

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and	)	WC Docket No. 11-42
Modernization	)	
	)	
Telecommunications carriers Eligible for	)	WC Docket No. 09-197
Universal Service Support	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

**COMMENTS OF SMITH BAGLEY, INC.**

Smith Bagley, Inc. (“SBI”), by its counsel, hereby submits these comments in support of the Petition for Declaratory Ruling filed on February 7, 2018, by the National Lifeline Association (“NaLA”) in the above-captioned proceedings.<sup>1</sup> For the reasons set forth below, SBI agrees that the Commission’s rules and policies support reimbursing eligible telecommunications carriers (“ETCs”) for Lifeline service they provide during the 15-day non-usage “cure” period.

**I. INTRODUCTION AND BACKGROUND.**

SBI is a facilities-based ETC providing Lifeline service to low-income households in Arizona, New Mexico and Utah. Most of SBI’s Lifeline subscribers live in extremely rural Tribal and near-reservation areas. With average household incomes far below those in the United States as a whole, and because customers in these areas often live 50 miles or more from the

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<sup>1</sup> See Petition for National Lifeline Association Petition for Declaratory Ruling, WC Docket No. 11-42 (filed Feb. 7, 2018)(“Petition”).

nearest SBI store and lack reliable access to transportation, mail or electronic payment systems, SBI has developed contracts designed to accommodate these extreme circumstances. For example, upon the expiration of a contract, a customer is converted to a prepaid plan that does not require payment.<sup>2</sup> Upon conversion, these prepaid customers become subject to the Commission's non-usage rules.

Section 54.407(c)(2) provides, for Lifeline plans that do not require the ETC to assess and collect a monthly fee from its subscribers, that "an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in §54.405(e)(3)."<sup>3</sup> Section 54.405(e)(3) provides that, if a subscriber has not used the service for 30 consecutive days, the carrier must "provide the subscriber 15 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage under this paragraph."<sup>4</sup>

SBI complies with the notice rule and de-enrolls customers who do not use their service within the 15-day "cure" period. SBI provides service to consumers using their handsets during

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<sup>2</sup> Service description and terms and conditions available at:  
<https://www.cellularoneonline.com/lifeline>.

<sup>3</sup> 47 C.F.R. § 54.407(c)(2).

<sup>4</sup> 47 C.F.R. § 54.405(e)(3).

the cure period; indeed it is required to.<sup>5</sup> A grant of NaLA's petition would make it clear that carriers are entitled to reimbursement up until de-enrollment, irrespective whether a customer actually uses service within the "cure" period. Accordingly, SBI has an interest in this proceeding.

## **II. DISCUSSION.**

SBI agrees with NaLA that the Commission's rules permit a Lifeline provider to receive reimbursement for service provided to a customer during the non-usage "cure" period.

### **A. Lifeline Providers Must Be Reimbursed for Service They Are Required to Provide.**

As an ETC, SBI is required to make Lifeline service available to qualifying consumers upon request.<sup>6</sup> This service consists of "a nontransferable retail service offering ... for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in §54.403; and ... [t]hat provides qualifying low-income consumers with voice telephony service or broadband Internet access service as defined in §54.400."<sup>7</sup> The rules further provide that "[u]niversal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month."<sup>8</sup>

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<sup>5</sup> 47 C.F.R. §§ 54.405(a), (e)(3).

<sup>6</sup> 47 C.F.R. § 54.405(a).

<sup>7</sup> 47 C.F.R. § 54.401(a).

<sup>8</sup> 47 C.F.R. § 54.407(a).

When a customer on a plan that is subject to the non-usage rules does not use their device for 30 days, SBI sends a 15-day notice to the customer as required by Section 54.405(c)(3) of the Commission's rules. If the customer does not use service, SBI may only de-enroll the customer from Lifeline after the 15-day "cure" period has expired. Until then, SBI must continue to serve the customer. SBI may not disable or otherwise refuse to provide service.

Because the Commission's rules entitle SBI to reimbursement for all Lifeline customers it serves directly as of the first of the month (i.e., the snapshot date), SBI is entitled to reimbursement for a customer whose "cure" period includes the snapshot date. That customer received Lifeline service directly from SBI as of the snapshot date. There is no provision in the rule requiring SBI to go back after the end of the "cure" period and return the Lifeline subsidy. Indeed, there is nothing to return since SBI was providing service during that period, as required by the rules. Lifeline is by definition a reimbursable mandate, and the non-usage rule is no exception.

**B. USAC Was Unjustified in Reversing Its Guidance on Seeking Reimbursement Customers who Do Not Use Their Service During the "Cure" Period.**

USAC's recent about-face on the issue of whether ETCs may seek reimbursement during the "cure" period was unexplained.<sup>9</sup> This reversal in guidance may have been due to perceived ambiguity in the reimbursement rules, which provide that for plans subject to the non-usage rule, an ETC "shall only continue to receive universal service support reimbursement for such

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<sup>9</sup> Petition at pp. 3-4.

Lifeline service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in §54.405(e)(3).” Read together with the de-enrollment rules, this rule cannot be reasonably construed as prohibiting Lifeline support from being provided during the “cure” period when a customer does not use their service during that period.

Non-usage is just one of several grounds for de-enrollment. The Commission’s de-enrollment rules set forth the procedures for terminating a customer’s Lifeline service under a variety of scenarios. In each case where a customer must take action or else be de-enrolled, the ETC must provide a certain amount of notice and an opportunity for the customer to take the required steps to keep their Lifeline service. If an ETC has a reasonable basis to believe that a customer is no longer eligible for Lifeline, the ETC must give the customer notice of the need to demonstrate eligibility (by providing the ETC with a recertification form) or be de-enrolled after 30 days.<sup>10</sup> For annual recertification, if a customer’s eligibility cannot be verified via database, then the customer must be provided notice of the need to recertify or be de-enrolled after 60 days.<sup>11</sup> For non-usage, the notification period is 15 days. Yet USAC only requires the relinquishment of support in the case of non-usage. In all other cases, USAC will allow reimbursement up until the date of de-enrollment.

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<sup>10</sup> 47 C.F.R. § 54.405(e)(1).

<sup>11</sup> 47 C.F.R. § 54.405(e)(4).

The Commission's reimbursement rules do not provide a basis for such a distinction. The provision merely directs carriers to stop reporting customers for reimbursement after the "cure" period ends if they have no usage by then. To read it otherwise would mean constant revisions as carriers exclude customers in the "cure" period from reimbursement claims and then re-add customers who cure their non-usage after the snapshot date.<sup>12</sup> Nowhere has the Commission publicly indicated an intent to saddle Lifeline providers with the burdensome task of filing the same reimbursement claim multiple times as a matter of course.

In addition, as NaLA points out, requiring carriers to forgo reimbursement would be contrary to the policies underlying the Commission's 2016 changes to the non-usage rules, which expanded the types of uses that would qualify as "usage" in order to make it easier for a customer to keep their Lifeline service.<sup>13</sup> Particularly in remote Tribal areas, consumers are dependent on wireless communications in their daily lives, for purposes of work and travel and for safety. It is their sole means of communicating. Many customers lack electricity and leave their wireless phones switched off for days at a time to save their battery; these customers are more likely to trigger non-usage notices. In changing its rules to make it easier for these

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<sup>12</sup> According to USAC's August 2017 Lifeline webinar slides at p. 24, a carrier must omit a subscriber from its reimbursement report, inter alia, if the subscriber is "in a non-usage cure period." This means that if the subscriber uses their service after the snapshot but before the end of the cure period, the carrier must revise the report to add that customer and be reimbursed. See: <https://www.usac.org/res/documents/li/training/2017/August-Lifeline-Program-Update-Webinar.pdf>

<sup>13</sup> See NaLA Petition at p. 5. The Commission added sending a text message and data usage as qualifying forms of usage.

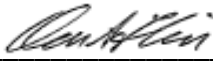
customers to retain their service, the Commission cannot have intended to make it more difficult for the service provider to continue serving them.

### **III. CONCLUSION.**

SBI urges the Commission to grant the NaLA Petition and make clear that Lifeline providers are entitled to reimbursement for service they provide up until a customer is de-enrolled for non-usage.

Respectfully submitted,

SMITH BAGLEY, INC.

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