

Attachment 1

April 15, 2011

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109

Dear Ms. Dortch:

The FCC has asked eligible telecommunications carriers (“ETCs”) to develop a proposal that the Commission could adopt in an interim order, under the “good cause” exception to notice and comment informal rulemaking procedures, to reduce the number of individual qualified Lifeline subscribers that are simultaneously receiving Lifeline-supported service from multiple ETCs. As set forth in the attached Interim Lifeline Duplicate Resolution Process proposal (the “Proposal”) and below, an interim order should establish a rule precluding any individual qualifying for low income consumer from simultaneously receiving more than one Lifeline supported service; provide a mechanism, to be applied on an interim basis in selected states, for de-enrolling an individual consumer who is simultaneously receiving Lifeline supported service from more than one ETC; and collect additional information regarding instances in which multiple residents of a single postal address may be receiving Lifeline supported services. These interim rules and procedures would be put in place pending adoption of final rules in response to the FCC’s *Lifeline and Linkup Reform and Modernization NPRM*.¹ The Proposal is designed to be implemented while the Commission considers the issues in Section IV, V.A, and VII.B & D of the *NPRM*, reply comments on which are due on an accelerated basis on May 10, 2011. The Proposal is designed to remain in effect for a limited period of approximately six months while the FCC and/or USAC procure the capabilities to operate a more permanent duplicate enrollment resolution process, and the specific identification process described more fully in the Proposal would sunset after six months unless specifically reinstated by the Commission in an order resulting from the pending rulemaking.

The undersigned ETCs and associations have worked cooperatively with each other and with Commission staff to develop the Proposal. The process envisioned by the Proposal would, however, seek only voluntary participation by ETCs, and neither submission of this letter nor the Proposal itself should indicate that any individual ETC has either agreed to participate in the process ultimately adopted by the Commission or, at this time, to fund a third-party vendor to

¹ *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45 (rel. Mar. 4, 2011).

conduct some of the functions in the Proposal or for a period beyond the six months of this proposal. For some ETCs, any such funding will depend on the cost of the vendor and the allocation of those costs among ETCs.

The Proposal is designed to reduce the number of individual qualified Lifeline subscribers who are simultaneously receiving Lifeline-supported service from multiple ETCs, while still providing low-income consumers with the opportunity to choose their provider of Lifeline-supported service. The Proposal also recognizes, however, that ETCs that have customers who are simultaneously receiving Lifeline services from multiple ETCs today have no means of verifying whether any Lifeline customer is already receiving Lifeline service from another ETC. These ETCs are complying with the Commission's rules and mandates when they provide Lifeline service in good faith (based on information available to the ETC at the time it received the request for service) to an individual who demonstrates that he / she qualifies for Lifeline support in accordance with existing rules. Under the Proposal, ETCs would therefore continue to be reimbursed for any Lifeline benefits provided to qualifying low income consumers until directed by USAC to de-enroll such customers, and would not be subject to retroactive denial or repayment of reimbursements for periods prior to USAC's direction to de-enroll a particular customer. Furthermore, until there is a centralized database or other mechanism for real-time certification and verification of low-income subscribers' eligibility for enrollment in an ETC's Lifeline program, ETCs that in the future provide service to a qualifying low income consumer that is also receiving Lifeline service from another ETC will also receive reimbursement for any Lifeline benefits provided to a qualifying low income consumer until directed by USAC to de-enroll the customer, and would not be subject to retroactive denial or repayment of reimbursements for periods prior to USAC's direction to de-enroll a particular customer. Any other approach would effectively deny Lifeline consumers the ability to port services among Lifeline providers and would penalize ETCs for providing services that they were required to provide based on current requirements and regulations.

In light of the particular facts before the Commission and the fact that no consumer will lose all Lifeline service as a result of this interim proposal, the ETCs identified below recognize that that it may be appropriate for the Commission to adopt the attached Proposed Rules—and move forward with the related procedures discussed in the Proposal—under the “good cause” exception to the Administrative Procedure Act's typical notice and comment procedures,² and do not object to the Commission doing so.

The Proposal would impose new duties that have the force of law and that modify existing legislative rules, and therefore must be adopted through legislative rulemaking.³ Most notably, notwithstanding rule 54.405(a), a legislative rule which directs all ETCs to make Lifeline service available to qualifying low-income consumers, the Proposal would both modify 54.405 to establish that ETCs have no obligation to provide Lifeline to low-income consumers

² 5 U.S.C. § 553(b)(3)(B).

³ *Chao v. Rothermel*, 327 F.3d 223, 227 (3d Cir. 2003); *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003).

simultaneously receiving Lifeline service from another ETC – and thus consumers can have no expectation of or entitlement to duplicate services – and add a new 54.405(e) to require ETCs to de-enroll specified consumers from the Lifeline program at USAC’s direction. The Proposal would also have USAC notify Lifeline customers of potential de-enrollment from one of the subscriber’s Lifeline supported services, rather than the carrier as required by legislative rule 54.405(c), and leads to de-enrollment from one of the Lifeline supported services within less than 60 days from the date of the USAC letter and notwithstanding any other provisions of federal or state law or provisions of tariffs, both contrary to legislative rule 54.405(d). The Commission can place these new, substantive obligations on providers and low income consumers only by adopting on an interim basis the proposed rules attached to the Proposal as Appendix A.

Critically, as discussed above, the Commission’s Order and rules must acknowledge that until the Commission adopts permanent Lifeline reforms ETCs will have no means to prevent duplicates from continuing or recurring and cannot, therefore, be expected to do so. In addition, the Commission’s Order and rules must make clear that the Order does not at this time create any new requirement for any ETC to modify existing Lifeline enrollment and verification procedures. ETCs may be required to make process and systems changes as part of permanent Lifeline reform being considered in the NPRM. However, the Commission should not expect or require ETCs to make resource-intensive changes on an interim basis and then to have to do so again when permanent rules are adopted, particularly since ETCs currently have no means of verifying whether a customer is already receiving Lifeline service from another ETC.

To implement the Proposal, in addition to directing USAC to take the steps detailed in the Proposal, the Commission should amend its Lifeline rules to state that Lifeline customers receiving duplicative Lifeline support resulting from individual consumers enrolling in multiple Lifeline programs are only entitled to a single Lifeline benefit. Specifically, the Commission should adopt the proposed rules attached to the Proposal as Appendix A.

The Proposed Rules would:

Amend rule 54.405(a) to provide that ETCs are obligated to provide Lifeline service only to qualifying low-income consumers who are not simultaneously receiving Lifeline service from that or any other ETC.

Amend rule 54.405 by adopting a new subsection (e) mandating the immediate de-enrollment of subscribers receiving duplicate benefits.⁴

In addition, the Commission must take a series of related steps to ensure that ETCs may de-enroll duplicate subscribers as contemplated by the Proposal.

⁴ Alternatively, the Commission could, by rule or order, waive or exclude from applicability Sections 54.405 (c) and (d) of its rules to permit carriers to immediately de-enroll subscribers.

First, the Commission must preempt any state or local requirements⁵ or state-approved tariff requirements that conflict with the obligation under newly adopted 54.405(e) to immediately de-enroll duplicate subscribers.

Second, the Commission must expressly permit Lifeline providers either to (a) terminate service or (b) change a customer to another service tier immediately upon notice from USAC of de-enrollment. The Commission's Order must make it clear that ETCs may take these steps notwithstanding any arguably contrary service terms and conditions (applicable by tariff or otherwise) or federal, state or local legal or regulatory requirements.

Third, to permit Lifeline providers to move customers to a rate or service plan that does reflect a Lifeline benefit and to streamline the interactive voice response ("IVR") process through which Lifeline subscribers would indicate their intent to retain Lifeline service from a different ETC than the one identified in USAC's letter to the consumer. Lifeline providers must be granted a blanket waiver of the slamming and cramming rules to the extent such rules are applicable.

Fourth, the order must make clear that any customer found to be receiving duplicate benefits from a state Universal Service or Lifeline fund must be de-enrolled from both the federal and the state program upon receipt by the provider of a de-enrollment notice from USAC.

⁵ See, e.g., Fla. Admin. Code r. 25-4.0665(14) ("An eligible telecommunications carrier must provide 60 days written notice prior to the termination of Lifeline service."); Wisc. Admin. Code ATCP 123.04 (with limited exceptions, "no provider may initiate any price increase or other subscription change without giving the consumer prior notice of that price increase or subscription change. The provider shall give the notice at least 25 days, but not more than 90 days, prior to the subscription change.").

Ms. Marlene Dortch, Secretary

15 April 2011

Page 5

Finally, the order should note that production of information necessary to identify and de-enroll recipients of duplicate Lifeline benefits is consistent with Section 222(d) of the Communications Act.

Respectfully submitted,

United States Telecom Association

CTIA – The Wireless Association ®

AT&T

CenturyLink

Cox Communications, Inc.

General Communication, Inc.

Nexus Communications, Inc.

Sprint Nextel Corp.

Tracfone Wireless, Inc.

Verizon Communications, Inc.

Cc: Kim Scardino
Sharon Gillett
Trent Harkrader
Zachary Katz
Carol Matthey
Austin Schlick
Dana Shaffer

Interim Lifeline Duplicate Resolution Process

The FCC has asked eligible telecommunications carriers (“ETCs”) to develop a proposal that the Commission could adopt immediately in an interim order, under the “good cause” exception to notice and comment informal rulemaking procedures. The interim order would provide a mechanism for elimination of duplicative Lifeline support resulting from individual consumers signing up for multiple Lifeline services prior to the Commission adopting final rules in response to its NPRM released March 4, 2011 (FCC 11-32). The following proposal would also pilot a process to assess instances of multiple individuals at the same address receiving Lifeline benefits. The proposal can be implemented while the Commission considers the issues in Section IV, V.A, and VII.B & D of the NPRM. Reply comments on those issues are due on an accelerated basis on May 10, 2011. This interim proposal would remain in effect for approximately 6 months while the FCC and/or USAC procure the capabilities to operate a more permanent duplicate enrollment resolution process that could become part of a national Lifeline database solution.¹

A. Parameters

1. The interim Lifeline duplicate resolution process (“Interim Process”) is a two track process designed to a) quickly reduce the number of individual, otherwise qualified Lifeline subscribers who are receiving benefits from more than one service provider at the same time, and b) better identify instances of multiple customers residing at the same address receiving Lifeline benefits.
2. During the period that the Interim Process is operational, the FCC/USAC shall take whatever steps are necessary to establish a permanent resolution process.² A duplicate resolution process is likely to be a necessary component of implementing a Lifeline database solution.
3. The Interim Process would be implemented on a state-by-state basis, beginning with states where the highest occurrence of individual Lifeline duplicate enrollment is known or anticipated (*i.e.*, the states in which audits have already revealed significant numbers of duplicate enrollments or the states where prepaid wireless Lifeline providers have been active).
4. Lifeline providers in the states identified for the Interim Process may conduct consumer education campaigns in advance of the process being implemented (*e.g.*, informing customers that they are eligible for Lifeline-supported service from only one provider and that the FCC/USAC will soon commence the

¹ Participating ETCs reserve the right to modify the Proposal to take into account higher-than-expected vendor costs, experience gained as the process is implemented, and other factors.

² The Interim Process will sunset after 6 months unless specifically reinstated by the FCC.

process of directing providers to de-enroll subscribers that are identified as receiving Lifeline service from multiple providers).

B. Administration

The Interim Process will be administered primarily by USAC as part of its Universal Service Fund administration duties with the assistance of affected service providers in each state. The Interim Process begins with USAC requesting up-to-date subscriber lists from the major Lifeline providers operating in the targeted states. USAC will analyze these subscriber lists and compile two lists. The Track 1 list will identify suspected duplicates that meet the “same person, same address, multiple service provider” pattern. The Track 2 list will identify potential situations that meet the “different individuals, same address” pattern and will be divided into two categories. The Track 2-A list will contain names of the multiple individuals at the same address who receive Lifeline benefits from the same provider. The Track 2-B list will contain names of the multiple individuals at the same address who receive Lifeline benefits from different providers. The two Tracks will then be administered as follows.

1. Track 1 – Same individual, same address, two service providers
 - a) USAC gives each provider its Track 1 list of individual subscribers suspected of receiving duplicate Lifeline benefits. ETCs may, at their option, provide to USAC additional identifying information, eliminate non-subscribers, or make other corrections. If the provider does not respond within three business days of receipt of the list, then the list is presumed to be correct.
 - b) Using a methodology that is approved by the FCC and reviewed with the ETCs, USAC randomly identifies a “default carrier” for each customer from among the two (or more) carriers to which that customer is subscribed.³ This methodology will result in each provider involved in a duplicate being named as the default carrier for 50% of the customers identified as having multiple Lifeline providers.⁴
 - c) USAC sends all affected customers a letter, notifying them that they must make a choice between their current Lifeline providers or, on a going-forward basis, they will receive Lifeline-supported service only from the provider identified in their letter as their default carrier. The letter

³ Identification of a default carrier ensures that the duplicate can be resolved even in the absence of a customer response.

⁴ While we anticipate that the overwhelming majority of USAC-identified customers receive duplicative Lifeline supported service from two ETCs, it is possible that some customers receive Lifeline supported service from three (or conceivably more) ETCs. In the case of a subscriber being served by three ETCs, USAC would randomly assign one-third of those customers to each provider. For any case involving more than three ETCs, each ETC would be identified as a default carrier for a proportionate number of subscribers.

will inform customers that they have 30 days to contact a toll-free number to indicate their choice of Lifeline provider. This notification letter will include a consumer-appropriate explanation of: i) the Lifeline rules; ii) why the impending allocation action is being taken; iii) what changes the customer can expect to see or actions he/she needs to take when the allocation action takes place (*e.g.*, an increase in the customer's wireline phone bill, termination of the customer's wireless Lifeline service, or selection of a new wireless plan); and, iv) a toll-free number to call with questions. The letter will provide a method for the customer to be authenticated when calling the toll-free number.

The notification will make clear that customers must contact a toll-free number within 30 days from the date of the letter if they want to continue to receive Lifeline supported services from the provider NOT listed as their default carrier. If they prefer the provider listed as the default carrier, no action is necessary.

USAC/FCC will consult with Lifeline ETCs to ensure that this notification includes the information necessary to avoid customer confusion and the Lifeline ETCs will assist with the provision of the customer service and response mechanisms.

- d) After the 30-day period has expired, any customer-generated provider selections are incorporated into the original allocation lists by the entity receiving the customer responses and these lists are provided to USAC. USAC then notifies each provider of the names of customers who must be de-enrolled from Lifeline (*i.e.*, any customers that have not selected that provider or for which that provider is not the default carrier). If a customer does not call the toll-free number to choose a provider, the original allocation automatically becomes effective, and on a going-forward basis, they will receive Lifeline-supported service only from the provider identified in their letter as their default carrier.

2. Track 2 - Different individuals, same address

- a) USAC gives each provider two Track 2 lists of customers: 2-A for intra-provider address matches and 2-B for inter-provider address matches.
- b) The service provider will analyze the lists to determine whether other information in its possession (*e.g.*, more granular *address* information or network provisioning data) can differentiate between apparently identical addresses, and any other information the carrier may seek to provide about the subscribers.
- c) The service provider will provide USAC with the results of its analysis including the 2-A and 2-B lists of customers for which no differentiating information was in the provider's possession.

- d) Following completion of step c), above, USAC will re-compare 2-B lists and generate updated lists of apparent inter-provider address matches.
- e) USAC will compile and submit to the FCC as part of the record in WC Docket 03-109 a report summarizing, in aggregate at the state level, the results of step c) for a particular state. The report will not include or reveal carrier-specific information. The FCC will treat the information provided by carriers as confidential and will provide a means for interested parties or their counsel to have access to the full report, subject to an appropriate Protective Order.

3. During the pendency of the Interim Process, and prior to the implementation of a national Lifeline database, USAC and the Lifeline providers will continue to follow existing applicable Lifeline eligibility rules and thus cannot guarantee that some consumers will not continue to self-certify their eligibility for Lifeline to two providers.

4. During the pendency of the Interim Process, the FCC will instruct USAC to suspend any existing Lifeline audit or “PQA” programs.

5. All Lifeline providers will continue to provide Lifeline-supported service to both Track 1 and Track 2 subscribers until notified by USAC to de-enroll certain Track 1 subscribers and until any mandatory rate notice period is complete, whichever is later, and shall be reimbursed for the Lifeline benefits provided to those de-enrolled subscribers.

APPENDIX A

Proposed Rules

§ 54.405 Carrier obligation to offer Lifeline.

All eligible telecommunications carriers shall:

(a) Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers that are not currently receiving Lifeline service from that or any other eligible telecommunications carrier, and

(c) *Termination for Ineligibility.* *****

(e) *De-enrollment.* Notwithstanding subsections 54.405(c) and (d) of this section, upon notification by USAC that a subscriber is currently receiving Lifeline service from another eligible telecommunications carrier, that ETC will de-enroll that subscriber from participation in that ETC's Lifeline program. ETCs shall not be eligible for Lifeline reimbursement as described in Sec. 54.407 for any subscriber de-enrolled pursuant to this subsection following the date of de-enrollment.