end-of-month lists from June through December 2018, USAC determined TracFone claimed support for 5,469 ineligible subscribers in June; 4,674 ineligible subscribers in July; 4,334 ineligible subscribers in August; 3,128 ineligible subscribers in September; 2,870 ineligible subscribers in October; 2,084 ineligible subscribers in November; and 2,250 ineligible subscribers in December.⁶⁵ Thus, USAC determined that TracFone appeared to have overclaimed \$229,483 in federal Lifeline support for Texas subscribers in those seven months.⁶⁶

⁵⁸ See TracFone Comments, *Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, 2 (Feb. 18, 2020) (asserting that TracFone needed additional time to comply with the *2019 Lifeline Reform Order's* prohibition on providing commissions to Lifeline program enrollment representatives by implementing a replacement for TracFone's existing representative compensation regime); TracFone Comments, *Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, at 47 (Feb. 21, 2018) (stating that TracFone "compensat[ed] its agents through a commission-based system").

⁵⁹ See March 15 LOI Response at 1-2; Nov. 20 LOI Response at Exh. 30. In this Notice of Apparent Liability for Forfeiture and Order, information for which TracFone has requested confidential treatment is set off by brackets and will be redacted from the publicly available version of this Notice.

⁶⁰ March 15 LOI Response, at 5-6.

⁶¹ See USAC Disbursement Tool at <https://apps.usac.org/li/tools/disbursements/default.aspx>, True-Ups filed for 2018 Lifeline support claims in SAC 219003 (Florida) in November 2018 (last visited Mar. 11, 2020). See also USAC Report on TracFone Florida Reimbursements (Jan. 31, 2020) (on file in File No. EB-IHD-18-00027738).

⁶² See *Reimbursement Process PN*, 33 FCC Rcd at 128-129.

⁶³ See Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Mitchell F. Brecher, Counsel for TracFone, Att. 2 (Apr. 22, 2019) (on file in File No. EB-IHD-18-00027738).

⁶⁴ See *id.*

⁶⁵ USAC Report on TracFone Texas Claims (Feb. 6, 2020) (on file in File No. EB-IHD-18-00027738).

⁶⁶ *Id.*

22. After receiving LOIs from the Enforcement Bureau, TracFone returned \$1,171,611 to USAC for Texas customers claimed during 2018.⁶⁷ Coordinating extensively with the Public Utility Commission of Texas in the investigation, the Bureau focused on Lifeline claims that TracFone made for Texas subscribers from June through December 2018.⁶⁸

III. DISCUSSION

23. Based on evidence developed through the Bureau's investigation, TracFone apparently willfully and repeatedly violated sections 54.407(a), 54.410(a), 54.410(b), and 54.410(c) of the Commission's rules.⁶⁹ TracFone made thousands of improper claims for Lifeline support during 2018, thereby receiving more than a million dollars from the Universal Service Fund that it should not have received. Specifically, TracFone sought and received federal Lifeline support for fictitious or duplicate Florida subscribers because their enrollments were manipulated by sales agents. In Texas, TracFone sought and received federal Lifeline support for subscribers who were not found to be eligible by the Public Utility Commission of Texas. Thus, TracFone apparently made improper claims for Lifeline support in Florida and Texas for subscribers who were not actually determined to be eligible in violation of the Commission's rules.

A. TracFone Apparently Submitted Improper Claims for Lifeline Support in Florida

24. TracFone apparently made 873 improper claims for Lifeline support in Florida from June through September of 2018. The Bureau's investigation focused on 873 improper claims, for service to 272 different subscribers.⁷⁰ Specifically, TracFone submitted claims for apparently fictitious or duplicate customers during the following months of 2018: June (269 claims), July (240 claims), August (189 claims), and September (175 claims). All of these claims apparently contained the eligibility documentation of beneficiaries of other existing individual TracFone subscribers, including the last four digits of Social Security Numbers, but with altered dates of birth and other data points.⁷¹ For example, TracFone claimed support for seven customers in Florida at different addresses using the beneficiary name Y W , all seven of whom have birth dates in July 1978 *and* share the same last four Social Security Number digits. Another example involves six customers in Florida at different addresses using the name A A , all six of whom have birth dates in October 1979 *and* share the same last four Social Security Number digits. TracFone continued to claim support for these improper accounts until it de-enrolled them on November 19, 2018.⁷²

⁶⁷ See USAC Disbursement Tool at <https://apps.usac.org/li/tools/disbursements/default.aspx>, True-Ups filed for 2018 Lifeline support claims in SAC 449058 (Texas); USAC Report on TracFone Texas Reimbursements (Jan. 31, 2020) (on file in File No. EB-IHD-18-00027738).

⁶⁸ See USAC Disbursement Tool at <https://apps.usac.org/li/tools/disbursements/default.aspx>, True-Ups filed for 2018 Lifeline support claims in SAC 449058 (Texas). On April 22, 2019, the Bureau issued a supplemental LOI to TracFone seeking information about the apparently improper claims in Texas. See April 22 LOI; July 8 LOI Response at 1 (amending its response to the supplemental LOI with revised data about the reimbursements it made to USAC). On June 24, 2019, TracFone responded to the supplemental LOI, and included information about and associated reimbursements to USAC. June 24 LOI Response.

⁶⁹ 47 CFR §§ 54.407(a), 54.410(a), (b), (c).

⁷⁰ See Nov. 20 LOI Response, Exh. 30.

⁷¹ See Nov. 20 LOI Response at 12-13, Exh. 30; March 15 LOI Response at 2-3.

⁷² See Nov. 20 LOI Response at Exh. 30.

25. TracFone has admitted that its agents fabricated enrollment data resulting in TracFone apparently receiving Lifeline support for these fictitious or duplicate subscribers.⁷³ We thus find that TracFone apparently willfully and repeatedly violated sections 54.407(a), 54.410(a), 54.410(b), and 54.410(c) of the Commission's rules with respect to these 873 claims.⁷⁴ Indeed, TracFone is responsible for the actions of those that act on its behalf. Section 217 of the Act provides that "the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person."⁷⁵ And the Commission has consistently found that "[l]icensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors," and has held the regulated party responsible for violations of the Commission's rules committed by agents.⁷⁶

B. TracFone Apparently Submitted Improper Claims for Lifeline Support in Texas

26. TracFone apparently made thousands of improper claims for Lifeline support in Texas from June through December of 2018. Specifically, TracFone apparently made 24,809 claims for Lifeline support without first receiving a determination by LIDA that the individual was eligible and not already receiving Lifeline service from another provider. TracFone apparently made these claims as follows: June (5,469), July (4,674), August (4,334), September (3,128), October (2,870), November (2,084), December (2,250).⁷⁷

27. Section 54.410(a), (b)(2), and (c)(2) of our rules prohibit an ETC from claiming reimbursement for Lifeline service to a subscriber unless the carrier receives notice that the customer has met either the income-based eligibility criteria or the program-based eligibility criteria prescribed by section 54.409 of the Commission's rules. In Texas, LIDA's end-of-month determinations of customer eligibility in accordance with the federal Lifeline requirements are determinative for Lifeline claims in Texas.⁷⁸ An ETC cannot submit a claim for reimbursement for Lifeline subscribers that have not been determined to be eligible by the state administrator. Without LIDA's actual end-of-month determination of customer eligibility, a customer is not deemed an actual "qualifying low-income consumer" as that term is defined in section 54.400(a) of the Commission's rules.⁷⁹

28. Each month, LIDA provided TracFone with an end-of-month determinative list containing in accordance with LIDA's published schedule⁸⁰ approved, eligible subscribers as well as a list

⁷³ See Nov. 20 LOI Response at 12-13; March 15 LOI Response at 2-3.

⁷⁴ We also note that TracFone's later reimbursement for such improper claims, after being caught, does not mitigate the rule violations uncovered by the Enforcement Bureau's investigation.

⁷⁵ 47 U.S.C. § 217.

⁷⁶ 2012 *Lifeline Reform Order*, 27 FCC Rcd at 6708-09, para. 110. See also *FCC Enforcement Advisory: Lifeline Providers Remain Liable for Ensuring the Eligibility of Their Subscribers to Receive Lifeline Service*, 34 FCC Rcd 11934, 11936 & note 16 (EB Dec. 9, 2019); *FCC Enforcement Advisory, Lifeline Providers are Liable if Their Agents or Representatives Violate the FCC's Lifeline Program Rules*, 28 FCC Rcd 9022 (EB June 25, 2013).

⁷⁷ See USAC Table of Improper Texas Claims (on file in File No. EB-IHD-18-00027738) (Jan. 31, 2020).

⁷⁸ See 47 CFR §§ 54.410(b)(2) and 54.410(c)(2). In fact, this reasoning applies to every state that conducts its own eligibility determination process.

⁷⁹ 47 CFR § 54.400(a). A qualifying low-income consumer is "a consumer who meets the qualifications for Lifeline, as specified in § 54.409."

⁸⁰ See Public Util. Comm'n of Tex., *Prepaid Schedule – 2018/19*, <http://www.puc.texas.gov/industry/communications/forms/Lifeline/>

of subscribers who are no longer eligible and who should be de-enrolled. Nevertheless, based on a comparison of LIDA's end-of-month determinative list with TracFone's submissions to USAC, between June and December 2018, TracFone apparently made thousands of claims for customers who were not on the eligible customer list for each month claimed.

29. We thus find that, in addition to apparently lacking policies and procedures to ensure it only claimed Lifeline support for eligible subscribers,⁸¹ TracFone apparently violated section 54.407(a) because it claimed Lifeline support for customers who did not meet the federal Lifeline eligibility requirements according to Texas's LIDA. We also find that the company violated section 54.410(b)(2) or (c)(2) because it made 24,809 claims for Lifeline support from June to December of 2018 without first obtaining either (1) proper income-eligibility determinations from Texas or (2) proper program-based eligibility determinations from Texas.

30. In its LOI responses, TracFone does not dispute that it made these claims for support. Instead, TracFone contends that it did not knowingly seek reimbursement for customers in excess of those authorized by Texas.⁸² We find this defense unavailing because TracFone willfully submitted the claims while certifying that all such claims were for eligible subscribers—and it knew, or should have known, that submitting claims for more subscribers than on the end-of-month determinative list that LIDA transmitted to TracFone would violate federal law.

IV. PROPOSED FORFEITURE

31. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”⁸³ For the violations at issue here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against a telecommunications carrier such as TracFone of up to \$204,892 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,048,915 for a single act or failure to act.⁸⁴ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁸⁵ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁸⁶ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious,

[TSP FY 19 Prepaid.pdf](#) (last visited Mar. 11, 2020); Pub. Util. Comm'n of Tex., “2017-18 TSP Schedule” (on file in File No. EB-IHD-18-00027738).

⁸¹ See 47 CFR § 54.410(a).

⁸² See June 24 LOI Response at 3-4 (stating its position that it did not knowingly seek reimbursement for Lifeline service that exceeded what was authorized by Texas).

⁸³ 47 U.S.C. § 503(b)(1)(B).

⁸⁴ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and a statutory maximum of \$1,000,000 for a single act or failure to act). See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 19-1325 (EB 2019); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 85 Fed. Reg. 2318 (Jan. 15, 2020) (setting January 15, 2020, as the effective date for the increases).

⁸⁵ 47 U.S.C. § 503(b)(2)(E).

⁸⁶ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.⁸⁷

32. The Commission has applied a forfeiture methodology in Lifeline cases designed to address and deter waste, fraud, and abuse by careless or manipulative ETCs seeking federal funds to which they are not entitled. If an ETC violates our rules and submits a claim for Lifeline support that it knew or should have known includes ineligible subscribers, and thus requests and/or receives more reimbursement from the Fund than the amount to which it is properly entitled, it undermines the Lifeline program. In the past, the Commission has proposed forfeitures against Lifeline service providers who improperly claim support for ineligible subscribers by using a base forfeiture of \$1,000 to \$5,000 per each ineligible subscriber claimed in a particular month.⁸⁸

33. Based on the facts and record in this case, we have determined that TracFone apparently violated sections 54.407(a), 54.410(a), 54.410(b), and 54.410(c) of the Commission's rules by claiming subscribers using partly or entirely fictitious data (in Florida) or that were not eligible under state and federal law (in Texas). Consistent with precedent, we propose a base forfeiture of \$1,000 per ineligible subscriber in the month with the highest number of ineligible claims. In Florida, TracFone apparently sought support for 269 ineligible subscribers in June 2018. In Texas, TracFone apparently sought support for 5,469 ineligible subscribers in June 2018.⁸⁹ Based on these numbers, we propose a base forfeiture of \$5,738,000.

34. We also propose an upward adjustment for TracFone's conduct in Florida. There, its agents (for whom TracFone is responsible) apparently fabricated enrollment data to increase TracFone's subscriber base (and thus reimbursements from the Lifeline program). Although any waste, fraud, or abuse of the federal support distributed by the Fund is problematic, such willful deceit is especially egregious—and every dollar misdirected from the Lifeline program to carriers that violate our rules is a dollar that could instead have been used to make voice and broadband service more affordable for low-income Americans. We therefore propose an upward adjustment of \$275,000 (an upward adjustment equal to about 100% of the base forfeiture in Florida), increasing the total forfeiture to \$6,013,000. Imposing a significant forfeiture on rule violators such as TracFone should deter those service providers that fail to devote sufficient resources to ferreting out company practices resulting in overcollection violations.

35. This NAL will in no way foreclose the Commission or any other governmental entity from taking additional enforcement action and imposing additional forfeitures for other violations of the Lifeline rules, or preclude USAC from conducting audits or data validations to confirm compliance with program rules and verify Lifeline claims. Moreover, the penalties that result from this NAL are separate from any amounts that an ETC may be required to refund to USAC in order to make the Fund whole.

⁸⁷ *Id.*

⁸⁸ See *American Broadband NAL*, 33 FCC Rcd at para. 175; *Total Call Mobile, Inc.*, 31 FCC Rcd 4191, 4216, par. 90 (2016); *Easy Telephone Services*, 28 FCC Rcd 14433, 14438-39, para. 16 (2013); *TracFone IDV NAL*, 28 FCC Rcd 14478, 14483, para. 15 (2013).

⁸⁹ See 47 U.S.C. § 503(b)(4). For purposes of this NAL, we take action only with respect to those violations identified above. See Nov. 20 LOI Response, Exh. 30 (listing TracFone's improper Florida claims); USAC Table of Improper Texas Claims; *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14899-900, paras. 21-23 (2015); *Best Insurance Contracts, Inc.*, and *Philip Roesel*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 6403, 6414-15, note 82 (2017); *Adrian Abramovich, et al.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 5418, 5427, note 58 (2017).

V. REQUESTS FOR CONFIDENTIALITY

36. TracFone requests that most of the information it provided to the Commission be withheld from public inspection pursuant to section 0.459 of our rules, claiming the information is “highly confidential commercial, financial and personal information.”⁹⁰ With respect to the few pieces of information for which TracFone has requested confidential treatment that are set forth in this Notice of Apparent Liability, we conclude that there is a significant public interest in revealing this information to the public by publicly releasing an unredacted version of this Notice (except for the names and identifying information of individual subscribers). We further conclude that this interest outweighs whatever competitive harms to TracFone and others might result from the disclosure of this information, and therefore deny TracFone’s request with respect to the information contained in this Notice.

37. The Commission may publicly reveal even otherwise confidential business information if, after balancing the public and private interests at stake, it finds that it would be in the public interest to do so.⁹¹ At the outset, we find that where regulatees are alleged to have violated our rules, there is a public interest in disclosing the details of our decisions so that the public can better follow and understand our reasoning. This is all the more true when the issue involves monies from the public fisc. As the Commission had previously stated, the public has a strong interest in ensuring that Lifeline funds are properly allocated, and the Commission has taken many steps to protect against waste, fraud, and abuse in the Universal Service Fund’s Lifeline program.⁹² Those steps both bolster public confidence in the Lifeline program and increase accountability in the program.⁹³ There is therefore a strong public interest in ensuring, and in the public understanding the extent to which, providers of Lifeline services are complying with the Commission’s rules.⁹⁴ Just as the Commission has found that the public interest is served by making publicly available the detailed reports that Lifeline providers are required to file,⁹⁵ we find that generally making publicly available the factual information underlying our notices and

⁹⁰ Letter from Mitchell F. Brecher, Counsel for TracFone, to Mindy Littell, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, 1 (Nov. 20, 2018) (Nov. 20 Request) (on file in File No. EB-IHD-18-00027738); *see also* Letter from Mitchell F. Brecher, Counsel for TracFone, to Mindy Littell, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, 1-2 (Mar. 15, 2019) (March 15 Request) (on file in File No. EB-IHD-18-00027738); Letter from Mitchell F. Brecher, Counsel for TracFone, to Mindy Littell, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau at 1-3 (June 24, 2019) (June 24 Request) (on file in File No. EB-IHD-18-00027738); and Letter from Mitchell F. Brecher, Counsel for TracFone, to Mindy Littell, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, 1-2 (July 8, 2019) (July 8 Request) (on file in File No. EB-IHD-18-00027738).

TracFone also asserts that information submitted in connection with a Commission investigation is not routinely available for public inspection pursuant to section 0.457(d)(1)(iii) of the Commission’s rules, 47 CFR § 0.457(d)(1)(iii). Nov. 20 Request at 1.

⁹¹ *See Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 10-90 *et al*, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505, 7522-23, para. 40 & n. 100 (2019) (noting long-established authority to release even otherwise confidential information after a balancing of the public and private interests at stake); *American Broadband & Telecommunications Company and Jeffrey S. Ansted*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 10308, 10366, para. 184 (2018); *Chrysler v. Brown*, 441 U.S. 281, 292-94 (1979); *Schreiber v. FCC*, 381 U.S. 279, 291-92 (1965); 47 U.S.C. § 154(j) (“The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and the ends of justice.”); 47 CFR § 0.461(f)(4).

⁹² *See generally 2012 Lifeline Reform Order*, 27 FCC Rcd 6656.

⁹³ *2015 Lifeline Reform Order*, 30 FCC Rcd at 7821, para. 3.

⁹⁴ *Id.*, 30 FCC Rcd at 7913, para. 283.

⁹⁵ *Id.* at 7913, paras. 282-83.

enforcement orders regarding universal service programs is an essential safeguard in protecting those programs from waste, fraud, and abuse. We also find there is a strong public interest in having other Lifeline providers know the details of our decisions—both the evidence and our reasoning—so that they will better be able to engage in proper conduct.⁹⁶ And the public’s confidence in our decisions is significantly enhanced when it can see the facts on which they are based and the Commission’s full reasoning.

38. We further find that the benefits of revealing the information contained in this Notice, except for the names and identifying information of individual subscribers, greatly outweigh whatever competitive harms to TracFone that might result. The information at issue reveals some of the actions TracFone took when it learned it had sought reimbursement from the Lifeline program for ineligible subscribers, and the number of improperly enrolled subscribers in Florida. TracFone does not explain how revealing to the public and its competitors its responses to discovering that it had improperly received Lifeline funds would harm it competitively. With regard to the number of ineligible subscribers in Florida, revealing this number does not provide insight into the total number of TracFone’s Lifeline subscribers in Florida, nor its total number of overall subscribers in Florida. On the other hand, revealing the number of improperly enrolled subscribers does provide the public with an understanding of the extent of the problem and of the Commission’s efforts to curb fraud and abuse. Accordingly, balancing the public interests in disclosure described in this and the previous paragraph against the private interests at stake, we find that there is a strong public interest in favor of publicly releasing this information that outweighs TracFone’s private interests in not releasing it.⁹⁷

39. Because TracFone’s requests are being ruled on by the Commission, and not the Bureau, in the first instance, we will not release the unredacted version of this Notice for 10 business days to allow TracFone to file a petition for reconsideration; if TracFone avails itself of this opportunity, we will continue to withhold the information from public inspection until we have ruled on the petition(s).⁹⁸ If, after 10 business days, TracFone has not filed a petition for reconsideration or sought a judicial stay with regard to this partial denial of TracFone’s confidentiality request, the material will be made publicly available.⁹⁹

VI. ORDERING CLAUSES

40. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and 1.80 of the Commission’s rules,¹⁰⁰ TracFone Wireless, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six million, thirteen thousand dollars (\$6,013,000) for apparently willfully and repeatedly violating Sections 54.407(a), 54.410(a), 54.410(b), and 54.410(c) of the rules.¹⁰¹

⁹⁶ While the underlying order here is a Notice of Apparent Liability and not a forfeiture order, and thus does not finally adjudicate TracFone’s liability, it nonetheless sets forth the Commission’s reasoning and application of that reasoning to a set of alleged facts. We believe it is important for other Lifeline providers to understand the actions we believe are permissible and impermissible under our rules.

⁹⁷ See *2015 Lifeline Reform Order*, 30 FCC Rcd at 7913-14, paras. 282-84, where the Commission similarly found, after balancing the public and private interests at stake, a strong public interest to support releasing Nexus’s Form 555 information used in the Lifeline program.

⁹⁸ Cf. 47 CFR § 0.459(g).

⁹⁹ See 47 CFR §§ 0.455(g).

¹⁰⁰ 47 U.S.C. § 503(b); 47 CFR § 1.80.

¹⁰¹ 47 CFR §§ 54.407, 54.409, 54.410.

41. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the rules,¹⁰² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, TracFone **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 44 below.

42. TracFone Wireless, Inc., shall send electronic notification of payment to Mindy Littell, Enforcement Bureau, Federal Communications Commission, at Mindy.Littell@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),¹⁰³ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁰⁴

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹⁰⁵ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensingdatabases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

43. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.¹⁰⁶ If you have questions regarding payment

¹⁰² 47 CFR § 1.80.

¹⁰³ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

¹⁰⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

¹⁰⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁰⁶ See 47 CFR § 1.1914.

procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

44. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the rules.¹⁰⁷ The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and to Mindy Littell at Mindy.Littell@fcc.gov.

45. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

46. **IT IS FURTHER ORDERED**, pursuant to section 0.459(g) of the Commission's rules,¹⁰⁸ that the Requests for Confidential Treatment filed by TracFone Wireless, Inc. in this proceeding **ARE DENIED IN PART**, to the extent specified herein.

47. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by certified mail, return receipt requested, and first-class mail to Mitchell F. Brecher, Counsel for TracFone Wireless, Inc., Greenberg Traurig, LLP, 2101 L Street, NW, Suite 1000, Washington, DC 20037, and copies of the following documents shall be transmitted to Counsel for TracFone Wireless, Inc., via secure file transfer: USAC Table of Improper Texas Claims, USAC Report on TracFone Texas Claims, USAC Report on TracFone Texas Reimbursements, and USAC Report on TracFone Florida Reimbursements.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰⁷ 47 CFR §§ 1.16, 1.80(f)(3).

¹⁰⁸ 47 CFR § 0.459(g).

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *TracFone Wireless, Inc.*, File No.: EB-IHD-18-00027738.

When companies violate the rules of the Lifeline program, we need to make clear that there are consequences. With this Notice of Apparent Liability we do just that because we seek to hold accountable a company that appears to have violated our rules. As the enforcement process proceeds, it is imperative that we get to the bottom of what transpired here in order to make sure that it does not happen again.

But it is time to have a bigger conversation about Lifeline. There is a pandemic that is wreaking havoc on our health, our economy and our collective well-being. The news is dizzying. Last week, it was announced that 3.3 million people filed unemployment claims. That's a record. As the coronavirus places new strains on our economy and households across the country, we need to make sure that no one is left behind when it comes to communications. So we have an opportunity to lead with our humanity when it comes to Lifeline. We should seize it. We need to abandon the FCC's cruel policy proposals to cut off and restrict Lifeline and instead see how we can modernize the program and extend its reach. The FCC has done so before in the face of crisis. I hope that history will remember us for doing so again.

STATEMENT OF COMMISSIONER GEOFFREY STARKS

Re: *TracFone Wireless, Inc.*, File No. EB-IHD-18-00027738

As the effects of COVID-19 ripple through our economy, Lifeline will be more important than ever. Lifeline has the power to help millions of Americans stay connected while staying home—something we’re asking more and more Americans to do.

Safeguarding the program is more important than ever. Last week, roughly 3.3 million people filed for unemployment benefits—and we have yet to hit the peak of this pandemic. The FCC should be preparing for a significant increase in need for Lifeline support. We are also seeing reports of rising numbers of applications for benefits through the Supplemental Nutrition Assistance Program. More people qualifying for SNAP—and many other programs that help low-income people—means more households eligible for Lifeline.

In this time of crisis, the FCC should be expanding Lifeline’s reach and scope, including better promoting the program to ensure more qualifying families actually receive these benefits. According to the most recent publicly available USAC data (from 2018), there are about 9 million Lifeline subscribers. But USAC estimates that there are roughly 38 million households that are eligible for the program—and, for the reasons above we should expect that number to rise. The FCC must coordinate with states and ETCs to ensure they have the resources and expertise necessary to assist social service agencies, schools, homeless shelters, and other places that are trusted in communities across this country to get folks signed up. Given the requirements of social distancing, the FCC also needs to re-imagine how to make struggling Americans aware of the program while many physical spaces are closed or experiencing limitations.

To ensure that Lifeline can meet all of these needs, it is critical that we vigorously investigate violations of the program’s rules and apply penalties that both make the fund whole and deter future violations. I believe the proposed penalty here is appropriate, and particularly that the upward adjustment with regard to TracFone’s Florida conduct is warranted in light of the apparent deception the Commission’s investigation uncovered. Though that apparent fraud was egregious, it occurred before the new National Verifier and its tools for detecting these types of fraud were in place in Florida. I will continue to monitor the effectiveness of those tools at protecting this vital program.

I thank the staff of the Enforcement Bureau for their hard work on these important investigations.