

**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
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	

**REPLY COMMENTS OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA
CORPORATION COMMISSION**

The Public Utility Division of the Oklahoma Corporation Commission (“PUD”) hereby submits its reply comments in conjunction with the Notice of Proposed Rulemaking (“2017 NPRM”) and Notice of Inquiry (“2017 NOI”) contained in the Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry released by the Federal Communication Commission (“FCC” or “Commission”) on December 1, 2017, FCC 17-155 (“NPRM”). Reply comments in this proceeding are due March 23, 2018.¹

Summary

PUD, once again, appreciates the FCC’s continuing efforts to refine and improve the Lifeline program to include steps to minimize waste, fraud and abuse. In its reply, PUD touches on the topics of agent registration, the use of “units” plans to offer the supported services, efforts to partner with states in implementing the National Verifier, and, finally, re-establishing the state

¹ Wireline Competition Bureau, *Order*, WC Docket No. 17-287, released January 23, 2018, DA 18-62 extended the filing date for reply comments to March 23, 2018.

commissions as the entities primarily responsible for designating all Eligible Telecommunications Carriers (“ETCs”).

I. Agent Registration

PUD indicated in its comments that it is unsure that establishing a registration process and a mechanism through which to take enforcement action directly against agents is the most efficient means of curtailing agent-based misbehavior.² PUD notes that, particularly among the Lifeline provider community, there is significant support for some type of agent registration process.³ PUD would suggest that, to the extent such a registration process and enforcement mechanism is adopted, it should be done in conjunction with the current responsibilities ETCs have for their agent’s actions, not as a substitute for such responsibilities.

Any registration process should not provide a “safe harbor” to the ETCs for any bad acts by one or more of their agents. To insulate ETCs from being accountable for the actions of their agents will, at a minimum, undo the efforts already undertaken by ETCs to monitor and control their agents. The National Lifeline Association (“NaLA”), in its comments, states that “Furthermore, most ETCs already have adopted effective controls to prevent improper activity among commission-based agents, and have procedures in place to address bad acts in the event that they arise.”⁴ These systems were put in place by the ETCs due to their ultimate accountability for the actions of their agents.⁵ Implementation of a registration process, even if it allows for corrective action to be taken against specific agents, should not remove the ETC from

² *Comments of the Public Utility Division of the Oklahoma Corporation Commission*, filed February 21, 2018, page 12.

³ *See, Comments of TracFone Wireless, Inc.*, filed February 21, 2018, page 48, *Comments of Q Link Wireless, LLC*, filed February 21, 2018, page 13, and *Comments of the National Lifeline Association*, filed February 21, 2018, page 84.

⁴ *See, Comments of the National Lifeline Association*, filed February 21, 2018, page 87.

⁵ *See, e.g., FCC Enforcement Advisory No. 2013-4, DA 13-1435*, released June 25, 2014.

its own accountability. To do so would allow for such existing ETC monitoring processes to be dismantled and could potentially leave a gap in enforcement. For instance, if the acts of an agent alone result in the associated ETC receiving Lifeline support for improperly enrolled subscribers, would USAC be limited to seeking recovery of the improper payments from the agent as the responsible party rather than directly from the ETC?

Additionally, PUD continues to question whether the gains to be realized from an agent registration process and enforcement mechanism would represent the best return on the resources used. The adoption of agent registration, responsibility and accountability will create yet another mechanism for which USAC will need to be diligent in looking for fraudulent activity given that such a process will likely create new incentives to implement “work around” methodologies with the goal of circumventing the registration process. For instance, Q Link, in its comments in support of its suggestion that the National Verifier should use APIs, highlights the potential for agents to game the registration process by engaging in “code-sharing” among agents.⁶

While the information and insight to be gained through a requirement for agents to register and meet specific standards may be useful, it is not a substitute for continuing to hold the ETC responsible for the actions of its agents. Further, PUD would suggest that adoption of an agent registration process should only be done with a clear understanding of the resources required to establish and manage such a process and confidence that expending those resources will not diminish or otherwise inhibit existing mechanisms for the elimination of waste, fraud and abuse.

⁶ See, *Comments of Q Link Wireless, LLC*, filed February 21, 2018, pages 13-14.

II. Units Based Service Standard

PUD, in its comments, recognized that the use of a “units” based service standard might “provide flexibility to consumers and empower the individual consumer to get the best value from the service based on their own needs.”⁷ PUD continues to see the value of a units based standard but will re-emphasize the importance of the per unit value ultimately established for such a standard. Also important to the per unit value is how texting is treated under this new standard. PUD would note that America’s Health Insurance Plans (“AHIP”), in its comments discussing the value of the Lifeline program relative to Medicaid health plans,⁸ provided the following:

- *Studies show that health text messaging can aid smoking cessation efforts and improve diabetes management, medication adherence, and keeping appointments.*
- *A recent study of a mobile phone text messaging demonstration program involving diabetes management found net cost savings of 8.8 percent, or \$812 per participant over a six-month period.*
- *Connecting pregnant women with the popular Text4baby program has been found to significantly increase maternal influenza immunization rates, reduce rates of alcohol consumption and smoking, and improve glycemic control for those with diabetes, which in turn helps reduce the incidence of perinatal complications.*
(footnotes omitted)

Likewise, UPMC Health Plan, UPMC for You, and the integrated companies of the UPMC Insurance Services Division (“UPMC”) explained in its comments, “In addition to providing connectivity for social, occupational, emergency services, and medical purposes, these phones also allow UPMC to send important text-based communications, which encompass a variety of purposes from prompting members to re-verify Medicaid eligibility with Pennsylvania, to flu shot and scheduled pediatric screening reminders.”⁹

⁷ See, *Comments of The Public Utility Division of the Oklahoma Corporation Commission*, filed February 21, 2018, page 9.

⁸ See, *Comments of America’s Health Insurance Plans*, filed February 21, 2018, page 2.

⁹ See, *Comments of UPMC*, filed February 21, 2018, page 2.

Given this demonstrated importance of texting capability associated with Lifeline service,¹⁰ PUD would suggest that adoption of a units based service standard must specifically address the per-unit value of a text message. Further, PUD believes the per-unit value of any capability should have some relative basis in the cost to provide the capability. The value of a unit should not be established based on ease of accounting or tracking. Accordingly, a mechanism such as one (1) minute of voice equals one (1) Mb of data equals one (1) text should not be adopted without adequate support for the value of each capability.

III. Partnering with States to Implement the National Verifier

Many parties agree that the successful and expeditious implementation of the National Verifier will be a significant step toward controlling waste, fraud and abuse in the Lifeline program.¹¹ PUD believes that the implementation of the National Verifier could be further advanced through recognition that the states should have the ability to recover at least some costs associated with their efforts to support the implementation of the National Verifier. The Florida Public Service Commission ("FLPSC"), in its comments, accurately states, "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 FLPSC believes that the FCC should help states defray costs associated with making consumer eligibility information available to

¹⁰ PUD would note that the new FCC Form 5629, Lifeline Program Application Form, allows applicants to select text messaging as the best way to reach them.

¹¹ See, *Comments of the National Lifeline Association*, filed February 21, 2018, page 24.

the National Verifier.”¹² PUD suggests that providing for recovery of some of a state’s costs would allow a state to adequately prioritize its efforts to support the implementation of the National Verifier among the multitude of other mission critical activities a state faces on a daily basis.

PUD would also suggest that, without a cost recovery mechanism in place for states, proposals such as that advanced by Sprint Corporation in its comments, that “Rather than halting enrollments in cases of ‘unnecessary delays,’ the Commission should consider other measures to ensure timely deployment of the National Verifier. For example, if a state cannot provide access to its eligibility database(s), the Commission could allow the National Verifier to leverage certain commercially available data sources (e.g., Medicaid HMOs or pharmacies), with the relevant state bearing the incremental costs associated with commercial integration and transaction processing. The Commission might also consider whether financial penalties should be assessed on states that decline to participate in the National Verifier deployment.”¹³ As an alternative, perhaps any costs associated with identification and use of alternative database sources should be the responsibility of the parties that actually receive revenue for the Lifeline services that would be supported by these alternative databases and that would realize cost reductions through the shift of eligibility determination to the National Verifier, namely, the ETCs.

¹² See, *Comments of The Florida Public Service Commission*, filed February 21, 2018, page 6.

¹³ See, *Comments of Sprint Corporation*, filed February 21, 2018, pages 13-14.

IV. Reauthorizing State Commissions to Designate Lifeline ETCs

PUD would note the broad support¹⁴ for this change and urge the Commission move forward with its proposal to “eliminate the Lifeline Broadband Provider category of ETCs and the state preemption on which it is based.”¹⁵

PUD would also respond to the suggestion by NaLA that the FCC retain its streamlined ETC designation process for the federal jurisdiction states¹⁶ and establish a “shot clock” for all other states in the review of ETC designation applications.¹⁷ PUD, in response to petitions and applications previously filed with the FCC requesting Lifeline Broadband Provider (“LBP”) ETC designation in areas that included Oklahoma as part of the requested service territory, filed Requests to Hold in Abeyance for each such petition.¹⁸ Among the issues raised by PUD in

¹⁴ See, *Comments of the Michigan Public Service Commission*, filed January 23, 2018 at page 2, “The MPSC believes that all ETCs should be designated through the traditional state and federal roles for the purposes of both the high-cost and Lifeline programs.” *Joint Comments of the Minnesota Public Utilities Commission and Minnesota Department of Commerce*, filed January 24, 2018 at page 2, “The Minnesota Agencies support the Commission proposal to eliminate state preemption of stand-alone LBP designations.” *Comments of the Nebraska Public Service Commission*, filed February 21, 2018 at page 2, “The NPSC fully supports reversal of the preemption imposed by the 2016 Lifeline Order.” *Comments of the California Public Utilities Commission*, filed February 21, 2018, at page 6, “States should have the primary responsibility of reviewing and granting requests for ETC designation primarily because states are better suited to determine whether a local carrier has met the ETC service and facilities requirements.” *Initial Comments of the National Association of Regulatory Utility Commissioners*, filed February 21, 2018 at page 5, “The tentative decision to reverse its pre-emption of State authority to designate ETC’s is correct.”

¹⁵ *Telecommunications Carriers Eligible for Universal Service Support et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 17-287, 11-42, 09-197, FCC 17-155, rel. December 1, 2017, ¶ 54

¹⁶ See, *Comments of the National Lifeline Association*, filed February 21, 2018 at page 101

¹⁷ *Id.*, page 102

¹⁸ See, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Assist Wireless, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197, filed October 14, 2016, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Blue Jay Wireless, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197, filed October 13, 2016, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Boomerang Wireless, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197, filed October 14, 2016, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of Cintex Wireless, LLC for Streamlined Designation as a Lifeline Broadband Provider*, WC Docket No. 09-197, filed November 21, 2016, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of Cross Cable, LLC for Streamlined Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197, filed January 25, 2017, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Easy Telephone Services*

these Requests to Hold in Abeyance was the concern that the streamlined, 60-day “deemed granted” approach, being advocated by NaLA here, does not allow adequate review time in order to be compliant with applicable statutory requirements as well as the FCC’s own directives for ETC designations.

In virtually all instances, the prior requests for LBP ETC designation filed with the FCC involving service areas in Oklahoma included areas served by rural telephone companies. The applicable statutory requirement for ETC designation is 47 U.S.C. § 214(e)(2) if designation is being performed by a State commission and 47 U.S.C. § 214(e)(6) if designation is being performed by the FCC. In either case these statutory sections require, in substantive part, that before designating an additional eligible telecommunications carrier for an area served by a rural

Company for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed October 14, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of I-Wireless, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed October 14, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Kajeet Inc. for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed October 19, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Karma Mobility for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed October 14, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of KonaTel, Inc. for Streamlined Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed November 28, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Q Link Wireless, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed October 14, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of SHOIT, Inc. for Designation as a Lifeline Broadband Provider, WC Docket No. 09-197, filed January 2, 2017, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Telrite Corporation for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed October 14, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of TerraCom, Inc. for Streamlined Designation as a Lifeline Broadband Provider, WC Docket No. 09-197, filed January 19, 2017, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of TracFone Wireless, Inc. for Designation as a Lifeline Broadband Provider, WC Docket No. 09-197, filed November 9, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of TruConnect Communications, Inc. for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, filed October 14, 2016, Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of TX Mobile, LLC for FCC Designation as a Lifeline Broadband Provider, WC Docket No. 09-197, filed January 23, 2017, and Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of Blue Casa Mobile, LLC for Streamlined Designation as a Lifeline Broadband Provider, WC Docket No. 09-197, filed December 29, 2016.

telephone company, the Commission or State commission shall find that the designation is in the public interest. The FCC has also found that a public interest finding is required in cases where designation is requested in non-rural areas as well.¹⁹

The FCC further addressed the public interest requirement in its *Memorandum Opinion and Order*, WC Docket Nos. 09-197, 11-42, released April 15, 2013, in which the FCC granted "...limited forbearance from the requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules that the service area of an eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area" and explicitly stated the requirement for an affirmative determination of public interest. The FCC stated:

The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest and that determination is not affected by this grant of forbearance." (§ 13) (footnotes omitted)

The Commission recognizes all of the important issues raised by commenters in determining whether a particular carrier has met the requirements to become an ETC for the limited purpose of receiving Lifeline support, all of which will be addressed by the designating authority when a carrier submits an application requesting designation. Designating authorities will continue to make an independent assessment as to whether designating a carrier as an ETC within a rural service area is in the public interest." (§ 15) (footnotes omitted)

We also note that state commissions and this Commission are still required to make an independent assessment as to whether granting a carrier ETC designation is in the public interest before including any part of a rural service area in such a carrier's service area." (§ 18) (footnotes omitted)

Accordingly, any designation granted simply by virtue of the expiration of an arbitrary 60-day time period, in the case of the FCC, or expiration of an arbitrary 90-day time period, in the case

¹⁹ See, *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, released March 17, 2005, § 42. "We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carriers." (footnote omitted).

of a State commission, would not be in compliance with the statutory public interest finding requirement or the FCC's own directives.

Given the standard of review and public interest finding required under the statute and rules, PUD does not believe the arbitrary time constraints advocated by NaLA in the form of the 60-day "deemed granted" or the 90-day "shot clock" allow, in all instances, adequate time for the designating authority to collect necessary information and perform an appropriate review (compliant with all applicable laws and rules) of an application for ETC designation. Further, such deadlines provide no incentive for an applicant seeking ETC designation to file a thorough application, respond to data requests, or otherwise participate fully and timely in the processing of the application. In fact, there is every incentive to delay and allow the clock to run out. For these reasons PUD does not support either of these "automatic approval" mechanisms.

Conclusion

PUD suggests that the Commission weigh the potential benefits against the resources necessary to establish and maintain a mechanism to register agents to ensure such an effort would return adequate value and, even if an agent registration program is implemented, continue to hold ETCs accountable for the actions of their agents. If a units based service standard is adopted, PUD urges the Commission to give careful consideration to the value that is established for a "unit," particularly with regard to text message capabilities. In its efforts to partner with the states in implementing the National Verifier, the Commission should consider the costs being incurred by the states in assisting in this process, particularly as to how such costs may be prohibiting or delaying the implementation of the National Verifier. Finally, the Commission should move forward with eliminating the Lifeline Broadband Provider ETC designation and

reauthorizing state commissions to take the primary role in designating ETCs and, in doing so, should not adopt any arbitrary "deemed granted" or "shot clock" time constraints under which the designating authorities must operate.

Respectfully submitted,



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