

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

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

**COMMENTS OF THE SMALL CARRIERS COALITION
IN RESPONSE TO
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

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I. Introduction and Summary.

The Small Carriers Coalition (“Coalition”),¹ by counsel, hereby files these Joint Comments in response to the Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.² Each member of the Coalition is an ETC, and as a result, under current FCC rules, is required to offer low-income Lifeline service. Each member of the Coalition serves fewer than 2,000 Lifeline subscribers.

Lifeline providers currently face significant regulatory compliance burdens, including monthly reporting (FCC Form 497), annual reporting (FCC Forms 481 and 555), the need to develop and modify Lifeline enrollment forms, the requirement to review and process certification forms and eligibility documentation during enrollment, the need to upload and manage subscriber information in the National Lifeline Accountability Database (“NLAD”), the requirement to re-certify all of their Lifeline customers each year, and the need to respond to USAC audits including Payment Quality Assurance (“PQA”) reviews and other inquiries. In the *Second Further NPRM*, the FCC proposes several changes that would reduce the burden, including the use of a national third party eligibility verifier and the availability of standardized FCC forms. At the same time, the *Second Further FNPRM* proposes new regulatory costs and requirements, including the following:

- A requirement that ETCs reimburse the costs of (1) the third-party verifier that is proposed in the *Second Further NPRM* to perform eligibility determinations and other

¹ The Coalition is comprised of the following small carriers: Carolina West Wireless, Inc., East Kentucky Network, LLC d/b/a Appalachian Wireless, Union Telephone Company, Union Wireless, Pioneer Telephone Cooperative, Inc. (OK), Cellular Network Partnership d/b/a Pioneer Cellular, and Nex-Tech Wireless, LLC.

² *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71 (rel. June 22, 2015) (“*Second Further NPRM*”).

functions;³ and (2) using NLAD, including the costs of performing the Third-Party Identification Verification (“TPIV”) check within NLAD.⁴

- A requirement to certify that all company employees and third-party agents interfacing with customers receive sufficient training on the Lifeline rules, and that such persons receive training annually.⁵
- A requirement to make available a 24-hour customer service number for consumers to call to de-enroll from Lifeline.⁶

The *Second Further NPRM* also proposes to require Lifeline providers to deliver a minimum level of service.⁷ With respect to voice, the FCC makes clear that Lifeline providers will have to offer more than 250 minutes per month, and perhaps unlimited voice and text service in order to obtain the maximum subsidy of \$9.25 per month.⁸ The FCC also proposes to provide support for broadband, and to require that carriers offer a data-only Lifeline broadband service offering – while limiting the maximum subsidy to the current \$9.25 per month.⁹

In summary, the FCC proposes to increase the regulatory and financial burdens on all Lifeline providers. This burden falls disproportionately on small carriers, who cannot spread the regulatory costs of Lifeline compliance – many of which are fixed costs – across a large customer base.

³ *Second Further NPRM* at ¶ 88 (“we propose to require Lifeline providers to reimburse the Fund for part or all of the operations of the national verifier.”)

⁴ *Id.* at ¶ 183.

⁵ *Id.* at ¶¶ 210 – 214.

⁶ *Id.* at ¶ 150.

⁷ *Id.* at ¶¶ 15 - 16, 34 – 53.

⁸ *Id.* at ¶¶ 16, 38 – 39, 53 (“we seek comment on whether the support amount should be reduced for Lifeline supported mobile voice-only service”).

⁹ *Id.* at ¶¶ 43 – 44.

The Coalition urges the FCC to adopt a threshold for the imposition of certain of the proposed new regulatory requirements. Carriers with fewer than 2,500 Lifeline subscribers should not be subject to the training requirement, or the 24-hour customer service center requirement.

In the *Second Further FNPRM*, the FCC also seeks comment on whether to de-link Lifeline support and high-cost support by permitting ETCs that receive high-cost support to opt-out of the current requirement that they offer Lifeline service “in specific areas where there is a sufficient number of Lifeline providers.”¹⁰ The Coalition supports providing ETCs the option to not participate in the Lifeline program, and recommends a process and standard for opting out.

ETCs should no longer be obligated to participate in the Lifeline program, particularly when legacy high-cost support needed to build out facilities has, for now, been drastically reduced by the FCC’s recent USF reform measures and will ultimately vanish for competitive ETCs. At the same time, the high and increasing costs of compliance, the risk of substantial forfeitures and the cost of audits make continued participation in Lifeline cost-prohibitive for many carriers, particularly small carriers. Accordingly, these carriers should be given the choice of not participating in the Lifeline program.

II. The FCC Should Adopt a Threshold for Imposing Certain Regulatory Obligations on Lifeline Providers

The Coalition urges the FCC to adopt a threshold for the imposition of certain of the proposed new regulatory requirements. Specifically, ETCs with fewer than 2,500 Lifeline

¹⁰ *Id.* at ¶¶ 125 - 126.

subscribers should not be subject to the training requirement, or the 24-hour call center requirement.¹¹

The training requirement will be especially burdensome for small carriers. These carriers have relatively small staffs, and staff members typically have multiple responsibilities. Because each of their Lifeline customer bases is small, few, if any, of these small carriers have staff dedicated exclusively to servicing Lifeline subscribers. Thus, if all employees interfacing with Lifeline customers were required to have sufficient training, it might well be the case that a sizeable portion of the staff would require such training. Training a large portion of the staff on Lifeline is unduly burdensome and unjustified when Lifeline-related issues rarely occur with these carriers. If the FCC is unwilling to entirely relieve such carriers from the training requirement, the requirement should, at a minimum, be pared back to training one supervisory employee tasked with responsibility for reviewing Lifeline applications and de-enrollments.

The 24-hour call center requirement would also be unduly burdensome for small carriers, particularly if paired with the annual training requirement. Some of these carriers do not provide 24-hour customer service now, and others provide such service only for outages and other service related issues. To require such support solely for Lifeline customers who seek to de-enroll would impose a significant cost on small carriers while offering almost no benefit to the agency's stated goal of program compliance. For example, one Coalition member had zero voluntary de-enrollments in 2014. Providing a 24-hour call center to field a handful of calls per year is not cost effective for the carrier or meaningful to preventing waste, fraud and abuse.

¹¹ At a support level of \$9.25 per month, ETCs can collect \$111 per year per customer. An ETC with 2,500 customers would be collecting \$277,500 per year – a tiny fraction of the \$16 billion Lifeline program.

If the training proposal is adopted, all of the 24-hour call center employees or agents would have to be specially trained for dealing with Lifeline customers, even when it would be sufficient to direct calls to one specially trained employee during regular business hours.

The FCC has repeatedly made allowances for how new regulations affect small carriers, establishing thresholds exempting small carriers when the benefits of compliance are outweighed by the costs or burdens. In its Rural Call Completion proceeding, the FCC exempted long-distance voice service providers that make the initial long-distance call path choice for fewer than 100,000 subscriber lines from the recording, retention and reporting rules.¹² The FCC concluded that the “[e]xclusion of smaller providers should not compromise our ability to monitor rural call completion problems effectively.”¹³ In its Special Access Data Collection proceeding, the FCC exempted entities that purchased less than \$5 million in special access services from the special access data collection and reporting requirements.¹⁴

The Regulatory Flexibility Act (“RFA”) requires the FCC to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach.¹⁵ In the *Second Further NPRM*, the FCC notes:

Compliance Burdens. Implementing any of our proposed rules (e.g. requiring an officer of an ETC to certify that individuals taking part in the ETC’s enrollment and recertification process have received training ...) would impose some burden on small entities by requiring them to make such certifications and entries on FCC forms, and

¹² *In the Matter of Rural Call Completion*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 13-39, FCC 13-135 (rel. Nov. 8, 2013) at ¶ 27.

¹³ *Id.*

¹⁴ *In the Matter of Special Access for Price Cap Local Exchange Carriers*, Order on Reconsideration, WC Docket No. 05-25, DA 14-1327 (rel. Sept. 15, 2014) at ¶¶ 8 – 9.

¹⁵ 5 U.S.C. § 603(c)(1) – (c)(4).

requiring them to become familiar with the new rules to comply with them. For many of the proposed rules, there is a minimal burden.”¹⁶

The FCC concludes that “[t]he importance of bringing the Lifeline program closer to its core purpose ... outweighs the minimal burden [that] requiring small entities to comply with the new rules would impose.”¹⁷

The FCC’s analysis of the burden on small entities is incomplete, and therefore, insufficient. While the burden of executing a certification that appropriate training has been received may be minor, the burden of arranging and paying for such training, and requiring employees and agents to undergo such training, is much higher. That higher burden is not addressed by the FCC’s Regulatory Flexibility Analysis. Likewise, the FCC fails to address the burden of requiring a 24-hour customer service call center requirement for the sole purpose of de-enrolling Lifeline customers. As explained above, these requirements impose a disproportionate burden on small Lifeline providers.

The broad training requirement and 24-hour customer service requirement would both impose undue costs with no corresponding public benefit. The Coalition recommends that the broad training requirement be eliminated, or if retained for small carriers, reduced such that only one supervisory employee be required to undergo training. This tailored requirement would more closely align the burden of training with the limited public interest benefit of requiring training for carriers with few Lifeline customers. The Coalition also recommends that the 24-hour customer service requirement not be applied to small carriers. The burden of such requirement dwarfs the potential public interest benefit.

¹⁶ *Second Further NPRM*, Appendix C, Initial Regulatory Flexibility Analysis, at ¶ 39.

¹⁷ *Id.*

III. Public Policy Supports De-Linking Lifeline Obligations from Eligibility for High Cost Support.

The Coalition strongly supports de-linking the obligation to provide Lifeline support from an ETC's eligibility for High Cost support. There are compelling policy reasons for not requiring high-cost ETCs to offer Lifeline service. Robust competition between and among wireless and wireline providers for Lifeline customers – as well as the proliferation of Lifeline-only competitive ETCs across the country – obviates the need for the Commission's current mandate that all wireline and wireless ETCs provide Lifeline service.

There has been a meteoric expansion of the geographic availability, and subscriber uptake, of wireless services since the Commission linked Lifeline support to high-cost support in 1997. In 1996, wireless penetration in the United States was 14%; by 2011, it was over 100%.¹⁸ Consumers who previously relied on wireline service as the only voice service available to them today have a choice of wireless and wireline service – and in most areas, multiple facilities-based and non-facilities-based wireless service providers offer Lifeline to qualifying customers. Market forces and the proliferation of carriers offering Lifeline are now more than adequate to ensure that Lifeline services are offered to low-income customers, and will continue to be offered in an area if a small carrier opts out.

IV. There Are No Legal Impediments to De-Linking Lifeline and High Cost Support.

There is no statutory requirement mandating that ETCs must provide Lifeline service. Section 214(e)(1)(A) of the Act provides, in relevant part, that ETCs must “offer the services that are supported by Federal universal service mechanisms under Section 254(c)....”¹⁹ In turn,

¹⁸ See <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>, visited on March 28, 2012.

¹⁹ 47 U.S.C. § 214(e)(1)(A).

Section 254(c) provides that the Commission shall establish, upon recommendation by the Joint Board, “the definition of the services that are supported by Federal universal service support mechanisms”²⁰ In making this determination, the Commission is instructed to consider, *inter alia*, the extent to which such telecommunication services “have, through the operation of market choices, been subscribed to by a substantial majority of residential customers....”²¹

Section 54.101(a) of the FCC’s rules implements Section 254(c) of the Act, and sets forth the “services” supported by the universal service program, and in turn, the “services” required to be provided by ETCs.²² Prior to adoption of the *USF/ICC Transformation Order*,²³ Section 54.101(a) of the FCC’s Rules set forth a list of nine supported services. The revised version of Section 54.101(a) sets forth a list of four supported services. These “services” are functionalities that ETCs are required to provide – not support mechanisms or programs. In adopting the requirement for all ETCs to provide Lifeline services, the Commission stated:

²⁰ 47 U.S.C. § 254(c)(1). In adopting the requirement that all ETCs must offer Lifeline service, the Commission stated that it was “acting under [its] general authority in sections 1, 4(i), 201, and 205 of the Act, as well as [its] authority under section 254.” *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 (adopted May 7, 1997), 62 FR 32862, 32891 (June 17, 1997) (§ 200 of Federal Register summary).

²¹ 47 U.S.C. § 254(c)(1)(A).

²² 47 C.F.R § 54.101(a).

²³ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) (“*USF-ICC Transformation Order*”), *recon.*, FCC 11-189 (rel. Dec. 23, 2011).

In requiring all eligible telecommunications carriers to offer Lifeline service to qualifying low-income consumers, we make Lifeline part of our universal service support mechanisms.²⁴

Lifeline is clearly not a “service”; rather, it is a low-income support mechanism supported by the Federal Universal Service Fund.

V. Procedural Mechanism for De-Linking Lifeline Support.

In the *Second Further FNPRM*, the FCC proposes to permit ETCs that receive high-cost support to opt-out of the current requirement that they offer Lifeline service “*in specific areas where there is a sufficient number of Lifeline providers.*” The Coalition proposes the following mechanism for opting out of the Lifeline program.

If the ETC designation has been granted by the FCC, Lifeline providers should be permitted to opt-out by filing a notice of intent to opt-out with the FCC. These opt-out elections would be placed on public notice. If there are no objections, opt-out elections would be deemed effective 30 days after expiration of the public notice period, without further action.

If the ETC designation has been granted by a state commission, Lifeline providers should be permitted to notify the state commission that they seek to “relinquish” the Lifeline portion of their ETC designation. Section 214(e)(4) of the Act provides that “a State commission ... shall permit an eligible telecommunications carrier to relinquish its designation ... in any area served by more than one eligible telecommunications carrier.”²⁵ The FCC should encourage state commissions to adopt a streamlined process for the grant of such relinquishment requests, and consider implementing a “shot clock” for state action.

²⁴ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 (adopted May 7, 1997), 62 FR 32862, 32891 (June 17, 1997) (¶ 200 of Federal Register summary).

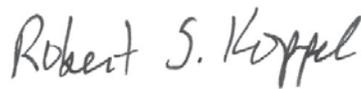
²⁵ 47 U.S.C. § 214(e)(4).

If objections are filed at the FCC or the state commission, the relevant agency would have to consider these objections. In such event, the burden of proof should be placed on the objecting party, and the ETC should be afforded a presumption that its opt-out election is in the public interest. Section 54.405 of the FCC's rules would need to be revised accordingly.

VI. Conclusion.

The Coalition urges the Commission not to apply the proposed training and 24-hour customer service call center requirements to carriers with fewer than 2,500 Lifeline subscribers. The Coalition also urges the Commission to allow high-cost support ETCs to choose voluntarily whether to continue participating in the Lifeline program.

Respectfully submitted,



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