

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

**RE: PROPOSED RULES, 47 CFR Part 54  
LIFELINE AND LINKUP PROGRAM**

**WC DOCKET NO. 03-109**

**COMMENTS OF THE NATIONAL CONSUMER LAW CENTER  
ON BEHALF OF MASSACHUSETTS UNION OF PUBLIC HOUSING TENANTS**

**AUGUST 18, 2003**

1. INTRODUCTION

The National Consumer Law Center (“NCLC”), on behalf of and in conjunction with the Massachusetts Union of Public Housing Tenants (“MUPHT”), offers these comments in response to the Notice of Proposed Rulemaking (“NPRM”) appearing in the July 17, 2003 Federal Register (68 FR 42333). The NPRM seeks comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”) regarding modifications to the Lifeline and Link-Up programs for low-income customers.<sup>1</sup> As stated in their comments to the Joint Board, MUPHT and NCLC (collectively, “NCLC”) believe that most states can reach a much higher percentage of the households eligible for Lifeline and Linkup than have been reached to date. The Joint-Board has recommended some very positive and important steps that will insure that more households eligible for Lifeline and Link-Up in fact receive the valuable benefits these programs offer. NCLC is very supportive of the Joint Board’s recommendations. The comments below will follow the order of issues as raised in the NPRM.

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<sup>1</sup> Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (FCC 03J-2) Recommended Decision, 18 FCC Rcd 6589 (released April 2, 2003)(“Recommended Decision”).

## 2. INTEREST OF THE COMMENTING PARTIES

MUPHT is the oldest state-wide association of public and subsidized housing tenants in the United States. Its thirteen member board is elected from tenants who live in public or subsidized housing. The tenants who MUPHT represents are predominantly senior citizens living on small, fixed incomes and families with low-wage jobs. MUPHT is concerned, among other issues, that its members and other low-income people constantly struggle to pay their bills for necessities such as food, housing, medical care and utilities. MUPHT sees Lifeline and Linkup as vital programs in that they help make basic telephone service more affordable. In the 21<sup>st</sup> century, phone service is an essential tool for participating in society, for staying in touch with friends and relatives, purchasing goods and services, communicating with government agencies, and obtaining medical care. Lifeline and Linkup should be designed and implemented to reach the largest number of eligible households possible. At the present time, however, many states run their programs in ways that tend to limit enrollment.

NCLC is a non-profit corporation organized under the laws of the Commonwealth of Massachusetts in 1971. Its purposes include representing the interest of low-income people and enhancing the rights of consumers. Throughout its history, NCLC has worked to make utility services (telephone, gas, electricity, and water) more affordable and accessible to low-income households.

## 3. NCLC SUPPORTS AN INCOME-BASED CRITERION FOR ELIGIBILITY AND

## EXPANDED PROGRAM ELIGIBILITY

The NPRM notes that the Joint Board has recommended “that the Commission expand the default federal eligibility criteria to include an income-based criterion and additional means-tested programs,” specifically including Temporary Aid to Needy Families (“TANF”) and the National School Lunch program (“NSL”).<sup>2</sup> NCLC strongly supports these recommendations.

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<sup>2</sup> 68 Fed. Reg. 42333, ¶ 1, referring to Recommended Decision, ¶¶ 10, 15, 20.

There is good reason to expand the existing list of qualifying programs to include TANF and NSL. TANF is a basic assistance program that serves approximately 2.1 million households. While the number of TANF households has declined significantly since the advent of welfare reform,<sup>3</sup> it still serves a large portion of low-income households in this country. Many states that adopt their own eligibility criteria for Lifeline pursuant to 47 CFR §54.409(a) add TANF to the list of assistance programs in §54.409(b). NCLC sees good reason to include TANF in §54.409(b). There are no doubt households that are on TANF but, for various reasons, are not on any of the other listed programs. The fact that a household's income is low enough to income-qualify for various programs listed in §54.409(b) does not mean the household actually receives those benefits. For example, the family may not meet the program's non-income criteria (e.g., the family does not have its own heating bills, and is therefore ineligible for LIHEAP/fuel assistance) or may not know that it is eligible for the other programs. By including TANF in §54.409(b), the FCC will increase the likelihood that households eligible for Lifeline and Link-Up actually sign up.

The Joint Board's proposal to also include NSL is particularly helpful. The U.S. Department of Agriculture estimates that NSL reaches 25 million households.<sup>4</sup> This makes it

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<sup>3</sup> According to comments submitted November 30, 2001 by the Center on Law and Social Policy on the reauthorization of TANF (see [www.clasp.org/pubs/TANF/TANF%20comments%201101.pdf](http://www.clasp.org/pubs/TANF/TANF%20comments%201101.pdf)), there were 5 million households on the Aid to Families for Dependent Children ("AFDC") program, the predecessor to TANF, in 1995. As of March 2001, there were 2.1 million households on TANF. The TANF caseload has been increasing slowly, however, since mid-2001.

<sup>4</sup> U.S. Department of Agriculture, *School Lunch Program Fact Sheets*, at <http://www.fns.usda.gov/cnd/Lunch/AboutLunch/faqs.htm>.

one of the largest government-funded programs for low-income households, in terms of the number of households served. In addition, there are many households that are willing to apply for a program that helps their school-aged children but who will not apply for any other government assistance (e.g., TANF or food stamps) because they feel that accepting assistance for the adults in the household carries a social stigma. NCLC believes that adding NSL to the list of qualifying programs will allow Lifeline and Link-Up to reach households who would otherwise not be reached.

Finally, the Joint Board's proposal to include an income-eligibility criterion (135% of the Federal Poverty Guideline ["FPG"])<sup>5</sup> addresses the reality that many poor households do not get any of the forms of public assistance listed in 47 C.F.R. § 54.409(b). There are more than 10 million households living at or below the federal poverty level, at least another 4 million between 100% and 125% of poverty, and at least 2 million more between 125% and 150% of poverty.<sup>6</sup> These 16 million households far dwarf the 6.2 million households reported as receiving Lifeline assistance in 2001.<sup>7</sup> Low-income people who would otherwise be eligible for Lifeline are not necessarily enrolled in the public benefits programs that make them eligible for Lifeline. For example, as a result of welfare reform and other reasons, the welfare rolls declined

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<sup>5</sup> Recommended Decision, ¶ 10.

<sup>6</sup> Source: Data prepared by Roper Strach Worldwide for the Department of Health and Human Services, Administration for Children and Families, Office of Community Services, as reported in HHS Information Memorandum LIHEAP-IM-2002-3.

<sup>7</sup> Industry Analysis and Technology Division/Wireline Competition Bureau, *Trends in Telephone Service*, at 7-1 (May 2002).

by more than 50% during the past decade. Food stamp enrollment declined by one third.<sup>8</sup> These households that are no longer on welfare or food stamps may not be on any other government assistance program and, therefore would not be eligible for Lifeline under 47 CFR 54.409(b). Similarly, millions of low-income households are not eligible for fuel assistance because they do not pay their own heating bills directly or otherwise do not meet eligibility rules. Very few income-eligible households actually live in public housing because waiting lists are so long. To be eligible for Supplemental Security Income, the applicant must be disabled, thus excluding most income-eligible households. Finally, Medicaid applicants must meet complex eligibility rules to qualify.<sup>9</sup> In short, there are any number of reasons why a low-income family may not be participating in various government assistance programs. The Joint Board's recommendation takes a common-sense approach to these problems, by allowing any household whose income is below the threshold of 135% of the FPG to apply for Lifeline/Link-Up. The Joint Board appropriately requires these households to verify their income.<sup>10</sup>

4. THE COMMISSION SHOULD REQUIRE VERIFICATION PROCEDURES THAT DO NOT CREATE UNDUE BARRIERS TO INCOME-ELIGIBLE APPLICANTS

NCLC agrees with the Joint Board that states will have to develop reasonable verification procedures for households that declare that they are income-eligible, as distinct from applicants

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<sup>8</sup> USDA/Food and Nutrition Service, *The Decline in Food Stamp Participation: A Report to Congress*, Report No. FSP-01-WEL (July 2001).

<sup>9</sup> See [www.hcfa.gov/medicaid/meligib.htm](http://www.hcfa.gov/medicaid/meligib.htm).

<sup>10</sup> Recommended Decision, ¶ 32.

who are program eligible (receive, e.g., food stamps or TANF).<sup>11</sup> The Joint Board has offered at least one suggestion to minimize the prospect that income verification could present insurmountable obstacles to enrollment. Specifically, the Board suggests that states “could access the documentation via an online database, if available in that state.”<sup>12</sup> In states where this can be accomplished, this will not only minimize the potential obstacles from the applicant’s perspective but also minimize the burdens on the telephone company, which would otherwise have to set up mechanisms for obtaining and reviewing paper documentation from each applicant.

But many states will not be able to avail themselves of on line databases and will instead have to require the types of paper documentation suggested by the Joint Board. This opens the possibility that some applicants will have a difficult time complying and that telephone companies will be burdened with determining who is income eligible. Telephone companies are neither well-equipped nor, NCLC believes, particularly eager to engage in too-detailed income determinations. NCLC therefore suggests that paragraph 35 of the Recommended Decision include the following additional language (inserted at the end of the existing paragraph):

“States must carefully weigh the benefit of requiring methods of income verification that may minimize the possibility of approving households who are not in fact income-eligible, against the burdens that rigorous documentation requirements will place on telephone companies that will have to collect and review the documentation. States must similarly consider the extent to which particular forms or methods of income verification may act as excessive barriers to households that are in fact eligible. States are strongly encouraged to utilize all available on-line or electronic means of verification to minimize the burdens on telephone companies and applicant households. ”

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<sup>11</sup> NPRM, ¶ 2; Recommended Decision, ¶ 32.

Recently, the Massachusetts Department of Telecommunications and Energy (“DTE”) issued an order in a docket in which it is investigating ways to “increase the penetration rate for discounted electric, gas and telephone service.”<sup>13</sup> The Department concluded that the most effective way to increase the number of income-eligible households who actually become enrolled on low-income discount rates is to require the companies that offer the discounts to share information electronically with the state agencies that operate various low-income assistance programs.<sup>14</sup> Texas also uses electronic sharing of information between utilities and a third-party administrator to identify and enroll households eligible for electric discount rates. The Commission should do whatever it can to promote the use of electronic means of enrollment and verification.

5. THE COMMISSION SHOULD EXPLICITLY REQUIRE REASONABLE OUTREACH EFFORTS IN ALL STATES

The NPRM notes that the Joint Board is recommending “that the Commission provide outreach guidelines for the Lifeline/Link-Up Program.”<sup>15</sup> The Joint Board’s recommended outline guidelines, which appear in ¶ 51 on the Recommended Decision, are drawn verbatim

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<sup>13</sup> Mass. DTE 01-106-A, Order dated August 8, 2003, available at <http://www.state.ma.us/dpu/electric/01-106/88order.pdf>.

<sup>14</sup> *Id.* In this first phase of the case, the Department only directed electric and gas companies to share information electronically with the state’s Executive Office of Health and Human Services. The Department intends to “explore how to maximize participation by the telecommunications industry in a computer matching program” in the second phase of the case. *Id.*, at 13.

<sup>15</sup> NPRM, ¶ 1, referring to Recommended Decision, ¶ 50.

from the comments that NCLC filed with the Joint Board.<sup>16</sup> However, NCLC had recommended that these guidelines appear in the regulations governing the Lifeline/Link-Up programs.

Specifically, NCLC recommended including the guidelines language appearing in ¶ 51 of the Recommended Decision into 47 C.F.R. § 54.405(b), which presently only requires that “eligible telecommunications carriers publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.” This very broad language is simply not sufficient to address the vast differences in state-by-state outreach efforts and enrollment results.

In its December 28, 2001 comments to the Joint Board, NCLC presented a table showing the estimated percentage of Lifeline/Link-Up eligible households actually enrolled in each state.<sup>17</sup>

Twenty-two states had Lifeline penetration rates of 10% or less. Six of those states (Arkansas, Delaware, Louisiana, Maryland, West Virginia and Wyoming) had participation rates of 5.0% or less. At the other end of the spectrum, seven states (California, Connecticut, Maine, Massachusetts, New York, Rhode Island and Vermont) had penetration rates of 30% or more. While the precise percentage numbers can no doubt be questioned, the relative penetration rates by state are unquestionably meaningful. There is no doubt that California, Maine and New York are reaching a vastly higher percentage of eligible households than Arkansas or Louisiana.

Further, the differences among the states are explained by a few salient variables. States with high enrollment rates employ one or more of the following: automatic enrollment of households identified as eligible by government benefits programs, self-certification by eligible

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<sup>16</sup> “Comments of the National Consumer Law Center on Behalf of Massachusetts Union of Public Housing Tenants” in CC Docket 96-45/FCC 01J-2 (Dec. 28, 2001), at 10.

households, and aggressive (sometimes well-funded) outreach. Conversely, it appears that many of the states with low penetration rates simply rely on periodic bill stuffers to spread the word about Lifeline and rely on eligible households to fill out individual application forms.

Thus, it is critical that the Commission do all that it can to promote reasonable outreach efforts. While including the guidelines in the regulations formally governing Lifeline/Lin-Up is no panacea, doing so will underscore the importance of each state focusing on outreach. Regulators, advocates and others who are working to make sure that all eligible households are aware of Lifeline and Link-Up will be more likely to succeed in their efforts if the Commission's outreach regulations are more explicit.

6. THE COMMISSION SHOULD ROUTINELY COLLECT INFORMATION FROM STATES ABOUT IMPLEMENTATION OF LIFELINE

The Joint Board and the Commission have raised two important questions that NCLC sees as closely related to each other and to the long-term success of the Lifeline/Link-Up programs. As the NPRM notes,<sup>18</sup> the “Joint Board recommended that the Commission seek more information about the reasons for differences in low-income penetration rates over time and among states.” Further, the Joint Board “recommended that the Commission adopt a voluntary information collection” form to gather more information from states, and sought comments on that form.

NCLC has been concerned about both the overall penetration rate of telephone subscribership as well as the penetration rate of Lifeline/Link-Up. As noted in the previous

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<sup>18</sup> NPRM, ¶ 2, 68 Fed. Reg. 42333.

section,<sup>19</sup> the percentage of Lifeline-eligible households that are enrolled in each state varies quite significantly, with half a dozen states enrolling less than 5% of the eligible households and half a dozen states enrolling 30% or more. NCLC has offered some initial observations about why there is such a disparity. The disparate results correlate closely with each state's outreach and enrollment techniques. States that engage in more outreach and use electronic enrollment and verification having the highest penetration rates. However, conducting a periodic survey of the type proposed by the Joint Board would help inform future policy analyses and future Commission action by collecting information from all states on one, consistent form. The Commission and interested parties could learn a great deal more about why some states do so well in enrolling eligible households.

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<sup>19</sup> Section V, *supra*.

NCLC also notes that there are state-by-state disparities in telephone subscribership, but the causes are less immediately apparent. As of July 2001, Arkansas and Mississippi had the lowest subscribership rates in the country.<sup>20</sup> While these states have high poverty rates, there are other states that also have high poverty rates but telephone subscribership rates that are only slightly below the national average subscribership rate. It is also worth noting, as the Joint Board did, that some states have significantly improved their telephone subscribership rates over time, where others have not.<sup>21</sup> The explanation for the state-by-state disparities in telephone subscribership are no doubt due to a number of complex variables that vary by state, including poverty rates, geographic density, level of Lifeline support, etc. The Joint Board's proposed survey would bring forth much more information that would help explain the state-by-state disparities and help shape future Lifeline policies.

Regarding the survey form itself, NCLC offers several suggestions for additional questions. (While some of the information sought by the questions listed below might be reported or collected elsewhere, it would be helpful to gather it in one place.)

- What is the current level of Lifeline support in the state, and are any changes scheduled to be made?
- What outreach techniques are being used at the present time? To what extent does any state agency conduct outreach? To what extent is there community-based outreach (attendance at community meetings or public events, placement of brochures or flyers with community organizations, etc.).
- Does the state now use, or is it contemplating using, any electronic information or databases to identify income-eligible households or facilitate verification or enrollment?

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<sup>20</sup> Industry Analysis and Technology Division/Wireline Competition Bureau, *Trends in Telephone Service*, Table 17.2 (May 2002).

<sup>21</sup> *Id.* For example, South Carolina's subscribership rate was only 81.8% in 1983, the lowest in the country and 10 percentage points below the national average. By 2001, its subscribership rate was 94.9%, just 2 percentage points below the national average.

- If yes, please describe.
7. THE COMMISSION SHOULD REQUIRE AN APPEALS PROCESS WHEN THE CARRIER INITIATES TERMINATION OF LIFELINE ASSISTANCE

The Commission seeks comment on the Joint Board's discussion of an appeals process for households who face termination of lifeline.<sup>22</sup> NCLC believes that a reasonable appeals process is essential to fair treatment of eligible households.

NCLC recently participated in a Massachusetts proceeding addressing the penetration rate of electric, gas and telephone discounts in that state.<sup>23</sup> In preparing its comments in that proceeding, NCLC solicited input from low-income consumers and advocates. One of the most frequent complaints was that the companies sometimes terminate the discount assistance with inadequate advance notice. While some of the details of the problem are specific to Massachusetts, the underlying problems regarding termination are more widespread, and a discussion may help inform the Commission's decision here.

In Massachusetts, the majority of households enrolled on the discount rates also receive fuel assistance. These fuel assistance households initially become enrolled and subsequently re-certify their continuing eligibility by arrangements that have been made between the companies and the fuel assistance agencies. The proceeding before the Massachusetts Department of Telecommunications and Energy revealed that companies took a number of different approaches to periodic recertification of income and to terminating assistance to those customers who may become income-ineligible. Some companies attempt to recertify all eligible customers at the same time of year, e.g., during one of summer months. Because the fuel assistance program is most heavily staffed in the fall and winter and only minimally staffed in the summer, many

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<sup>22</sup> NPRM, ¶ 2; Recommended Decision, ¶¶ 29, 30.

households who receive termination notices are unable to obtain recertification documentation from the fuel assistance agencies quickly enough to avoid termination of Lifeline assistance.

Another common problem identified was that some households no longer receive a particular form of assistance but are still eligible for the Lifeline program, unbeknown to the company. For example, a household may originally qualify for Lifeline by demonstrating to the company that it receives TANF assistance. The household has no reason to demonstrate to the company at the time of initially applying for Lifeline that it also receives, e.g., fuel assistance. That household, for various reasons, may not receive TANF a year later, but may still be receiving fuel assistance and, thus, still eligible for Lifeline. Because some companies set up data-sharing protocols with government agencies, the utility may learn that the household no longer receives TANF and intend to terminate Lifeline assistance. But it will have no information about the household's receipt of fuel assistance. It is therefore essential that the company give the household adequate notice that assistance will be terminated and provide an adequate opportunity for the household to demonstrate that it is still eligible for Lifeline assistance.

Given that companies have wide discretion about how they will go about seeking recertification of income-eligibility, there is no uniformity about how this is done. Households enrolled on Lifeline often do not know when they are expected to recertify or how recertification will occur. It is therefore imperative that all telephone companies provide adequate advance notice before terminating assistance. The Joint Board's proposed notice of 60 days is very reasonable. The appeals process need not be any more involved than informing the customer that Lifeline assistance will be terminated as of a particular date unless the customer produces

the type of income verification specified in the notice. Use of the word “appeals” may inappropriately imply that companies will need to adjudicate disputed facts or otherwise provide a hearing process. In reality, the most common basis for appeal will be that the company is not aware that the customer is still income eligible for assistance, and the customer will simply produce documentation of program or income eligibility. The Commission should adopt the Joint Board’s proposal as reasonable means of protecting eligible households from inappropriate terminations.

8. CONCLUSION

NCLC and MUPHT urge the Joint Board to adopt their recommendations.

Respectfully submitted,  
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