

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
TRACFONE WIRELESS, INC.)	Docket No. 11-42
Petition for Declaratory Ruling)	
)	
_____)	

EMERGENCY PETITION FOR DECLARATORY RULING

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SUMMARY

TracFone Wireless, Inc. (“TracFone”) requests that the Commission issue a declaratory ruling on an emergency basis confirming that state laws and regulations that impose 911 taxes and fees on low-income Lifeline customers who receive no charge (*i.e.*, free) wireless Lifeline service (1) unlawfully reduce the value of the federal Lifeline benefits by imposing a state tax on those benefits (in one case, as high as 19 percent); and (2) impede the ability of Eligible Telecommunications Carriers (“ETCs”) offering no charge Lifeline service to fairly compete in the Lifeline service market. TracFone asks the Commission to issue a declaratory ruling preempting enforcement of such laws and regulations pursuant to the Supremacy Clause of the United States Constitution and Section 253 of the Communications Act of 1934, as amended.

Pursuant to Commission rules, ETCs receive \$9.25 per month per enrolled Lifeline customer from the federal Universal Service Fund (“USF”) so long as the ETCs pass through the full amount of the support to Lifeline customers. TracFone complies with the Commission’s rule by providing qualifying low-income households with free monthly service including a specified quantity of airtime minutes valued at \$9.25. To date, two states – Alabama and Indiana – have attempted to impose state 911 taxes and fees on no charge Lifeline service supported entirely by the USF. Unless the Commission preempts such state “money grabs” from the pockets of low-income households, there is a risk that other states may similarly attempt to tax federal Lifeline benefits.

Application of 911 taxes to Lifeline consumers who receive Lifeline service for no charge is unlawful whether the consumer or the consumer’s Lifeline service provider is liable for the tax. Under Alabama law, effective August 1, 2014, a Lifeline subscriber is required to pay a monthly 911 tax of \$1.75 associated with a Lifeline benefit valued at \$9.25. Application of the \$1.75 911 fee decreases the amount of the subscriber’s Lifeline benefit in violation of the

Commission rule requiring that each subscriber receive the full amount of Lifeline support and constitutes a 19 percent state tax on that federal benefit. Alabama Lifeline subscribers who purchase airtime cards in any given month are subject to multiple taxation because they also must pay a \$1.75 prepaid wireless 911 fee on each airtime purchase. Similarly, Indiana is imposing a \$0.50 per month tax on federal Lifeline benefits in addition to taxation of subsequent purchases of wireless airtime by Lifeline customers. If an ETC uses a portion of the funds it receives from the USF to pay those states' 911 taxes (by decreasing the number of monthly airtime minutes), then it would be passing through to the Lifeline customer less than the full amount of Lifeline support by reducing the value of the federal Lifeline benefit. In accordance with the Supremacy Clause of the U.S. Constitution, the Commission should preempt Alabama and Indiana laws to the extent that they apply to no charge Lifeline service because they conflict with Commission rules.

In addition, the Commission should preempt Alabama and Indiana laws imposing 911 taxes on no charge Lifeline subscribers to the extent those laws are interpreted to require ETCs to pay those taxes on behalf of their Lifeline customers from the providers' own resources. Under Section 253 of the Communications Act, the Commission has authority to preempt state laws which protect the public safety and welfare (such as laws related to 911 funding mechanisms) if those laws are not imposed on a competitively neutral basis. ETCs that provide no charge, non-billed Lifeline service lack effective means to collect 911 taxes from their customers. In contrast, ETCs with a billing relationship with their customers are able to collect the 911 taxes from those customers. The different treatment of providers of no charge, non-billed Lifeline service and providers of billed Lifeline service is not competitively neutral, and as such should be preempted pursuant to Section 253.

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TracFone Wireless, Inc. (“TracFone”), by its attorneys, pursuant to Section 1.2 of the Commission’s rules,¹ hereby requests the Commission to issue a declaratory ruling and that it do so on an expedited basis due to the emergency circumstances – circumstances which place in jeopardy the continued availability of Lifeline service to hundreds of thousands of low-income households in several states. TracFone asks the Commission to confirm that state laws and regulations as well as interpretations of state laws and regulations by state agencies and boards that purport to impose 911 taxes and fees on low-income Lifeline customers who receive no charge (*i.e.*, non-billed) wireless Lifeline service funded exclusively by the federal Universal Service Fund (“USF”) violate federal law. Specifically, such state laws and regulations (and interpretations thereof) violate the Communications Act of 1934, as amended,² and the Communications rules and regulations implementing the Act, and therefore, should be preempted. TracFone requests a Commission ruling that such state-imposed fees on no charge federal Lifeline service (1) constitute a state-imposed tax on such service and unlawfully reduce the value of the federal Lifeline benefits below the level mandated by the Commission’s rules; and (2) impede the ability of Eligible Telecommunications Carriers (“ETCs”) offering such no

¹ 47 C.F.R. § 1.2.

² 47 U.S.C. 151 *et seq.* (“Communications Act” or “Act”).

charge Lifeline service to fairly compete in the Lifeline service market. State 911 taxes and fees on no charge federal Lifeline benefits do so to the extent that those providers are required to pay the 911 taxes on behalf of their Lifeline customers from the providers' own resources even if they are unable to collect the taxes from customers, and are therefore not competitively neutral. TracFone asks the Commission to issue a declaratory ruling preempting enforcement of such state laws and regulations described in this petition in accordance with the Supremacy Clause of the United States Constitution³ and pursuant to Section 253 of the Communications Act of 1934, as amended.⁴

As will be described in this petition, so far, at least two states – Alabama and Indiana – have notified TracFone that its no charge Lifeline service supported solely by the federal USF is subject to state 911 taxes and have demanded that such state taxes be paid either by Lifeline customers or by TracFone on behalf of its Lifeline customers. Unless the Commission acts promptly and definitively to preempt such state efforts to tax a federal benefit, it is possible, even inevitable, that other states may seek to do so as well. As will be described more fully herein, imposition of Alabama's 911 tax on Lifeline customers constitutes a tax of 19 percent on those customers' Lifeline service. Similarly, imposition of Indiana's 911 tax on Lifeline customers constitutes a tax of 6 percent on those customers' Lifeline service. TracFone has no effective mechanism for collecting a 6 or 19 percent tax from those Lifeline customers, nor will it or should it bear the burden of a 6 or 19 percent monthly tax itself on behalf of each of its Lifeline customers. Unless this matter is promptly addressed and rectified, TracFone will be forced to consider whether it can continue to provide Lifeline service in Alabama and Indiana.

³ U.S. Const., Art. VI, cl. 2.

⁴ 47 U.S.C. § 253.

I. BACKGROUND

A. TracFone's Service

TracFone is a leading provider of prepaid wireless telecommunications services throughout the United States. TracFone provides service by reselling services it obtains from licensed operators of wireless networks. Unlike other wireless providers who offer prepaid service options in addition to post-paid or billed services, TracFone only provides prepaid non-billed service. TracFone's "pay as you go" service enables customers to acquire service by purchasing prepaid airtime which is loaded into the customers' handsets. Collection of 911 funding from consumers of prepaid wireless services has been problematic because there is no billing process and hence, no effective collection mechanism to obtain 911 payments from consumers. Many states, including Alabama and Indiana, have resolved the problem of 911 funding on sales of traditional prepaid services by enacting statutes that require collection of the applicable 911 fee at the time and place of retail sale. Where a consumer purchases prepaid wireless airtime from an independent retail vendor such as a Wal-Mart or a convenience store, the vendor collects the 911 fee and remits the collected proceeds to the state. Where consumers purchase prepaid service directly from the service provider (such as, for example, by purchasing TracFone airtime from TracFone's website), the provider collects the 911 fee from the consumer and remits the collected proceeds to the state.

In addition to offering prepaid wireless service nationwide, TracFone has been offering Lifeline service supported by the federal USF as an ETC since 2008. With more than 4.2 million low-income households in 39 states currently enrolled in its SafeLink Wireless[®] Lifeline program, TracFone is the nation's leading provider of Lifeline service. Under the Lifeline program, a carrier designated as an ETC by the Commission or an appropriate state utility commission in accordance with Section 214(e) of the Communications Act of 1934, as

amended,⁵ may request funds from the USF to be reimbursed for revenues it forgoes by providing telecommunications services to Lifeline-eligible consumers for a reduced charge.⁶ Commission rules allow ETCs to receive \$9.25 per month from the USF for each Lifeline customer.⁷ Commission rules further require ETCs to “pass through the full amount of support to the qualifying low-income consumer.”⁸ TracFone complies with this regulation by providing qualifying low-income consumers with free monthly service including a specified quantity of airtime minutes valued at \$9.25 – the full amount of USF Lifeline support permitted by Commission rules. Under TracFone’s Lifeline plan, available in all states where TracFone has been designated as an ETC (including Alabama and Indiana), Lifeline customers receive free monthly service, free airtime each month, and a free handset.⁹ All of TracFone’s SafeLink Wireless® Lifeline offerings include voicemail and other features, national long distance at no additional charge, and no charge for roaming. Therefore, low-income consumers who meet the Commission’s strict requirements for receiving benefits under the Lifeline program receive wireless service at no charge so long as they remain qualified to receive Lifeline service and remain enrolled in the Lifeline program. Importantly, TracFone’s Lifeline service is not “prepaid” service. Unlike prepaid service, Lifeline customers do not pay in advance for their monthly allotment of Lifeline-supported service (typically, 250 minutes per month). They do not pay at all since the entire monthly Lifeline benefit is provided at no charge to the Lifeline consumer. Since the entire Lifeline-supported benefit of \$9.25 per month is provided to Lifeline

⁵ See 47 U.S.C. §§ 214(e), 254(e).

⁶ See 47 C.F.R. § 54.403(a).

⁷ See 47 C.F.R. § 54.401(a)(1).

⁸ See 47 C.F.R. § 54.403.

⁹ The handsets provided to TracFone’s Lifeline customers are paid for by TracFone and are not subsidized or supported by the USF.

customers in the form of no charge service, there is no collection of any amount from the customer and no bill is rendered to the customer for Lifeline service.

Nothing in Section 54.403 nor any other provision of the Commission's rules allows ETCs to reduce the Lifeline benefit to enrolled households in order to pay state taxes and fees. Nor does any provision of the Communications Act or the Commission's rules allow states to tax federal Lifeline benefits. Yet Alabama and Indiana are attempting to impose state 911 taxes on federal Lifeline benefits and on the thousands of low-income households in those states who receive Lifeline-supported service under the federal Lifeline program.

Lifeline service serves an important public interest function in all states – providing affordable telecommunications service to low-income households so that all Americans are able to access voice telephony services. Available, affordable Lifeline service supported by the USF is more than a public interest benefit. It fulfills a statutory responsibility. Section 254(b) of the Act codifies the universal service principles enacted by Congress. Those principles include that [c]onsumers in all regions of the nation, **including low-income consumers**, ... have access to telecommunications and information services, ... that are reasonably comparable to those services provided in urban areas, and that are available at rates reasonably comparable to rates charged for similar services in urban areas.”¹⁰ The Lifeline program was established by the Commission to deliver on the Congressional promise set forth at Section 254(b)(3) – that affordable telecommunications service be available to low-income consumers.

Availability of Lifeline is especially critical in states such as Alabama and Indiana. With 19 percent of Alabama adults (over 900,000 adults) and 28 percent of Alabama children (over 300,000 children) living at or below the poverty line, Alabama is the seventh most impoverished

¹⁰ 47 U.S.C. § 254(b)(3) (emphasis added).

state in the nation.¹¹ Similarly, in Indiana, 15.5 percent of the state's residents (more than 980,000 people) and 22 percent of Indiana children (more than 345,000 children) are living at or below the poverty line. Despite these high incidences of poverty in Alabama and Indiana, the Lifeline program in those states and elsewhere has been historically underutilized. According to Commission data published in 2004 (prior to the introduction of no charge wireless Lifeline programs such as TracFone's SafeLink Wireless[®]) only 8.5 percent of Alabama's Lifeline-eligible low-income households were enrolled in Lifeline.¹² In Indiana, the Lifeline participation rate was not much better – only 13 percent.¹³ In the years since TracFone's introduction of SafeLink Wireless[®] in Alabama in 2009, the percentage of qualified low-income Alabama households receiving Lifeline benefits has increased from 8.5 percent to over 50 percent of qualified low-income Alabama households currently enrolled. Indiana has experienced a similar increase in Lifeline participation among qualified low-income households. Thus, today many low-income households in those states have Lifeline-supported access to telecommunications service and many of those are enjoying the convenience and security of mobile telephony. Those thousands of low-income consumers may contact and be contacted by existing and prospective employers, remain in touch with family (including children) and friends, be accessible to their health care providers, and access government departments and agencies that provide important social services.

¹¹ See 2014 Alabama Possible Poverty Data Sheet, available at <http://alabamapossible.org/datasheet/>.

¹² See *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87 (April 29, 2004) Table 1.A.

¹³ *Id.*

B. Alabama's 911 Fee

The Alabama Legislature, like other state legislatures, has enacted a law that establishes a 911 Fund to cover the costs associated with deploying and maintaining 911 service throughout Alabama. Alabama law provides for a monthly 911 fee on billed wireless and other communications services that is administered by the Alabama Statewide 911 Board (“911 Board”).¹⁴ Section 11-98-5 of the Alabama Code provides that the monthly statewide 911 fee “is payable by the subscriber to the voice communications service provider.”¹⁵ A “subscriber” is defined as “[a] person who purchases or subscribes to a voice communications service and is able to receive it or use it periodically over time”¹⁶ Section 11-98-5 of the Alabama Code further provides that “[e]xcept as otherwise provided in this chapter, the voice communications service provider shall list the statewide 911 charge separately from other charges on the bill and the charge shall be collected according to the regular billing practice of the voice communications service provider.”

The Alabama 911 Fund is also funded, in part, by a prepaid 911 fee collected from prepaid wireless consumers each time they purchase airtime minutes. Section 11-98-5.3 of the Alabama Code provides that “[t]he prepaid statewide 911 charge shall be collected on prepaid wireless by the seller from the prepaid wireless consumer with respect to each retail transaction occurring in this state.”¹⁷ Consumers of TracFone’s prepaid wireless service in Alabama pay the prepaid wireless 911 fee when they purchase airtime cards either directly from TracFone or from a third party retail vendor. The prepaid wireless 911 fee is paid by TracFone’s non-Lifeline

¹⁴ Ala. Code §§ 11-98-4.1(e)(2) and 11-98-5 (2014).

¹⁵ Ala. Code § 11-98-5 (2014).

¹⁶ Ala. Code § 11-98-1(a)(16) (2014).

¹⁷ The Alabama Department of Revenue has authority to administer the prepaid wireless 911 fee. *See* Ala. Code § 11-98-5.3.

customers when they purchase airtime cards so they can continue to receive service, as well as by TracFone's Lifeline customers who purchase airtime cards when they wish to obtain additional airtime minutes beyond the free monthly allotment of minutes received as part of their federal USF-funded Lifeline service.

In an attempt to obtain 911 fees from those low-income Alabama households that receive no charge Lifeline service, the 911 Board promulgated regulations, effective January 1, 2014, that the 911 Board argues subjects all wireline and wireless Lifeline customers to the monthly 911 charge -- even if those Lifeline customers receive Lifeline service for no charge.¹⁸ In particular, the 911 Board's regulations provide that "[a] single monthly statewide 9-1-1 fee is to be imposed on each active voice communication service connection in Alabama that is technically capable of accessing a 9-1-1 system."¹⁹ Voice connections subject to the monthly 911 fee imposed by the 911 Board include "[a]ll Lifeline connections in Alabama, both wireline and wireless."²⁰ The 911 Board's regulations also include a provision specifically related to an ETC's collection of the 911 fee from its Lifeline customers:

585-X-4.05 Lifeline Service Collection of 9-1-1 Service Charge.

(1) Any telecommunications carrier that has been designated and certified as an Eligible Telecommunication Carrier (ETC) by the F.C.C. and the Universal Services Administrative Co. (USAC) to offer Lifeline service shall collect from any Lifeline subscriber, the monthly 9-1-1 service charge and remit the monthly

¹⁸ The issue of whether the 911 Board has authority to issue regulations that assess a 911 fee on low-income customers who receive no charge Lifeline service is the subject of a pending action in Alabama state court. *See TracFone Wireless, Inc. v. Alabama Statewide 9-1-1 Board, et al.*, Civil Action No. CV-2014-900202 (Circuit Court of Montgomery County, Alabama, filed Jan. 30, 2014). This petition requests that the Commission preempt the 911 Board's regulations, as well as related Alabama statutes, because they are an unlawful attempt by a state to impose a state tax on a federal benefit and do so in a manner not competitively neutral in violation of 47 U.S.C. § 253.

¹⁹ Ala. Admin. Code r. 585-X-4.01(2).

²⁰ Ala. Admin. Code r. 585-X-4.01(2)(b).

collections to the Board pursuant to Sections 37-2A-7 or 11-98-5, Code of Ala. 1975.

(2) A CMRS provider which has been designated as an ETC shall collect from any Lifeline subscriber, the monthly 9-1-1 service charge and remit the monthly collections to the Board pursuant to Section 11-98-5(a), Code of Ala. 1975.

(3) “Lifeline Subscriber” means a customer who meets the income eligibility tests and requirements established by the Alabama Public Service Commission and USAC and receives telecommunication services wherein the customer is capable of receiving voice communication service that is technically capable of accessing a 9-1-1 system.²¹

Therefore, the 911 Board’s regulations purportedly apply to all Lifeline customers whether they pay some amount for that service or simply utilize the service for no charge such as those customers who receive federal Lifeline benefits in the form of no charge Lifeline service such as that provided by TracFone. Additionally, TracFone’s Lifeline customers who purchase additional airtime minutes above the free complement of minutes each month are subject to both the monthly 911 fee claimed to be owed by the 911 Board’s regulation and the statutory prepaid wireless fee each time they purchase additional minutes.

C. Indiana’s 911 Fee

Indiana Code 36-8-16.6 provides for an Enhanced Prepaid Wireless Telecommunications Service Charge to finance the state’s 911 fund. Pursuant to that code section, an enhanced prepaid wireless charge is imposed on each retail transaction. The code defines “retail transaction” as the “**purchase** of prepaid wireless service from a seller for any purpose other than resale.”²² Prior to 2014, the Indiana law governing 911 fees on sales of prepaid services was clear. The “seller” (*i.e.*, the person that sells prepaid wireless service to another person) was

²¹ Ala. Admin. Code r. 585-X-4-.05. This regulation incorrectly refers to USAC as an entity that designates ETCs and establishes Lifeline eligibility requirements. USAC’s functions and responsibilities are set forth at Section 54.702 of the Commission’s rules (47 C.F.R. § 54.702). Those powers and responsibilities do not include the authority either to designate ETCs or to establish Lifeline eligibility requirements.

²² IC 36-8-16.6-8 (emphasis added).

required to collect from the purchaser a specified 911 fee and remit the collected proceeds to the state. That law did not cover wireless Lifeline service supported entirely by the federal USF. In such cases, persons receiving the Lifeline-supported service do not purchase the service and there is no retail transaction. As a result, Indiana's 911 law did not reach no charge Lifeline service and there was no attempt by Indiana to impose a federal tax on a federal Lifeline benefit.

In 2014, the Indiana Legislature enacted a new subsection (d) to Indiana Code 36-8-16.6-

11. Subsection (d) states as follows:

(d) This subsection applies to a provider that is designated by the Indiana Utility Regulatory Commission as an eligible telecommunications carrier for purposes of receiving reimbursement from the universal service fund through the administrator designated by the Federal Communications Commission. A provider:

- (1) Is not considered an agency of the federal government for purposes of the exemption set forth in subsection (c); and
- (2) Is liable for the enhanced prepaid wireless charge imposed under this section with respect to prepaid wireless telecommunications service provided by the provider in its capacity as an eligible telecommunications carrier.

It is the opinion of the Indiana State 911 Advisory Board ("Board") that the purpose for the 2014 legislation, notwithstanding its language, was to impose 911 tax obligations on federal Lifeline service, including no charge Lifeline service despite the fact that there is no retail transaction between the service provider and the consumer and despite the fact that Lifeline service provided by ETCs at no charge to qualified enrolled Lifeline households is not "prepaid wireless telecommunications service" as that term is used in Indiana Code § 38.8-16.6-11 since the consumer does not pay in advance for the service. In fact, the consumer does not pay at all for the service. The service is funded entirely by the federal USF. The Board's viewpoint is expressed in a letter recently provided to TracFone's counsel by counsel for the Board. In that letter, the 911 Board states as follows: "Lest there be any doubt that the legislature intends all

providers of Lifeline service to remit the 911 fee to the Board, in its most recent session, the Indiana General Assembly added a subsection (d) to Indiana Code § 36-8-16.6-11 confirming that ETCs such as TracFone are ‘liable for the enhanced prepaid wireless charge imposed under this subsection’²³

TracFone recognizes the importance of funding 911 services in all states in which it provides service. All of TracFone’s non-Lifeline customers, as well as its Lifeline customers who purchase additional airtime minutes, pay state prepaid wireless 911 fees in accordance with applicable state point-of-sale fee collection laws (including the laws of Alabama and Indiana) each time they purchase airtime. However, requiring customers who receive no charge Lifeline service to pay a state-imposed monthly tax or fee on their federal Lifeline benefits unlawfully reduces the value of those federal benefits below the federally-prescribed amount, thereby depriving qualified low-income Lifeline-eligible households the full value of the federal benefit to which they are entitled under the Communications Act and the Commission’s rules.

Moreover, ETCs, such as TracFone, that provide no charge Lifeline service to qualified low-income households lack the opportunity and the ability to collect efficiently and effectively the 911 charge from their Lifeline customers. As a result, if such ETCs are required to collect and remit fees or taxes such as Alabama’s and Indiana’s 911 fees, on no charge, non-billed services, they must either reduce the USF-supported benefits provided to their Lifeline customers to cover the 911 fees to be “collected,” or pay the fees from their own resources. As explained below, neither option would conform with federal law. Therefore, TracFone asks the

²³ Letter from Clayton C. Miller, counsel to the Board, to Mitchell F. Brecher, counsel for TracFone Wireless, Inc., dated August 15, 2014, at 2. A copy of that letter is attached hereto as Attachment 1. TracFone has learned that virtually identical letters were sent to other ETCs who provide no charge Lifeline service to low-income Indiana households. Of course, that letter reflecting the position of the Board disregards the fact that such no charge Lifeline services are not prepaid wireless services.

Commission to preempt state laws which purport to impose state taxes on Lifeline service funded entirely by the federal USF.

II. ARGUMENT

A. **Laws and Regulations Imposing State 911 Taxes and Fees on Low-Income Lifeline Customers Who Receive No Charge Federal Lifeline Service Unlawfully Reduce the Federal Lifeline Benefit to Which Those Customers are Entitled by Taxing that Federal Benefit.**

As described above, both Alabama and Indiana have asserted that those states' laws impose a monthly 911 tax on Lifeline customers, even if those customers receive free federal Lifeline service funded entirely by the USF.²⁴ As of August 1, 2014, the monthly Alabama 911 fee is \$1.75. Lifeline customers are entitled to a federal Lifeline benefit of \$9.25 per month – the full amount of federal Lifeline support received provided by the USF. A monthly 911 fee of \$1.75 associated with a Lifeline benefit valued at \$9.25 constitutes a 19 percent state tax on that federal benefit. Indiana's 911 tax on wireless service is \$0.50 per month. That constitutes a tax of almost 6 percent on federal Lifeline service. Although Indiana's six percent state 911 tax on federal Lifeline service is less burdensome than Alabama's 19 percent tax, it is equally unlawful.

The impact of those unlawful and regressive taxes on those states' most economically-disadvantaged residents -- low-income Lifeline-eligible households -- who purchase additional prepaid wireless airtime is even more egregious. Under Alabama law, effective August 1, 2014,

²⁴ In both Alabama and Indiana, 911 taxes are imposed on Lifeline customers even though the relevant statutory and regulatory language differs. In Alabama, ETCs are required to collect the 911 tax from customers. In Indiana, the Board claims that ETCs are liable for the 911 tax. As discussed in this petition, ETCs in Alabama and Indiana are left with the same untenable options, including attempting to collect the 911 tax from Lifeline customers with whom they do not have a billing relationship, decreasing the amount of Lifeline benefits to cover the tax, or paying the tax from their own resources. If an ETC chooses to collect the tax from Lifeline customers or decrease the Lifeline benefit, then the tax is effectively being imposed on Lifeline customers. Therefore, in this petition, TracFone refers to both the Alabama 911 tax and the Indiana 911 tax as taxes imposed on Lifeline customers.

Lifeline customers who purchase additional airtime to supplement their federal Lifeline benefit must, in addition to paying the monthly 19 percent (\$1.75) tax, also pay an additional \$1.75 tax on each retail transaction.²⁵ Indiana imposes a per transaction tax of \$0.50 on purchases of additional airtime by that state's Lifeline customers. Indiana Lifeline consumers who make multiple purchases of airtime each month to supplement their Lifeline benefit would be required to pay multiple 911 taxes in addition to the monthly 6 percent tax which Indiana imposes on Lifeline service. As a result, those states' neediest residents are subject to potentially multiple 911 state tax obligations.

The Commission's rules require that the "full amount" of the \$9.25 in federal Lifeline support provided to ETCs be passed through to the qualifying low-income consumer.²⁶ A requirement that Lifeline customers pay a \$1.75 monthly state-imposed tax in Alabama or a \$0.50 per month tax in Indiana in order to receive their federal Lifeline benefit violates the Commission's rule that Lifeline customers must receive the full amount of their benefit. Whereas Lifeline customers in other states receive a monthly federal benefit of \$9.25, Alabama's Lifeline customers will receive a monthly benefit of only \$7.50 ($\$9.25 - \$1.75 = \7.50). Indiana Lifeline customers will receive a monthly benefit of only \$8.75 ($\$9.25 - \$0.50 = \8.75). Moreover, an ETC's use of a portion of the funds received from the USF to pay the 911 tax is similarly a violation of the Commission's rule that the full amount of Lifeline support be provided to the Lifeline consumer. If TracFone, and other ETCs that provide no charge non-billed Lifeline service use a portion of the Lifeline support they receive from the USF to pay the

²⁵ Section 11-98-5.3(b)(5) of the Alabama Code provides that that the prepaid wireless 911 fee shall be increased or decreased to match the statewide 911 fee. On May 22, 2014, the Department of Revenue issued a notice advising that the prepaid wireless 911 will be increased to \$1.75 effective August 1, 2014.

²⁶ 47 C.F.R. § 54.403(a).

Alabama or Indiana 911 taxes rather than providing the full amount of support to the Lifeline customer, then the value of the Lifeline benefits provided to Lifeline customers in those states would be unlawfully decreased below the federally-mandated \$9.25 monthly benefit.

For ETCs that provide their customers with Lifeline benefits in the form of free monthly airtime minutes, a decrease in the Lifeline benefit could be implemented by reducing the number of airtime minutes provided each month.²⁷ However, as noted above, the Commission's rules explicitly require ETCs to pass through to the customer the entire monthly Lifeline benefit of \$9.25. Alabama and Indiana 911 taxation of federal Lifeline service reduces the value of the federal Lifeline benefit by decreasing the number of free airtime minutes or by requiring the Lifeline customers to pay the 911 fee to the ETC (assuming that there is a means for the customer to do so).²⁸ These requirements conflict with the Commission's requirement that ETCs pass through to the customer the entire \$9.25 in federal USF support. As such, the Commission should preempt those provisions of Alabama and Indiana law to the extent that they impose 911

²⁷ As explained below, if an ETC providing free Lifeline service pays for the 911 charge from its own resources, then it would be at a competitive disadvantage to other ETCs that are able to collect the 911 charge from their customers.

²⁸ Even if an ETC like TracFone were able to send bills to its Lifeline customers for state 911 taxes, payment of such billed taxes would create an undue burden for many of those customers. A substantial portion of TracFone's Lifeline customers in Alabama, Indiana, and elsewhere are "unbanked" in that they do not have checking accounts, savings accounts, or credit cards. Those customers would have to purchase money orders in order to remit state 911 tax payments of \$1.75, \$0.50 or any other amount. In many cases, the cost of those money orders would exceed the amount of the tax owed. For such customers, even the cost of a postage stamp (currently \$0.49) to remit a payment of \$1.75 or even \$0.50 is burdensome.

taxes and fees on all low-income Alabama and Indiana households receiving free Lifeline service supported by the federal USF.²⁹

As the Commission has noted, “[t]he doctrine of federal preemption arises from the Supremacy Clause of the U.S. Constitution, which provides that federal law is the ‘supreme Law of the Land.’”³⁰ Under the Supremacy Clause, a federal law preempts a state law when the state law conflicts with the federal law or when it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”³¹ “Such conflict preemption may result not only from action taken by Congress. It may also result from action taken by a federal agency when the agency acts within the scope of its congressionally delegated authority.”³²

Indeed, recently Chairman Tom Wheeler stated that “when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption.”³³ Chairman

²⁹ Lifeline customers receive a federal benefit that covers all or a significant portion of the costs of telecommunications service. A Lifeline benefit is similar to other federal support programs including, for example, the Supplemental Nutrition Assistance Program (“SNAP”), formerly known as the Food Stamps Program. Participants in SNAP receive a federal benefit in the form of coupons used to purchase food. Federal regulations provide that a “State shall not participate in the Food Stamp Program if State or local sales taxes or other taxes or fees, including but not limited to excise taxes, are collected within the State on purchases made with food stamp coupons.” 7 C.F.R. § 272.1. Other federal benefit programs including, *e.g.*, Medicaid, Temporary Assistance for Needy Families, the National School Lunch Program, and the Low Income Household Energy Assistance Program, may not have their benefits limited by state-imposed taxes or fees. Similarly, no State should assess a sales tax or other tax or fee on Lifeline benefits because such an assessment would constitute an unlawful tax on a federal benefit.

³⁰ *Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, ¶ 17 n.63 (2011) (citing U.S. Const. Art. VI, cl. 2 and *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 368 (1986)).

³¹ *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

³² *American Communications Services, Inc.*, 14 FCC Rcd 21579 (1999) (citing *City of New York v. FCC*, 486 U.S. 57, 64 (1988)).

³³ Letter from Chairman Tom Wheeler to Hon. Marsha Blackburn, U.S. House of Representatives, dated July 22, 2014, at 2.

Wheeler’s letter was in response to a letter from Members of Congress regarding the potential preemption of state laws prohibiting municipal broadband deployment. Although that involves a different factual situation, state tax laws that undermine delivery of a federal benefits program in accordance with the Communications Act and with applicable Commission rules is as antithetical to federal law and policy as are state broadband deployment limitations. For the same reasons that Chairman Wheeler asserted that preemption might be appropriate in the latter circumstance, it is equally appropriate, if not more appropriate, in the former circumstance.

As detailed above, Alabama and Indiana laws and regulations as administered by the 911 officials in those states conflict with a Lifeline consumer’s legal entitlement to receive the full amount of the federal Lifeline benefit and with an ETC’s obligation to pass through the full amount of the USF Lifeline support. As such, the Commission should preempt those statutes and regulations based upon the Supremacy Clause. Preemption is also warranted because the imposition of a 911 tax on recipients of no charge non-billed Lifeline service is an obstacle to the accomplishment of the purposes and objectives expressed by Congress when it empowered the Commission to promulgate rules to advance universal service. One of the universal service principles established by Congress is that “[q]uality services should be available at just, reasonable, and affordable rates.”³⁴ Another important universal service principle articulated by Congress is that “[c]onsumers in all regions of the Nation, **including low-income consumers**, ... should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”³⁵ Consistent with the principle of providing affordable telecommunications service to all consumers throughout the

³⁴ 47 U.S.C. § 254(b)(1).

³⁵ 47 U.S.C. § 254 (b)(3) (emphasis added).

nation, including low-income consumers, the Commission developed the Lifeline program to “offset the cost of services purchased by low-income consumers”³⁶

Some ETCs, including TracFone, have determined that the most affordable service for low-income consumers is no charge Lifeline service. Those ETCs have chosen to provide the entire \$9.25 federal benefit in the form of specified quantities of no charge service, rather than as a discount below the standard charges for billed service. Thousands of low-income households in Alabama, Indiana and other states agree that free Lifeline service is the most attractive Lifeline service for them. TracFone currently provides its Safelink Wireless[®] Lifeline service to over 117,000 low-income Alabama households and to more than 45,000 Indiana low-income households. TracFone is the leading provider of Lifeline service in Alabama. Virgin Mobile, another no charge wireless ETC, is the second ranked Lifeline provider.³⁷ Together, TracFone and Virgin Mobile serve over 83 percent of the Lifeline customer base in Alabama.³⁸ In Indiana, Virgin Mobile and TracFone are the largest providers of Lifeline service and customers enrolled in no charge Lifeline programs comprise over 90 percent of Indiana’s total Lifeline households.³⁹ Moreover, as explained above, during the time that TracFone has provided Lifeline service in Alabama, Indiana, and other states, the Lifeline participation rate of all households eligible to receive Lifeline benefits has increased substantially. These statistics indicate that no charge Lifeline service effectively meets the needs of low-income households.

³⁶ *In the Matter of Lifeline and Link Up Reform and Modernization, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶ 36 (2013) (citations omitted).

³⁷ See USAC FCC Filings, 2014 Fourth Quarter Appendices, LI04 – Quarterly Low Income Support Disbursement Amounts by Company – 2Q2014, available at <http://www.usac.org/about/tools/fcc/filings/2014/q4.aspx>.

³⁸ See *id.* (in May 2014, TracFone and Virgin Mobile, together, received over 83 percent of the total Lifeline disbursements made to ETCs in Alabama).

³⁹ See *id.* (in May 2014, ETCs with no charge Lifeline plans received over 90 percent of the total Lifeline disbursements made to ETCs in Indiana).

Others have expressed concern about the adverse impact on low-income households of Alabama's ill-advised effort to tax Lifeline service. On July 15, 2014, a group of public interest and consumer advocacy organizations, including the Alliance for Generational Equity, Consumer Action, Community Action Association of Alabama, the Community Action Partnership, the National Consumers League, the North Alabama Patriots Tea Party, and the National Grange, submitted a letter to Alabama Governor Robert J. Bentley in opposition to the Alabama tax on Lifeline service. On August 4, 2014, the Free State Foundation – a well-respected free market think tank, posted a blog noting the impropriety of Alabama's Lifeline tax. That blog states, in part that, "... it doesn't make sense to grant certified low-income consumers a \$9.25 subsidy on the one hand, and then make the same consumer pay a \$1.75 fee on the other." Copies of the public interest advocacy group letter and the Free State Foundation blog posting are attached to this petition as Attachment 2 and Attachment 3 respectively.

The Free State Foundation is correct. Imposing a \$1.75 state tax on a \$9.25 federal benefit does not make sense. Alabama statutes and the 911 Board's regulation, by imposing a 19 percent state tax on the federal benefits received by Lifeline households, interfere with the ability of Alabama's low-income households to receive the full federal Lifeline benefit to which they are entitled under federal law. As such, they should be preempted.

B. Section 253 of the Communications Act Preempts State Laws and Regulations Imposing a 911 Charge on Lifeline Service Because They Limit the Ability of ETCs Offering Free Lifeline Service to Fairly Compete in the Lifeline Service Market.

Section 253(a) of the Act proscribes state or local laws that “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”⁴⁰ Lifeline service is an “interstate or intrastate telecommunications service.” In determining whether a state or local law has the effect of prohibiting an entity from providing interstate or intrastate telecommunications services, the Commission “consider[s] whether the requirement in question materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”⁴¹ The primary goal of the Telecommunications Act of 1996 was “to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets.”⁴² Indeed, Congress gave the Commission authority to preempt state and local laws to ensure that competitive markets determine which entities will provide telecommunications services demanded by consumers.⁴³

Section 253(b) allows for certain “safe harbor” exceptions to the proscription of Section 253(a), including an exception to “protect the public safety and welfare.” However, that exception is a limited exception. Any requirement imposed by a state to protect the public safety

⁴⁰ See, e.g., *Qwest Corporation v. City of Portland, et al.*, 385 F.3d 1236, at 1240-1241 (9th Cir. 2004) (“Section 253(a) preempts regulations that not only prohibit outright the ability of any entity to provide telecommunications services, but also those that may have the effect of prohibiting the provision of such services.”) (quoting *City of Auburn v. Qwest Corporation*, 260 F.3d 1160, 1175 (9th 2001)).

⁴¹ *Petition of Pittencrief Communications, Inc.*, 13 FCC Rcd 1735, ¶ 32 (1997) (citing *California Payphone Association*, 12 FCC Rcd 14191, ¶ 31 (1997)).

⁴² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 4 (1996).

⁴³ *Id.*, at ¶ 3

and welfare (including, for example, funding mechanisms to support 911 service) must be imposed on a “*competitively neutral basis*.”⁴⁴ The Commission has interpreted Section 253(b) competitive neutrality to require that statutes or regulations “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”⁴⁵

For ETCs that provide no charge, non-billed Lifeline service, billing and collecting 911 taxes from Lifeline customers being demanded by officials in Alabama and Indiana is impracticable.⁴⁶ Notwithstanding those states’ awareness of this situation, they have nevertheless sought to hold TracFone liable for remitting the 911 tax related to its no charge non-billed federal Lifeline service – a service funded entirely by the federal USF. Accordingly, Alabama and Indiana are seeking to impose 911 funding obligations directly on providers of free Lifeline service when such funding requirements are not imposed directly on those providers of Lifeline service that do have a billing relationship with their customers.

The disparity in the treatment of providers of no charge, non-billed Lifeline service *vis-à-vis* providers of billed Lifeline service for which the 911 tax may be collected from customers through billing surcharges is not competitively neutral. Indeed, it is the antithesis of competitive neutrality. Providers of free Lifeline service are forced to change the terms of their service and the nature of their Lifeline offerings so that they no longer offer free Lifeline service; or they

⁴⁴ 47 U.S.C. § 253(b) (emphasis added).

⁴⁵ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8876, ¶ 47 (1997) (subsequent history omitted); see also *Nixon v. Missouri Municipal League*, 124 S.Ct. 1555, 1564 (2004) (“The FCC has understood § 253(b) neutrality to require a statute or regulation affecting all types of utilities in like fashion”) (citing *Federal-State Joint Board on Universal Service*, Declaratory Ruling, 15 FCC Rcd 15168 (2000)).

⁴⁶ TracFone has attempted to bill 911 taxes to its Alabama Lifeline customers. Fewer than ten percent of those customers on average actually remit the 911 taxes.

must pay the 911 charge on behalf of their Lifeline customers from their own resources. Both options place a Lifeline service provider that currently offers no charge Lifeline service to qualifying low-income Lifeline-eligible households at a significant competitive disadvantage relative to other Lifeline providers. For example, if a provider of free Lifeline service pays the state 911 tax from its own resources while other Lifeline providers are able to collect the state 911 tax from their customers through billed surcharges, then the cost of providing no charge, non-billed Lifeline service is materially increased, thereby making it uneconomic to offer no charge Lifeline service. “Nowhere does [Section 253(a)] require that a bar to entry be insurmountable before the FCC must preempt it.”⁴⁷ Therefore, even if the 911 funding requirements imposed on providers of no charge Lifeline services do not constitute an absolute prohibition against provision of interstate or intrastate telecommunications service in contravention of Section 253(a), such requirements create a substantial impediment to providing no charge federal Lifeline service. As such, they violate the Section 253(b) directive that state laws which protect the public safety and welfare must be competitively neutral.

CONCLUSION

For reasons set forth in this emergency petition, TracFone respectfully requests that the Commission promptly issue a declaratory ruling preempting state laws that unlawfully impose a state 911 fee or tax on no charge Lifeline service funded by the federal USF.⁴⁸ Failure to address and resolve the issue raised by this petition in an expedited manner will jeopardize the ability of Lifeline providers to continue to offer no charge Lifeline services to low-income households in

⁴⁷ *RT Communications, Inc. v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000).

⁴⁸ This petition is directed specifically at the Alabama and Indiana 911 laws, including the regulations of the Alabama 911 Board. However, other states indicated that they may similarly assert the applicability of their 911 taxes and fees to no charge Lifeline services. A declaratory ruling in this proceeding should address all states’ efforts to tax federal Lifeline benefits.

in those states which tax no charge Lifeline services supported solely by the federal USF. If those ETCs are unable to continue to provide such services, many thousands of low-income households will lose the no charge Lifeline-supported wireless telecommunications services upon which they have come to rely for essential communications.

Respectfully submitted,

TRACFONE WIRELESS, INC.

A handwritten signature in black ink, appearing to read 'M. Brecher', is written over a horizontal line.

Mitchell F. Brecher
Debra McGuire Mercer

GREENBERG TRAURIG, LLP
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Its Attorneys

October 23, 2014

Attachment 1



Bamberger, Foreman,
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August 15, 2014

Mitchell F. Brecher
Greenberg Traurig, LLP
2101 L Street, N.W., Suite 1000
Washington, DC 20037

Re: TracFone Wireless, Inc. Indiana 9-1-1 Fees

Dear Mr. Brecher:

Thank you for your July 9, 2014 letter on behalf of TracFone Wireless, Inc. concerning 911 fees owed for Lifeline customers. I appreciate your explanation of TracFone's position that its provision of wireless communications to such customers does not involve a retail transaction pursuant to Indiana Code § 36-8-16.6-11, and also that the only "consumer" of your retail Lifeline service is the federal government, which is exempt from the 911 fee under subsection (c) of that same statute.

Please be advised that TracFone's interpretation of its obligations under Indiana law is contrary to the position of my client, the Indiana Statewide 911 Advisory Board ("Board"). Specifically, we disagree both with the contention that ordering retail service as a Lifeline customer does not qualify as a retail transaction under the above-referenced statute and that the consumer of the Lifeline service is the federal government.

The act of ordering retail service from a provider, for which service the provider will be compensated, constitutes a purchase within the statutory definition of "retail transaction." TracFone's election to defer compensation for providing the retail service to Lifeline customers, which includes the ability to call 9-1-1, does not negate the fact that service has been purchased. I also note that the \$9.25 that TracFone collects every month from the federal Universal Service Fund for providing service to each Lifeline customer is more than sufficient to cover the required \$0.50 911 fee.

Furthermore, it strains credulity to characterize the federal government as the consumer of TracFone's Lifeline service which is used by the individual customers who sign-up to receive their service directly from TracFone.

Lest there be any doubt that the legislature intends all providers of Lifeline service to remit the 911 fee to the Board, in its most recent session the Indiana General Assembly added a subsection (d) to Indiana Code § 36-8-16.6-11 confirming that ETCs such as TracFone are "liable for the enhanced prepaid wireless charge imposed under this section...." This language was added to confirm the Board's interpretation after evidence came to light earlier this year that not all ETCs were remitting the 911 fee.

Finally, I note that TracFone's June 29, 2011 order from the Indiana Utility Regulatory Commission approving TracFone's ETC application in Cause No. 41052 ETC-54 includes a finding, at paragraph 9 on page 18, that TracFone's qualification to receive reimbursement for providing Lifeline service to its customers is specifically conditioned on paying the applicable 911 fee.

For all these reasons, I respectfully ask that TracFone reconsider its obligations as an ETC licensed by the Indiana Utility Regulatory Commission and as a provider of Lifeline services, including access to 9-1-1. I would appreciate receiving your reply by August 26, 2014. To the extent TracFone wishes to make arrangements to spread-out payment of the amount due over more than one month, my client has indicated a willingness to be flexible concerning such terms.

Sincerely,



Clayton C. Miller
Bamberger, Foreman,
Oswald & Hahn, LLP

Attachment 2

UPDATED

July 15, 2014

Honorable Robert J. Bentley
State Capitol
600 Dexter Avenue
Montgomery, AL, 36130

Dear Governor Bentley:

We, the undersigned national and state-based organizations represent Alabama citizens who oppose unfair taxation. We also speak for Alabama's seniors, veterans, people with disabilities, and low-income residents. Today, we have taken the extraordinary step of joining together to urge you to direct Alabama's 911 Board to repeal its unfair and prohibitively expensive Emergency 911 (E-911) tax on participants in the federal "no charge" wireless Lifeline program.¹

Alabama's E-911 Board has gone where no other state has seen fit to go before: It has for no valid public policy reason imposed a punitive phone tax targeting the poorest of its poor residents who receive wireless Lifeline telephone service at no cost.² This move should be overruled by your office as soon as possible.

It is even more troubling that Alabama's poorest residents are required to pay one of the highest wireless E-911 taxes of any state.³ Attorneys General in other states including South Carolina⁴, Tennessee⁵, and Rhode Island⁶, have provided sound legal reasoning for why Lifeline participants in those states should be exempted from paying E-911 taxes. We believe that Lifeline customers who receive support, landline or wireless **at no cost**, should not be required to pay E-911 fees.

On August 1, 2014, the monthly E-911 tax imposed on all telephone subscribers in Alabama – including participants in the federal Lifeline program – will increase from the current \$1.60 to \$1.75 per month. Members of the unelected and unaccountable state 911 Board⁷ imposed this tax hike on Alabama citizens, at a rate that is far above typical E-911 taxes in comparable states. Indeed, the \$1.75 monthly charge amounts to an exorbitant **19% percent** tax on all Lifeline participants – residents in the state who are least able to afford such an outrageously high fee.

¹ Created in 1985 by the Federal Communications Commission, the Lifeline program initially provided discounted landline service to qualifying low-income individuals. The program was extended to include wireless telecommunications services in 2005. Today, qualifying low-income Lifeline participants may choose to receive free monthly wireless telephone service. Additional information on Lifeline program available at: <http://www.fcc.gov/lifeline>

² See: <http://al911board.com/rules/lifeline-service-collection-9-1-1-service-charge>

³ For a full list of E-911 fees by state as of January 1, 2014, see: <http://www.nena.org/?page=911RateByState>

⁴ State of South Carolina, Office of the Attorney General, letter to State Rep. Leon Joe Howard, October 10, 2011.

Available at: <http://2hsvz0l74ah31vgcm16peuy12tz.wpengine.netdna-cdn.com/wp-content/uploads/2011/10/howard-l-j-os-9334-10-10-11-E911-fees1.pdf>

⁵ State of Tennessee, Office of the Attorney General, Opinion No. 09-87, "Allocation of Emergency Communications Fund; "Safelink" Program, May 18, 2009. Available at: <http://www.tn.gov/attorneygeneral/op/2009/op/op87.pdf>

⁶ State of Rhode Island, Department of the Attorney General, letter to House Speaker Gordon D. Fox, October 12, 2012. Available at:

<https://docs.google.com/file/d/0BxeciyBfSNSATVh3dnNzbktJNEZrQUILRlhleFBvWTRjSkcw/edit>

⁷ See: <http://al911board.com/article/9-1-1-Rate-Change-effective-August-1-2014>

Imposing the \$1.75 E-911 tax on Lifeline subscribers tangibly reduces the full federal rate of \$9.25 in Lifeline benefits that program participants are entitled to. The impact of the 19% E-911 tax on low-income Alabama Lifeline households is even more egregious for those participants who decide to purchase additional minutes and are subsequently charged a tax twice. Think about what this means in practical terms: A low-income person who used a Lifeline wireless phone to get or keep a job – possibly even to migrate off social services – is now being actively discouraged by the state of Alabama from doing so.

While we fully support the critical work of Alabama’s emergency first responders, funding for such services should not come on the backs of its neediest residents. Our diverse coalition of state and national organizations stands united in opposition to Alabama’s excessive and unfair E-911 tax on no cost Lifeline participants, and strongly advocate that no other state follow in the footsteps of such misguided policy. We urge you and leaders in Alabama’s state legislature to direct members of Alabama’s 911 Board not to impose the nation’s highest wireless E-911 tax on federal wireless Lifeline benefits. This will protect Alabama households from excessive taxation and remove an unjust burden on the state’s poorest residents.

Respectfully,

Alliance for Generational Equity
Consumer Action
Community Action Association of Alabama
Community Action Partnership
National Consumers League
North Alabama Patriots Tea Party
The National Grange

Attachment 3

THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland.....Because Ideas Matter



Monday, August 04, 2014

Alabama Needs a LifeLine to Common Sense

I just became aware through a story in today's *Communications Daily* that Alabama collects a fee of \$1.75 per month for 911 service from LifeLine subscribers. According to the story, Alabama estimates there are 200,000 consumers in the state who are LifeLine customers who must pay the \$1.75 per month fee on the \$9.25 per month subsidy they receive.

I think someone needs to throw Alabama a Lifeline to the Common Sense safe harbor.

Apparently, Alabama is among the few states that require low-income residents who receive subsidized telephone service to pay a 911 fee. It may be the only one. It is true that LifeLine customers may need to call 911, just like non-LifeLine. But that's not the point. Indeed, there is a reason it is called LifeLine service.

To my mind, it just doesn't make sense to grant certified low-income consumers a \$9.25 subsidy on the one hand, and then make those same customers pay a \$1.75 fee on the other.

TracFone has filed a lawsuit challenging the authority of Alabama under state law to impose the 911 fee on LifeLine subscribers. If common sense doesn't prevail first, perhaps TracFone's lawsuit will bring about a change.

One way or the other, Alabama's practice of imposing the 911 fee on LifeLine customers should be jettisoned.

Posted by Randolph J. May at 3:16 PM

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