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November 6, 2015

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

**Re: <u>Notice of Oral *Ex Parte* Presentation; WC Docket Nos. 11-42, 09-197, 10-90</u>**

Dear Ms. Dortch:

On November 4, 2015, John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP met on behalf of the Wireless ETC Petitioners[1] with Ryan Palmer, Jay Schwarz and Jodie Griffin from the Wireline Competition Bureau Telecommunications Access Policy Division to discuss the petition for reconsideration[2] filed by the Wireless ETC Petitioners regarding the FCC Form 497 "snapshot" rule change in the Lifeline Second Report and Order.[3] The new rule takes a snapshot of an ETC's Lifeline subscribers as of the first of the month and provides reimbursements for the previous month's service based on the number of subscribers in the snapshot. The Wireless ETC Petitioners do not object to establishing a snapshot; however, the manner in which the order implements the snapshot would harm ETCs by forcing them to incur costs and provide service without reimbursement. This concern is most pronounced with respect to the annual recertification

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[1] The Wireless ETC Petitioners are i-wireless LLC, Telrite Corporation, Assist Wireless, LLC, Total Call Mobile, LLC, American Broadband and Telecommunications Company, Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect) and Easy Telephone Services Company (d/b/a Easy Wireless).

[2] *See* Wireless ETC Petitioners' Petition for Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 13, 2015).

[3] *See In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, 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 Report and Order).

process because Lifeline providers would not be reimbursed for service in the month of December for all subscribers that fail to recertify their eligibility annually (10 to 50 percent or more depending on the ETC) because the Universal Service Administrative Company requires all such subscribers to be de-enrolled by December 31, rather than within five business days after December 31.

The discussions were consistent with the enclosed exhibit summarizing the position of the Wireless ETC Petitioners. A particular focus of our discussions was the argument that the loss of reimbursements in some instances would be offset by reimbursements provided for months in which some Lifeline customers are not enrolled for the full month or do not use all of their minutes.[4] We discussed the fact that it is the experience of these companies that the minutes do not offset, but usage costs are only one component of the costs incurred by wireless ETCs to provide Lifeline service to a subscriber. In particular, monthly line costs would not be offset. The same would be true for the substantial fixed costs that ETCs incur to provide wireless services, enroll subscribers and to conduct marketing and outreach. These costs include fees to access state eligibility databases, real-time review queue expenses to confirm eligibility, subscriber seat license fees on billing platforms, expenses associated with collecting and maintaining subscriber records in a secure searchable environment, and federal, state and local taxes (e.g., 911 or E911 fees). Such taxes are often not based on revenues received, but rather service provided during a month. That means ETCs must pay the taxes or fees even if they do not receive reimbursements from the Lifeline program.

[4] *See* Second Report and Order ¶ 241 ("we agree it is possible that subscribers who initiate service may offset those who terminate service mind-month.").

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,

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cc: Ryan Palmer
Jay Schwarz
Jodie Griffin

# EXHIBIT

**Wireless ETC Petitioners Petition for Reconsideration and Clarification of the FCC Form 497 Snapshot Rule in the Lifeline Second Report and Order (FCC 15-71)**

On August 13, 2015, the Wireless ETC Petitioners filed a petition for reconsideration of the new FCC Form 497 snapshot date requirement in the Lifeline Second Report and Order. Oppositions were due by September 17, 2015 and none were filed. The Wireless ETC Petitioners do not object to establishing a snapshot; however, the manner in which the order implements the snapshot would harm eligible telecommunications carriers (ETCs) by forcing them to incur costs and provide service without reimbursement. The petition for reconsideration is based on the simple principle that Lifeline providers should be reimbursed for the services provided to their Lifeline customers.

**Unreimbursed Service**

The new rule takes a snapshot of an ETC's Lifeline subscribers as of the first of the month and provides reimbursements for the previous month's service based on the number of subscribers in the snapshot. The new rule will result in several situations where ETCs will provide Lifeline service without receiving reimbursement for that service. For example,

- An ETC will not be reimbursed for the service provided to any subscriber that enrolls and de-enrolls in the same month. For example, a subscriber enrolls on August 2 and de-enrolls on August 30. The ETC will have provided service (e.g., 250, 500, 1,000, unlimited minutes) to the subscriber, which the subscriber can use in its entirety and, because the subscriber is no longer a subscriber on September 1, the ETC would not receive reimbursement for the service provided.

- An ETC will not be reimbursed for the service provided to any subscriber that de-enrolls in any month after receiving Lifeline service but before the first of the following month. In these situations, the subscriber's last month of service would not be reimbursed. For example, a subscriber enrolls on August 2 and de-enrolls on November 30. The subscriber would receive four months of Lifeline service, but the ETC would receive only three reimbursements.

- Most egregiously, Lifeline providers would not be reimbursed for service in the month of December for all subscribers that fail to recertify their eligibility annually because USAC requires all such subscribers to be de-enrolled by December 31, rather than within five business days after December 31.
    - Annual recertification is the largest single de-enrollment event in the Lifeline program. Annual recertification failure rates vary by carrier from 10 to 50 percent or higher. The highest failure rates are generally attributable to those ETCs that use USAC to conduct recertification. ETCs are generally able to achieve substantially better results by conducting their own recertification processes.

> Under the new snapshot rule, ETCs would provide service to their customer base for the entire month of December and not be reimbursed for between 10 and 50 or more percent of them.

**Fixed Costs**

Lifeline providers incur many costs by enrolling customers and providing service beyond just the cost of the minutes provided. These costs include state and local taxes and fees that are tied to service rather than revenue. As an example, one carrier reports the following fixed costs associated with serving a Lifeline subscriber:

1. Marketing/outreach expenses
2. Fees and/or expense associated with accessing a state eligibility database
3. Per subscriber seat license fee on billing platform
4. Real-time review queue staffing for enrollment checks
5. Wholesale MRC with underlying carrier
6. Customer care expense
7. Expense associated with maintaining a secure searchable environment to retain customer records in the immediate term and for three years following the termination of their service
8. Per subscriber monthly fee with external CRM/IT vendor
9. State or federal taxes

**Proposed Rule Change**

Therefore, the Commission should reconsider and revise Section 54.407(a) of the rules to read as follows:

> Universal service support for providing Lifeline shall be provided to an eligible telecommunications carrier, based on the number of actual qualifying low-income consumers it serves directly as of the first day of the month <u>plus any qualifying consumers de-enrolled in the previous month that received Lifeline service in the prior month</u>.[1]

[1] ETCs should not be permitted to include de-enrolled customers that simply had minutes that carried over from a previous month.