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Public Service Commission

February 21, 2018

VIA ELECTROIC FILING

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comments of the Florida Public Service Commission in WC Docket No. 17-287, Bridging the Digital Divide for Low-Income Consumers, WC Docket No. 11-42, Lifeline and Link Up Reform Modernization, and WC Docket No. 09-197, Telecommunication Carriers Eligible for Universal Service Support.

Dear Ms. Dortch:

Forwarded herewith are comments of the Florida Public Service Commission in the above dockets regarding further reform of the federal Lifeline program.

Gregory Fogleman is the primary staff contact on these comments. He can be reached at 850-413-6574 (gfoglema@psc.state.fl.us).

Sincerely,

/s/

Cayce Hinton, Director
Office of Industry Development and Market Analysis

Enclosure

cc: Mr. James Bradford Ramsay, NARUC

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Bridging the Digital Divide for Low-Income Consumers	))	WC Docket No. 17-287
	)	
Lifeline and Link Up Reform and Modernization	))	WC Docket No. 11-42
	)	
Telecommunication Carriers Eligible For Universal Service Support	))	WC Docket No. 09-197

COMMENTS OF

THE FLORIDA PUBLIC SERVICE COMMISSION

CHAIRMAN ART GRAHAM

COMMISSIONER JULIE I. BROWN

COMMISSIONER DONALD J. POLMANN

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COMMISSIONER ANDREW GILES FAY

February 21, 2018

Introduction and Summary

The Florida Public Service Commission (FPSC) submits these comments in response to the Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry in the above captioned proceedings regarding the federal Lifeline Program released by the Federal Communications Commission (FCC) on December 1, 2017.[1] Among other issues, the FCC is seeking comment on whether to limit Lifeline support to facilities-based carriers, whether to continue the phase down of voice-only support, possible changes to the existing Lifeline budget, and strategies intended to limit waste, fraud and abuse. The FPSC encourages the FCC to consider the following:

- Resellers contribute, albeit indirectly, to the infrastructure of the underlying network they use.
- Competitive options for consumers would be constrained if the FCC limited support to only facility-based Lifeline providers.
- Consumers are best situated to determine if they need or can afford both broadband and voice services.
- Broadband Internet Access Service cannot be eligible for universal service support unless it includes a telecommunications service such as voice.
- Any conduct-based standards adopted by the FCC should be applied to all ETCs.
- Collaboration among the FCC, Universal Service Administrative Company (USAC), and state commissions to identify instances of potential fraud is in everyone's best interest.
- Integrating access to existing state databases for purposes of eligibility verification may take time and requires resources that should be reimbursed to states.
- If the FCC implements a self-enforcing budget, the FCC should not discriminate among rural, non-rural, and tribal households.

[1] FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017.

Limiting Support to Facilities-Based Carriers

In this proceeding, the FCC has stated that Lifeline support will best promote access to advanced communications services if it is focused on encouraging investment in broadband-capable networks.[2] It therefore proposes "limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC's voice- and broadband-capable last-mile network."[3] The FCC believes that this proposal would do more than the current reimbursement structure to encourage access to quality, affordable broadband service for low-income Americans. Furthermore, if Lifeline support can help promote the deployment of more broadband-capable facilities by Lifeline carriers, such support can then indirectly serve to reduce prices for consumers. The FCC seeks comment on this proposal as well as how it should discontinue Lifeline support for non-facilities-based service providers.

While the FPSC remains concerned about growth in the size of the Lifeline budget, we do not believe the FCC's proposal will have the desired effect to more efficiently meet the needs of Lifeline consumers. First, resellers contribute, albeit indirectly, to the infrastructure of the underlying network. Specifically, resellers pay wholesale companies a market-based rate for the services they use that should include the wholesale companies' expenses related to infrastructure. Second, some prominent facilities-based carriers have already left the Lifeline market. In Florida, AT&T has withdrawn as an ETC in areas where it was not eligible to receive high-cost support.[4] Resellers are the only option in many of the affected areas where AT&T has relinquished this designation for wireline service. Finally, many states have seen a significant transition in the provision of Lifeline service by wireline to wireless carriers. Many of these wireless resellers have developed this business plan, not to defraud the Lifeline program, but to serve a market underserved by many traditional carriers.

In Florida, the vast majority of Lifeline customers are served by wireless resellers. As of June 2017, 63 percent of Lifeline customers in Florida receive service from a reseller of wireless

[2] Ibid., ¶65.
[3] Ibid.
[4] Request for relinquishment of partial eligible telecommunications carrier (ETC) status, by Bellsouth Telecommunications, LLC d/b/a AT&T Florida, Florida Public Service Commission, Docket No. 20170082-TP, Order No. PSC-2017-0290-PAA-TP (Jul. 24, 2017).

services.[5] By comparison, 33 percent are serviced by facilities-based wireless carriers. Facilities-based Lifeline service from wireline providers represents a declining market, currently about three percent of the Florida Lifeline market.[6] Less than one percent of Florida Lifeline customers are served by wireline resellers.[7] Eliminating support for non-facilities-based service providers could cause some wireless providers in a state to leave the Lifeline market, resulting in reduced service options and potentially a loss of Lifeline service altogether. If the FCC moves forward with limiting support to only facilities-based carriers, the FPSC believes that affected Lifeline consumers will need a reasonable transition period to find an alternative Lifeline provider in order to minimize a potential disruption of service.

In general, the Lifeline program was never designed to promote infrastructure deployment. The Lifeline program was intended to ensure affordability of service to vulnerable consumers, and the FPSC believes that is what the Lifeline program should continue to focus on. Infrastructure investment, while an important component of universal service policy, is better addressed through the federal high-cost programs.

Support for Lifeline Voice-Only Service

The FCC also seeks comment on continuing the phase down of Lifeline support for voice-only services.[8] In the 2016 Lifeline Order, the FCC adopted rules to gradually phase out Lifeline support for voice-only services to further its goal of transitioning to a broadband-focused Lifeline program.[9] The current rules provide that Lifeline support will end on December 1, 2021, for voice-only Lifeline service.[10] An exception was included permitting Lifeline voice support to continue in census blocks where there is only one Lifeline provider.

[5] Florida Lifeline Assistance: A report to the Governor, President of the Senate, Speaker of the House of Representatives, December 2017, Attachment B, http://www.floridapsc.com/Files/PDF/Publications/Reports/Telecommunication/LifelineReport/2017.pdf, accessed February 21, 2018.
[6] Ibid.
[7] Ibid.
[8] FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶74.
[9] FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, ¶¶52-66.
[10] 47 CFR Part 54.403(a)(2)(iv).

The FPSC believes that customers should have the option to continue to receive Lifeline support for voice-only service and that the FCC should eliminate its planned phase down of support for voice only services. We are concerned that if the only option for customers to obtain Lifeline voice service is by combining the service with broadband, the cost of the combined services may become cost prohibitive for some consumers without increasing financial support from the Lifeline program. Furthermore, some consumers may have concluded that they do not need broadband service. Customers should continue to have the option of stand-alone voice or a combination of voice and broadband services.

In addition, a phase out of voice services appears to be inconsistent with the Telecommunications Act of 1996 (Act). Section 214(e)(1) of the Act requires ETCs to offer services that are supported by the federal universal service mechanism under section 254(c) of the Act.[11] Section 254(c) of the Act is clear that universal service is an evolving level of "telecommunications services."[12] Given the recent reclassification of Broadband Internet Access Service as an information service, the FPSC does not see how a carrier only offering broadband service would qualify as an ETC and receive universal service support.[13] This interpretation is consistent by the decision of the Tenth Circuit Court of Appeals (Court) in 2014.[14] Wherein the Court concluded that "*there is no imminent possibility that broadband-only providers will receive USF support under the FCC's Order, since they cannot be designated as 'eligible telecommunications carriers.'"* (emphasis added).

Conduct-Based Requirements

The FCC requests comment on TracFone's suggestion that the FCC minimize waste, fraud, and abuse in the Lifeline program through "conduct-based requirements."[15] TracFone's proposal would be to suspend for a year or disbar any Lifeline ETC with sufficiently high

[11] 47 U.S.C. § 214(e)(1).
[12] 47 U.S.C. § 254(c).
[13] FCC, Declaratory Ruling, Report and Order, and Order, FCC 17-166, WC Docket No. 17-108, released January 4, 2018.
[14] *In Re: FCC 11-161,* 753 F.3d 1015, at 1048-1049 (10th Cir. 2014).
[15] FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶73.

improper payment rates. As Florida is a net-contributor to the federal universal service program, the FPSC supports this proposal as a way to ensure that such ETCs do not financially benefit from defrauding the program. The FCC notes that most of its enforcement actions have centered on wireless resellers and seeks comment on if this new requirement be limited to only wireless resellers or all Lifeline ETCs. The FPSC believes that all ETCs should be held to the same standards.

Improving Program Audits

The FCC proposes to adjust the process that USAC currently uses to identify which service providers will be subjected to Lifeline audits.[16] The FCC's plan would transition the independent audit requirements required by its rules away from a $5 million threshold. Instead, audits would be based on established risk factors and take into consideration the potential amount of harm to the universal service fund. The FPSC agrees that increased flexibility should be provided for the audit selection process, allowing USAC to adapt its risk factors over time as necessary to effectively and efficiently identify instances of waste, fraud, or abuse of the program. At the same time, the FPSC believes that the FCC and USAC should collaborate with state commissions to identify potential instances of waste, fraud, and abuse in the program.

Prohibiting Agent Commissions

The FCC seeks comment on prohibiting agent commissions related to enrolling subscribers in the Lifeline program. According to the FCC, many ETCs compensate sales employees and contractors with a commission for each consumer enrolled. These sales and marketing practices can encourage the employees and agents of ETCs to enroll subscribers in the programs regardless of a consumer's eligibility.[17] As noted in prior comments of the FPSC, we believe that agents should not be paid commissions for each Lifeline application submitted.[18]

[16] Ibid., ¶86.
[17] Ibid., ¶91.
[18] Comments of the FPSC to the FCC in WC Docket Nos. 11-42, 09-197, and 10-90, filed on August 31, 2015, p. 7.

National Verifier Implementation

In the 2016 Lifeline Order, the FCC established the National Verifier to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program.[19] In this proceeding, the FCC seeks comment on ways to ensure the FCC can partner with states to facilitate the successful implementation of the National Verifier.[20] To protect the integrity of the enrollment and eligibility determination process, the FCC has asked for comment on whether new Lifeline enrollments should be halted in a state at any point if the launch of the National Verifier has been unnecessarily delayed in that state.

The FPSC opposes "halting" processing of Lifeline applications statewide when a delay has occurred in integrating state databases into the National Verifier. We question how the FCC would determine factually whether a delay was "unnecessary." At a minimum, eligibility criteria that are outside of any state database should continue to be used. Furthermore, the National Verifier has been tasked to verify eligibility either through electronic means, or by physical examination of supporting documents.[21] Eligible consumers should not be disadvantaged regardless of the National Verifier's ability to integrate an electronic link to state databases.

Creating a system that allows the National Verifier to confirm the participation in a qualifying program is not without cost. State agencies are likely to require additional federal funds to compensate for costs associated with verification or access to state databases. The FPSC believes that the FCC should help states defray costs associated with making consumer eligibility information available to the National Verifier. This is especially true in states like Florida, where a database has already been developed by the Florida Department of Children and Families.

[19] FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, ¶¶126-166.
[20] FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶59.
[21] FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, ¶133.

USAC Report Availability

In this proceeding, the FCC asks for comment on additional reports USAC could make public or available to state agencies to increase program transparency and accountability.[22] The FCC asks for comment on directing USAC to periodically report suspicious activity or trends to the FCC's Wireline Competition and Enforcement Bureaus, Office of Managing Director, and any relevant state agencies. The FPSC supports the idea of USAC notifying state commissions of suspicious activity with carrier specific information within their respective states.

Self-Enforcing Budget

The FCC proposes to adopt a self-enforcing budget mechanism to ensure that Lifeline disbursements are kept at a responsible level and to prevent undue burdens on the ratepayers who contribute to the program.[23] The FCC's plan would replace the approach adopted in the 2016 Lifeline Order and require an annual cap for Lifeline disbursements. The process adopted in 2016 required the Wireline Competition Bureau to report to the FCC Commissioners detailing the reasons for increased spending and recommending next steps should Lifeline/Link Up funding meet or exceed 90 percent of that year's budget.[24] The FCC intends for the self-enforcing budget to automatically make adjustments in order to maintain the cap in the event the budget is exceeded. The FCC seeks comment on how frequently such adjustments should be made and whether to prioritize Tribal and rural areas for support.

The FPSC reiterates our prior comments recommending a budget or cap could be tied to the growth or decrease in federal SNAP program participants.[25] For example, if participation in the SNAP program increases by three percent, the Lifeline budget would be allowed to increase by three percent. Conversely, if participation in the SNAP program decreases by three percent, the Lifeline budget would decrease by three percent. SNAP is the primary eligibility criteria used

[22] FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶102.
[23] Ibid., ¶¶105-108.
[24] FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, ¶402.
[25] Comments of the FPSC to the FCC in WC Docket Nos. 11-42, 09-197, and 10-90, filed on August 31, 2015, p. 5.

by consumers when signing up for Lifeline services.[26] Connecting the primary eligibility criteria to a self-enforcing budget may address the "sufficiency" requirement mandated by Congress in Section 254(e) of the Act.[27] Regarding prioritizing Tribal and rural areas for support, the FPSC opposes such a change. Equally qualifying households should not be disadvantaged because they are not considered to be in a rural, non-rural, or Tribal area.

Benefit Limits

The FCC requests comment on whether it should implement a benefit limit that restricts the total amount of support a household may receive or the length of time a household may participate in the program.[28] Such a limit would provide low-income households incentives to not take the subsidy unless it is needed at that time. The FCC seeks comment on whether it should adopt a benefit limit for the Lifeline program. On average, households currently remain enrolled for 1.75 years in the Lifeline program.[29] The FCC asks if there are other alternatives to a benefit limit that it should consider to better focus Lifeline funds on those households who need it most. The FPSC believes that administering and tracking such limits would unnecessarily complicate the program in light of the FCC's own data that most households remain enrolled for under two years. We do not believe a limit based on the total amount of support or the length of time allowed for participation is necessary at this time.

Respectfully submitted,

/s/

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[26] FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, footnote 453.
[27] 47 U.S.C. § 254(e).
[28] FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶¶130-131.
[29] Ibid., ¶131.