

November 6, 2017

**Ex Parte**

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

Re: *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

Dear Ms. Dortch:

On November 2, 2017, on behalf of Q Link Wireless, LLC, I spoke separately with Jay Schwarz, Legal Advisor to Chairman Pai, and Jodie Griffin, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, with respect to the draft Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking and Notice of Inquiry (FCC-CIRC1711-05) (“*Draft Order*”), which was publicly released on October 26, 2017. Specifically, I addressed the draft order on reconsideration which would eliminate all port-freezes 60 days after publication in the Federal Register.

Setting aside whether or not the elimination of all port freezes is good policy (Q Link believes it is not good policy), the timing of the proposed elimination of port freezes would once again subject the Lifeline program to rampant flipping. Concerns about flipping were the reason that USAC administratively adopted a 60-day port freeze long before the *Third Report and Order*, which codified and, in the case of broadband plans, extended them to twelve months.<sup>1</sup> Flipping and churning led to news programs filming customers collecting multiple Lifeline phones, to the detriment of the program.

While the potential for flipping to lead to multiple support payments for the same customer in a given month has been curtailed by the requirement to report on Form 497 Lifeline eligible customers served on the first day of the month, as a snapshot, reintroducing flipping will create a significant FCC-mandated exposure to fraud for all Lifeline providers. The Commission should not, in the name of consumer choice, subject Lifeline providers to potentially significant consumer fraud.

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<sup>1</sup> See *Lifeline and Link-up Reform and Modernization, et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd. 3962, 4105-4108 ¶¶ 387-394 (2016).

Under current rules, Lifeline providers must provide Lifeline service to any eligible customer that requests service.<sup>2</sup> For mobile Lifeline providers, that service must include a minimum of 500 MB per month of data (increasing to 1 GB on December 1, 2017) or 500 voice minutes (increasing to 750 minutes on December 1, 2017).<sup>3</sup> Moreover, the Commission has essentially required that all mobile devices provided to the consumer are smartphones, in order to meet the Wi-Fi enabled and hotspot requirements.<sup>4</sup>

Without a port freeze, a Lifeline consumer could commit service fraud simply by porting from one Lifeline provider to another. Each Lifeline provider would be obligated by rule to provide the customer with a full month's allocation of data or voice service. When the customer exhausted the first provider's service, he or she could then simply port to another provider and obtain a new full month's allocation of data or voice service. This could be repeated multiple times within the month. And, by FCC rules, in the absence of a port freeze, every Lifeline provider would be required to provide the service, but only one—the provider serving the customer on the first day of the month—would be reimbursed. Similarly, if the Lifeline provider subsidizes handsets, the customer could receive multiple provider-subsidized handsets in a given month.

The Commission should move the consideration of the elimination (or retention) of port freezes to the NPRM portion of the draft in order to more carefully examine the cost-benefit tradeoffs between unfettered consumer choice in the absence of port freezes and increased costs to providers from fraud or providing multiple provider-subsidized handsets to the same customer. These increased costs, even if not borne by the fund, have a direct impact on Lifeline consumers. Costs incurred to provide unreimbursed service in a month directly limit a provider's ability to provide more service for the same amount of USF support, and costs for phones provided to churning customers similarly limit the overall package that providers can offer to low-income consumers. This is the case whether the service and handsets are offered at no charge to the end users, or at a modest, but reduced charge to the end users.<sup>5</sup> And these impacts will only worsen as the amount of prescribed minimum data or voice service increases. The *Draft Order* does not consider these or other offsetting harms to consumers from elimination of port freezes. Eliminating port freezes will also predictably harm consumers by reducing the quality of handsets and service packages available to Lifeline consumers, because handset and customer acquisition costs that can be amortized over a longer average customer life with a port freeze will now have to be recovered over a shorter period. Because the *Draft Order* fails to consider the costs to consumers of eliminating port freezes along with the asserted benefits,

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<sup>2</sup> See 47 C.F.R. § 54.405(a).

<sup>3</sup> See 47 C.F.R. § 54.408(b)(2)-(3).

<sup>4</sup> See 47 C.F.R. § 54.408(f).

<sup>5</sup> With respect to handsets, this effect is exacerbated by the de facto requirement for smartphones.

eliminating port freezes would be arbitrary and capricious because it fails entirely to consider these important aspects to the issue.<sup>6</sup>

At a very minimum, the Commission should not reduce data and voice port freezes below the original 60 days USAC originally administratively adopted until it completes its consideration of the various proposed waste, fraud, and abuse safeguards in the NPRM. For example, the draft NPRM proposes, *inter alia*, to eliminate sales agent commissions and to require sales agents to register with USAC.<sup>7</sup> Although these steps would not eliminate FCC-mandated exposure of Lifeline providers to consumer fraud, they would at least mitigate the incentives for sales agents to promote rapid flipping.

Please contact me if you have any questions regarding this matter.

Sincerely,



John T. Nakahata  
*Counsel to Q Link Wireless, LLC.*

cc: Jay Schwarz  
Trent Harkrader  
Ryan Palmer  
Jodie Griffin

Claude Aiken  
Amy Bender  
Travis Littman  
Jamie Susskind

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<sup>6</sup> *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“an agency rule would be arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem . . .”).

<sup>7</sup> *Draft Order* at ¶¶ 87, 89.