

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

TRACFONE WIRELESS, INC.)	
Annual Verification of SafeLink Wireless)	D.T.C. 09-9
Lifeline Subscribers)	
)	

**TRACFONE WIRELESS, INC.'S SUPPLEMENTAL RESPONSES
TO FIRST SET OF INFORMATION REQUESTS AND
RESPONSES TO SECOND SET OF INFORMATION REQUESTS
OF THE DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

TracFone Wireless, Inc. ("TracFone"), hereby files its supplemental responses to the Department's First Set of Information Requests issued February 9, 2010 and responses to the Department's Second Set of Information Requests issued March 16, 2010 in the above-captioned case.

GENERAL OBJECTION

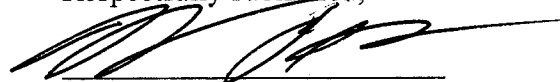
TracFone generally objects to the information requests to the extent that they seek information that is beyond the scope of this proceeding. In a letter dated April 24, 2009, from Geoffrey G. Why, the Department's General Counsel at that time, to Mitchell F. Brecher, TracFone's counsel, Mr. Why stated that TracFone was required to conduct an annual customer audit of its SafeLink Wireless® Lifeline customers "to verify eligibility." Mr. Why further referred to TracFone's obligation to file a "Massachusetts annual audit report." In a letter dated November 9, 2009 from Kajal Chattopadhyay, the Department's Acting General Counsel, to Jose Fuentes, TracFone's Director of Government Relations, Mr. Chattopadhyay stated that TracFone was required to conduct "an annual, random, statistically valid audit of customers of its Safelink Lifeline service, consistent with the Federal Communications Commission's annual audit requirement at

47 CF.R. § 54.410(2).” As required by Section 54.410(c) and by the Department TracFone “implement[ed] procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers” in Massachusetts.

On November 18, 2009, TracFone filed an Annual Audit Report regarding its Massachusetts Lifeline customers. On January 5, 2010, the Department issued a Notice of Public Hearing in which it stated that TracFone had an “Annual Audit Report of a statistically valid sample of its SafeLink Wireless Lifeline subscribers ... for the purpose of verifying the eligibility of its subscribers.” The Notice of Public Hearing further stated that Department had docketed the matter and would be investigating it.

TracFone acknowledges that the Department has authority to examine TracFone’s annual verification of Lifeline subscribers to the extent that TracFone’s Lifeline service is offered to Massachusetts consumers, and TracFone is prepared to provide the Department with all requested information relevant to its annual verification of Lifeline customers in Massachusetts. However, TracFone maintains that the Department does not have authority to investigate TracFone’s verification of the eligibility of its Lifeline subscribers in states other than Massachusetts. In addition, the investigation, as described by the Notice of Public Hearing relates to TracFone’s report on its verification of the eligibility of its Lifeline subscribers. Therefore, TracFone objects to the information requests to the extent that they seek information regarding issues other than TracFone’s annual audit to verify continued eligibility of its Massachusetts Lifeline subscribers.

Respectfully submitted,



Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAUERIG, LLP
2101 L Street, NW
Suite 1000
Washington, D.C. 20037
(202) 331-3100
Counsel for TracFone Wireless, Inc.

March 30, 2010

TRACFONE WIRELESS, INC.
D.T.C. 09-9

Request Number: D.T.C. 1-3

Request: Provide a list of all states in which TracFone:

- A. Currently offers SafeLink Lifeline service.**
- B. Has been designated an ETC. Provide the docket number for the relevant proceeding.**
- C. Is presently seeking ETC designation. Provide the docket number for the relevant proceeding.**
- D. Has been denied ETC designation. Specify the reasons for denial and provide the docket number for the relevant proceeding.**

Supplemental Response: TracFone continues to object to this request as beyond the scope of an audit of its verification of the continued eligibility of Massachusetts SafeLink Wireless® Lifeline customers. See General Objection. Without waiving this objection, TracFone provides the following supplemental response.

- A. Maine and Texas.
- B. TracFone has been designated as an ETC in Puerto Rico (Case No. JRT-2009-SU-0001) and South Carolina (Docket No. 2009-144-C).
- C. Idaho (Case No. TFW-T-09-01); Nevada (Docket No. 09-10037); Rhode Island (Docket No. 4153); and Vermont (not available).
- D. On March 18, 2010, the Idaho Public Utilities Commission issued a Notice of Amended Application recommending that TracFone's Amended Application be processed with a 60-day comment period.

In TracFone's initial response to this request, it explained the status of proceedings in Puerto Rico and South Carolina. As noted in the supplemental

TRACFONE WIRELESS, INC.
D.T.C. 09-9

response to D.T.C. 1-3(C), TracFone has been designated as an ETC in Puerto Rico and South Carolina.

Respondent: Jose Fuentes, Director of Government Relations

TRACFONE WIRELESS, INC.
D.T.C. 09-9

Request Number: D.T.C. 2-1

Request: Will TracFone verify annually, via self certification, that each of its Lifeline subscribers in Massachusetts is the head of household and only receives Lifeline service from TracFone? Does TracFone intend to submit the results of this verification process to the Department? If the answer to either of these questions is “No” please provide a detailed explanation, including citation to statute or other law, of the basis for each such “No” answer.

Response: In accordance with the FCC’s Order designating TracFone as an ETC in Massachusetts, TracFone will verify annually, via self-certification, that each of its Lifeline subscribers in Massachusetts is head of household and only receives Lifeline from TracFone. See In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al., 23 FCC Rcd 6206 (2008). TracFone does not intend to submit the results of the self-certification process to the Department unless it is directed to do so. The FCC established the annual self-certification requirement in its Forbearance Order. Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd 15095, ¶ 18 (2005). Neither the Forbearance Order nor the FCC Order designating TracFone as an ETC require TracFone to submit the results of the self-certification process to the FCC or any state commission. TracFone maintains records of its compliance with the self-certification requirement in all states in which it offers Lifeline service, but does not report the results to any state commission, the FCC or the Universal Service Administrative Company (“USAC”).

Respondent: Jose Fuentes, Director of Government Relations

TRACFONE WIRELESS, INC.
D.T.C. 09-9

Request Number: D.T.C. 2-2

Request: In regards to the subscriber referenced in D.T.C. 1-18, who indicated that s/he already had Lifeline service at home and thus cancelled his/her SafeLink service when contacted during the audit, explain, including citation to statute or other law, why TracFone did not classify this subscriber as ineligible for SafeLink service.

Response: TracFone classified this subscriber as “de-enrolled” by the customer’s request because the customer asked to be removed from TracFone’s Lifeline service, and therefore, TracFone did not initiate the decision to de-enroll the customer from its Lifeline service.

Respondent: Jose Fuentes, Director of Government Relations

TRACFONE WIRELESS, INC.
D.T.C. 09-9

Request Number: D.T.C. 2-3

Request: In connection with TracFone's definition of "not verified" in its response to D.T.C. 1-9 as having "not respond[ed] to TracFone's repeated request for documentation;" and its indication, in D.T.C. 1-19, that "wrong documentation" refers to "when the customer sends incorrect forms" and "invalid documentation" refers to "when the customer sends an expired proof," please answer the following:

- A. Does TracFone maintain that "wrong documentation" and "invalid documentation" are correctly labeled as "not verified"? Explain in detail the basis for this position and provide citations to all relevant authority.
- B. Does TracFone assert that these subscribers were "not sampled"? Explain in detail the basis for this position and provide citations to all relevant authority.

Response:

- A. TracFone identifies a subscriber as "not verified" when the subscriber does not respond to TracFone's repeated attempts to contact the subscriber to request documentation. A subscriber who does not send valid documentation to TracFone is identified as "ineligible".
- B. TracFone considers subscribers having "wrong documentation" and "invalid documentation" to be "sampled" subscribers. However, these subscribers did not provide proper documentation to prove continued eligibility, and therefore, were de-enrolled from the Lifeline program.

Respondent: Jose Fuentes, Director of Government Relations

TRACFONE WIRELESS, INC.
D.T.C. 09-9

Request Number: D.T.C. 2-4

Request: In its response to D.T.C. 1-16, TracFone indicated that of the five (5) subscribers labeled “De-enroll” two (2) were based on the subscribers’ requests to be removed from the program in order to receive Lifeline service from another carrier. At the time these subscribers communicated this to TracFone or its representatives, were those subscribers already receiving Lifeline services from those other carriers?

Response: TracFone is unable to determine when subscribers are receiving Lifeline service from another carrier, and therefore, requests subscribers to certify under penalty of perjury that they only receive a single Lifeline benefit.

Respondent: Jose Fuentes, Director of Government Relations

TRACFONE WIRELESS, INC.
D.T.C. 09-9

Request Number: D.T.C. 2-5

Request: Provide citations to the FCC guidelines and privacy laws referenced in TracFone's response to D.T.C. 1-20.

Response: D.T.C 1-20 stated that TracFone provided the customer verification forms as submitted by the customers verified as eligible, but did not provide copies of the verified customers' proof of program documentation. TracFone's response indicated that it was required to destroy that documentation. USAC's guidelines for verification state: "Do not retain proof of eligibility, only keep self-certification." See Certification and Verification Training Demo, at page 8 (Verification), attached as Exhibit 1 (viewed at http://www.usac.org/_res/documents/li/ppt/CertsandVerfsPresentationWebsite.ppt).

Thus, in accordance with guidelines published by USAC, the FCC-established entity responsible for administering and auditing the Lifeline program, TracFone may not retain documentation proving participation in a qualified program.

Furthermore, Section 54.417 of the FCC's rules, which sets forth ETCs' recordkeeping obligations, provides that ETCs must maintain the documentation required by §§ 54.409(d) and 54.410(b)(3). Section 54.409(d) requires each ETC to obtain at the time of enrollment in Lifeline the consumer's signature on a document certifying under penalty of perjury that: (1) the consumer receives benefits from one of the qualified programs and identifying the program or (2) the consumer's household meets the income requirement and the presented documentation of income accurately represents the consumer's household income; and (3) the consumer will notify the carrier if that consumer ceases to participate in the qualified program or if the consumer's income

TRACFONE WIRELESS, INC.
D.T.C. 09-9

exceeds 135% of the Federal Poverty Guidelines. Section 54.410(b)(3) refers to self-certifications regarding the number of individuals in their households from consumer who qualify for Lifeline under an income-based criterion. These sections do not require an ETC to keep copies of documentation proving participation in a qualified program.

In addition, Section 54.410(c) of the FCC's rules, which governs annual verification of continued participation in a qualified program, provides that subscribers who are subject to verification and qualify under program-based eligibility criteria must prove their continued eligibility by presenting in person or sending a copy of their Lifeline-qualifying public assistance card and self-certifying, under penalty of perjury, that they continue to participate in the Lifeline-qualifying public assistance program. Section 54.410 also states: "The eligible telecommunications carrier must retain records of these certifications." There is no requirement that an ETC retain copies of Lifeline-qualifying public assistance cards for those consumers who are chosen to participate in the annual verification. Indeed, per USAC guidelines, ETCs may not retain such documents.

Respondent: Jose Fuentes, Director of Government Relations

TRACFONE WIRELESS, INC.
D.T.C. 09-9

Request Number: D.T.C. 2-6

Request: TracFone asserts that: “In accordance with the Federal guidelines those who are not sampled are not deemed ineligible.” Response to D.T.C. 1-11(B), 1-11(C), 1-11(D), 1-13. Provide support for this assertion, including all relevant citations.

Response: Section 54.410(c)(2) of the FCC’s Rules provides:

By one year from the effective date of these rules, eligible telecommunications carriers in states that do not mandate state Lifeline support must implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers. Eligible telecommunications carriers may verify directly with a state that particular subscribers continue to be eligible by virtue of participation in a qualifying program or income level. To the extent eligible telecommunications carriers cannot obtain the necessary information from the state, they may survey subscribers directly and provide the results of the sample to the Administrator. Subscribers who are subject to this verification and qualify under program-based eligibility criteria must prove their continued eligibility by presenting in person or sending a copy of their Lifeline-qualifying public assistance card and self-certifying, under penalty of perjury, that they continue to participate in the Lifeline-qualifying public assistance program.

(emphasis added). TracFone conducted a random sample survey of its Lifeline customers in Massachusetts in compliance with Section 54.410(c)(2). Those subscribers who are subject to verification must prove their continued eligibility to receive Lifeline. Those subscribers who are not subject to verification are not required to prove continued eligibility. Moreover, those subscribers who are not subject to verification are assumed to remain eligible and will continue to receive Lifeline benefits. There is no FCC rule or order that requires subscribers who are not within the verification sample to be deemed ineligible to receive Lifeline.

Respondent: Jose Fuentes, Director of Government Relations

Exhibit 1

**Certification
&
Verification**

Certification and Verification

Consumer Certification

Consumers certify that they are eligible

Occurs at the time an individual applies to enroll in Lifeline

Company Certification

Companies certify that they are following state and FCC rules

Certifications must be submitted to USAC by August 31st of each year

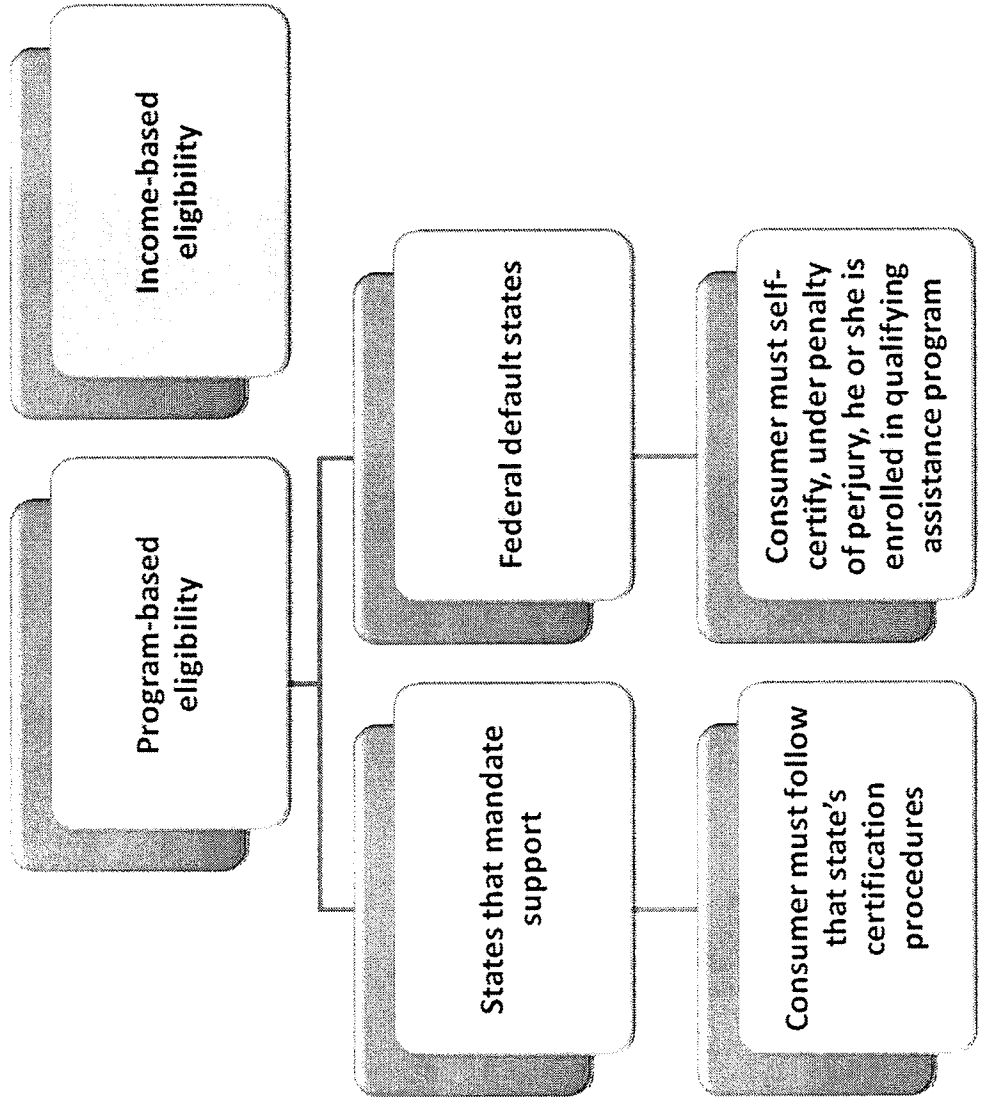
Verification

Periodic checks to see whether existing Lifeline customers remain eligible

Occurs after a consumer has already been certified

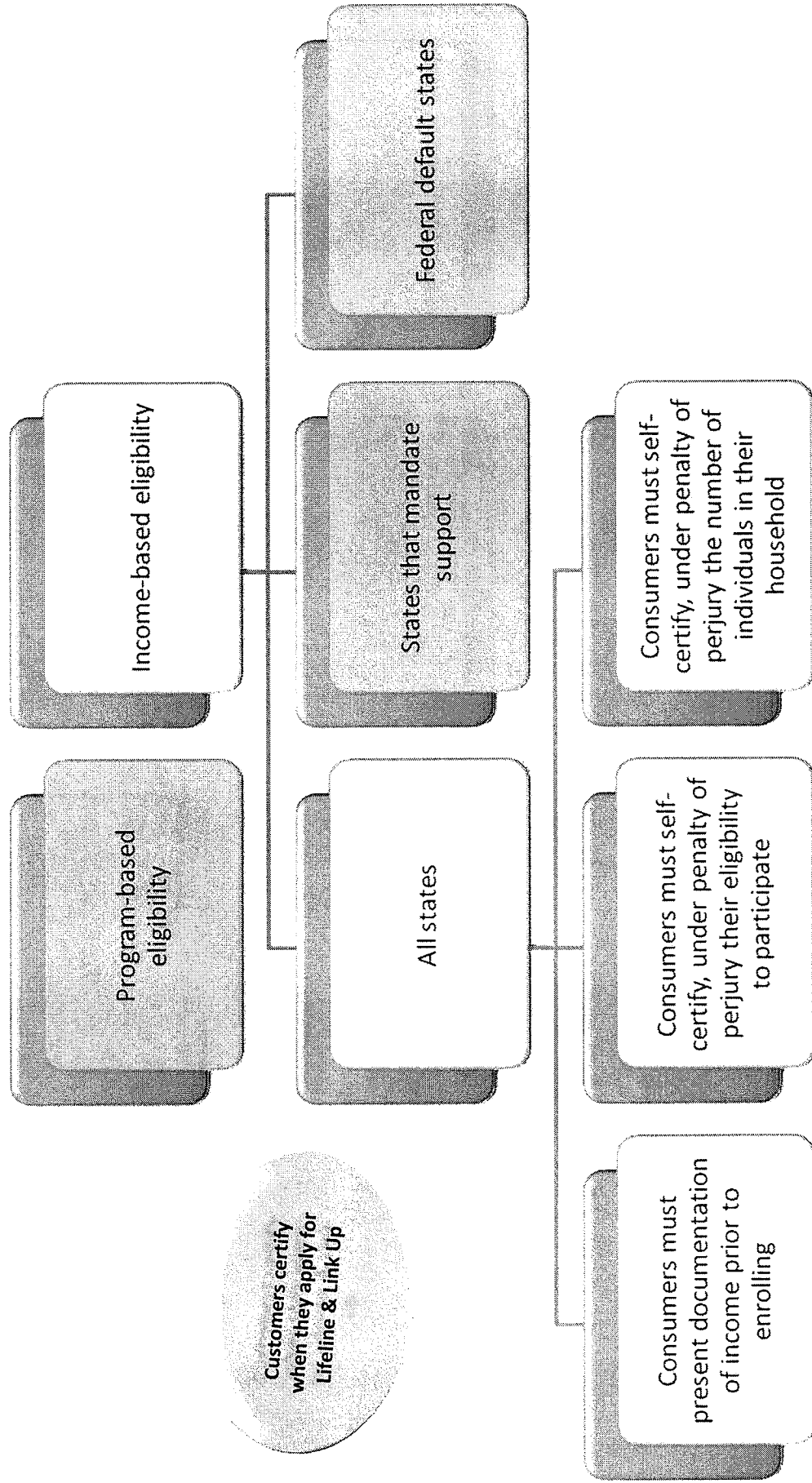
Verifications must be submitted to USAC by August 31st of each year

Consumer Certification

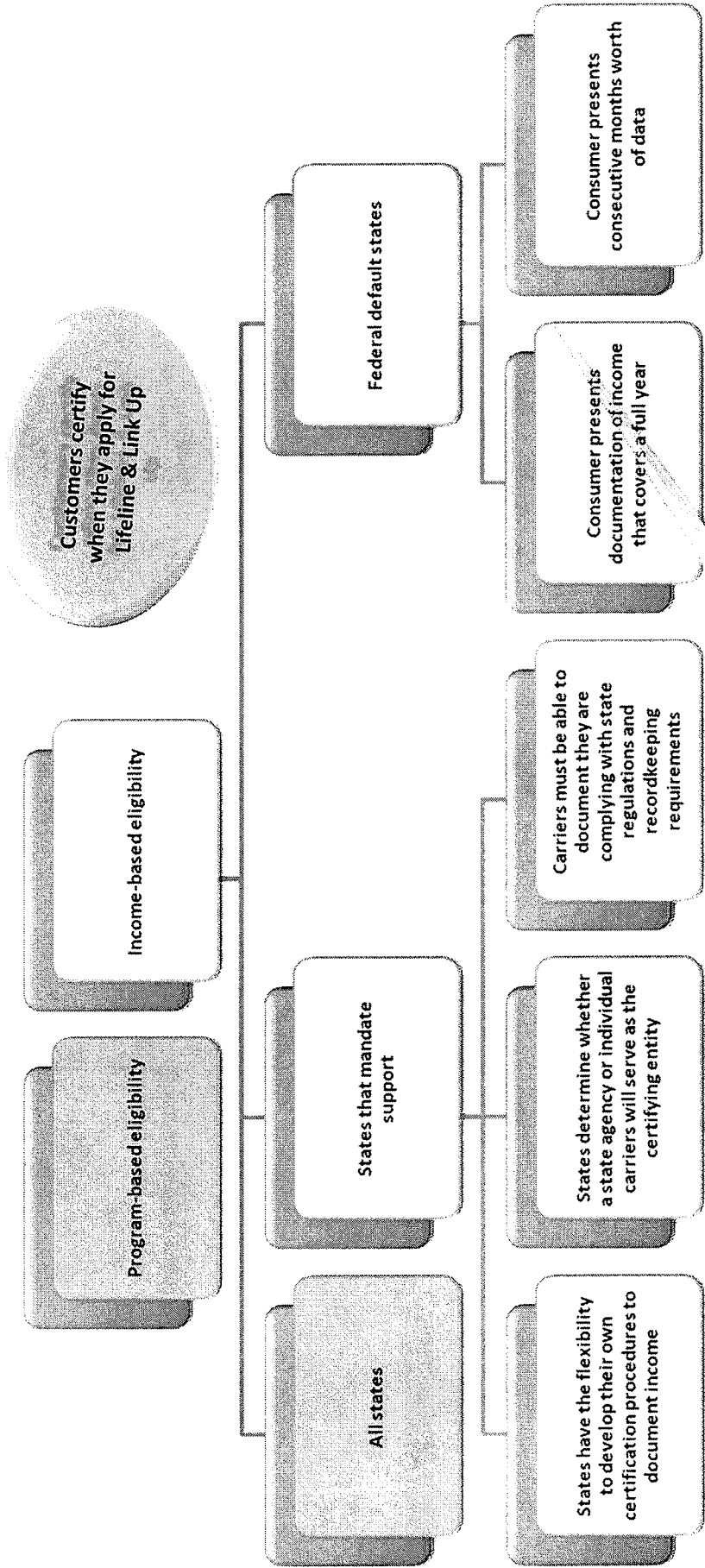


Customers certify when they apply for Lifeline & Link Up

Consumer Certification



Consumer Certification



Do not retain proof of income

Company Certification

Federal default states

- Officer of company enrolling the Lifeline customer must certify, under penalty of perjury that the company has procedures in place to review income documentation
- Officer of company enrolling the Lifeline customer must certify, under penalty of perjury that, to the best of his or her knowledge, company was presented with documentation that the consumer's household is at or below 135% of FPG

States that mandate support

- Officer of the company certifies that the company is in compliance with state Lifeline and Link Up income certification procedures and that, to the best of his or her knowledge, documentation of income was provided
- The company is in compliance with its state's certification and verification procedures, including any deadlines set by the state

ETCs selling Lifeline connections to non-ETC resellers

- Must obtain certifications from the non-ETC reseller that it is complying with the FCC's Lifeline and Link Up requirements

See 47 C.F.R. §54.410(c)

See Public Notice (DA 06-1391, released July, 3, 2006)

See In the Matter of Lifeline and Link Up, para. 40 (2004)

Verification

All States

- Must establish procedures to verify consumers' continued eligibility under both program-based and income-based criteria

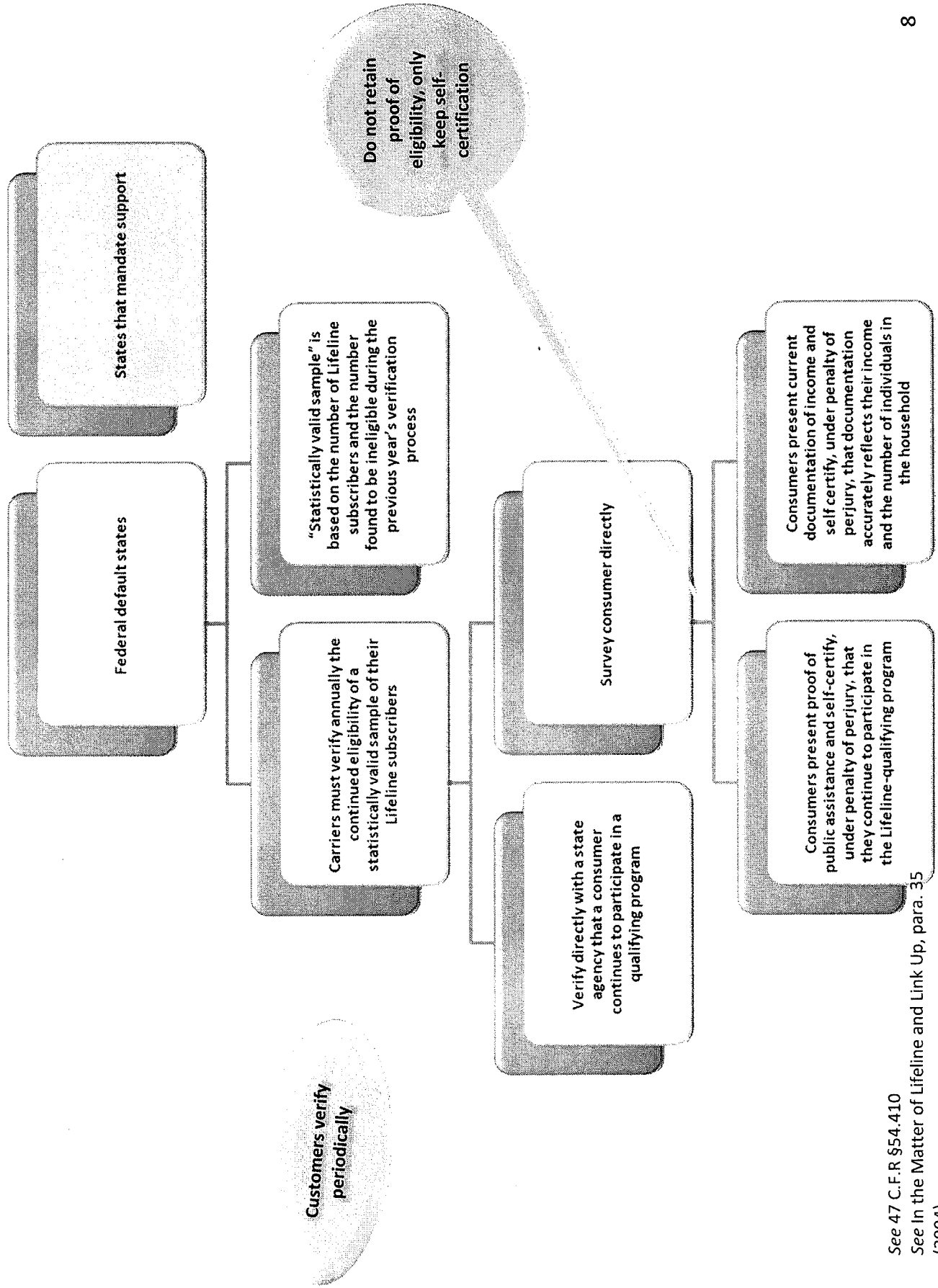
Federal default states

- Verification requirement began in 2005 for federal default states

States that mandate support

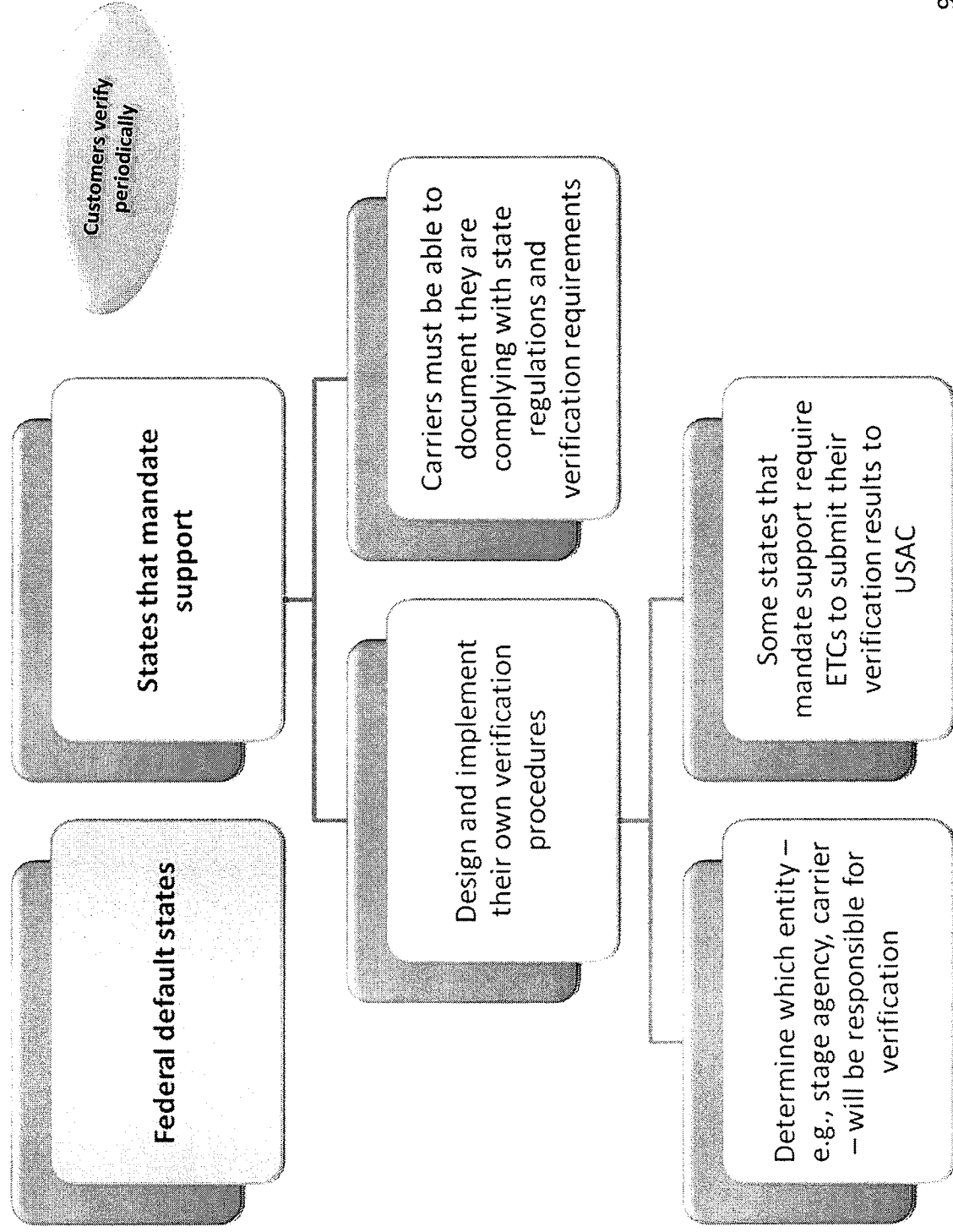
- Consumer must follow that state's verification procedures

Verification



See 47 C.F.R. §54.410
 See In the Matter of Lifeline and Link Up, para. 35 (2004)

Verification



Annual Certification and Verification

All ETCs must submit to USAC the OMB-approved "Annual Certification and Verification" form

- Must be submitted to USAC by August 31st of each year
- New form captures only "eligible" and "ineligible" consumers; carriers must follow-up with those from whom they did not receive a response and report them in one of these categories (can no longer report "no response")
- Do not send follow up results to USAC—only send one form

Annual Certification and Verification

Approved by OMB
3060-0819

Annual Lifetime Certification & Verification

Complete Section 1, 2, or 3. Then complete the chart below.

1. Eligible Telecommunications Carrier (ETC) serving Federal Default State (complete columns A through E and sign below)

I certify that the company listed below has procedures in place to verify the continued eligibility of a statistically valid random sample of its Lifetime customers. Results are provided in the chart below. I certify that the company listed below has procedures in place to review income documentation and that, to the best of my knowledge, the company was presented with documentation of the customer's household income. I am an officer of the company named below. I am authorized to make this certification for the Study Area(s) listed below.

OR

2. Eligible Telecommunications Carrier (ETC) serving Non-Federal Default State (complete columns A through C and sign below, complete columns D and E if required by your state commission)

I certify that the company listed below is in compliance with the Lifetime and Link Up verification procedures in place in the state(s) listed below. If any Lifetime customers of the company listed below qualify based on income, I certify that the company listed below is in compliance with state Lifetime income certification procedures and that, to the best of my knowledge, documentation of income was presented. I am an officer of the company named below. I am authorized to make this certification for the Study Area(s) listed below.

OR

3. I certify that my company has not claimed federal Low Income support for any Lifetime customers in _____ (insert current year).

A	B	C	D	E
Company Name	SAC (6 digit number)	State	Customers Surveyed or Verified	Customers Found to be Ineligible*

* Ineligible customers who did not respond to the survey in the ineligible column.

Check if you are in a state that has its own Lifetime or Link Up program

Only complete columns D and E if:
(a) Your ETC serves in a federal default state
(b) Your state commission requires ETCs to follow the federal verification procedures

Check ONLY if you serve in a federal default state

Check if your company did not claim federal Low Income support

All ETCs submitting the form should complete columns A, B and C

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing TracFone Wireless, Inc.'s Supplemental Responses to First Set of Information Requests and Responses to Second Set of Information Requests of the Department of Telecommunications and Cable was served electronically and by overnight delivery to the persons listed below, on this 30th day of March, 2010.

Catrice C. Williams, Department Secretary
Department of Telecommunications and
Cable
Two South Station, 4th Floor
Boston Ma, 02110
Tel: 617-305-3580
Fax: 617-988-8287
Email: catrice.williams@state.ma.us
Dtc.efiling@state.ma.us

Michael Isenberg, Director, Competition
Division
Department of Telecommunications and
Cable
Two South Station, 4th Floor
Boston Ma, 02110
Tel: 617-305-3580
Fax: 617-988-8265
Email: mike.isenberg@state.ma.us

Alison Lackey, Hearing Officer
Department of Telecommunications and
Cable
Two South Station, 4th Floor
Boston Ma, 02110
Tel: 617-305-3580
Fax: 617-988-8253
Email: Alison.lackey@state.ma.us

Armine Simonyan, Telecom Analyst
Department of Telecommunications and
Cable
Two South Station, 4th Floor
Boston Ma, 02110
Tel: 617-305-3580
Fax: 617-988-8279
Email: armine.simonyan@state.ma.us

Betsy Whittey, Hearing Officer
Department of Telecommunications and
Cable
Two South Station, 4th Floor
Boston Ma, 02110
Tel: 617-305-3580
Fax: 617-988-8285
Email: betsy.whittey@state.ma.us

Michael Mael, Telecom Analyst
Department of Telecommunications and
Cable
Two South Station, 4th Floor
Boston Ma, 02110
Tel: 617-305-3580
Fax: 617-988-8269
Email: michael.mael@state.ma.us

Kajal Chattopadhyay, Acting General
Counsel
Department of Telecommunications and
Cable
Two South Station, 4th Floor
Boston Ma, 02110
Tel: 617-305-3580
Fax: 617-988-8254
Email: Kajal.chattopadhyay@state.ma.us

Charles Harak, Esq.
7 Winthrop Square, 4th Floor
Boston, MA 02110-1245
Tel: (617) 542-8010
Email: charak@nclc.org

John Breyault
National Consumers League
1701 K Street, NW, Suite 1200
Washington, D.C. 20006
Tel: (202) 835-3323
Email: johnb@nclnet.org

/s/ Raymond Lee