

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF	§	CC DOCKET NO. 96-45
	§	
LIFELINE AND LINK-UP	§	WC DOCKET NO. 03-109

**COMMENTS OF THE
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL**

The Texas Office of Public Utility Counsel (“OPC”) is the independent Texas state agency that represents over six million Texas residential and small business consumers in telecommunication proceedings. OPC submits these comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking, Docket No. 03-109 released June 9, 2003.

I.

The FCC is seeking public comment on the recommended decision issued by the Federal State Joint Board on Universal Service (“Joint Board”) in this docket.¹ OPC will limit its comments on the following issues raised in the Joint Board’s recommended decision:

- whether the FCC should establish a minimum eligibility criteria;
- whether states should be required to have verification procedures for income-based eligibility requirements; and
- whether an income-based eligibility requirement be set at 150% of poverty level;

OPC urges the Commission to reconsider the Joint Board’s recommendations as to these issues. OPC urges the FCC to adopt OPC’s recommended changes set out below. Failure to comment on other Joint Board recommendations should not be inferred as approval or rejection. OPC reserves the right to supplement its comments as the rulemaking process continues.

Many of the Joint Board's recommendations constitute significant strides toward the goal of Universal Service. Specifically, the recommended automatic eligibility and income-based eligibility requirements will have a substantial impact on improving telephone penetration for those low income consumers in states that have the default federal eligibility requirements.

II. Minimum Eligibility Requirements

The federal requirements, including those recommended by the Joint Board, should be considered minimum requirements for state Lifeline programs. The requirements further the goal enunciated by Congress that low-income consumers should have access to telecommunications and information services. 47 U.S.C. § 254(b). While the Joint Board strongly encourages the incorporation of federal eligibility standards into state programs, it stops short of recommending that federal eligibility standards be established as minimum requirements for state programs. The Joint Board argues that states should be able to maintain their flexibility. *Id.* Flexibility for state programs is commendable. But flexibility should be a tool to allow states to excel beyond minimum standards. It should not be a tool for some states to deny Lifeline or Link-up services due to the state program's limited eligibility requirements. For instance, Alabama's state program limits Lifeline and Link-up eligibility to consumers on Medicaid.² Many low income consumers do not qualify for Medicaid. Nonetheless, these consumers cannot receive the benefits of Lifeline and Link-up. There is no rational reason to deny these consumers access to Lifeline and Link-up services when they would have qualified for them under other state programs using federal eligibility guidelines. In recommending that current federal eligibility requirements be expanded, the Joint Board determined that the

¹ In the Matter of Federal – State Board on Universal Service, CC Docket No. 96-45 (FCC April 2, 2003). (“Recommended Decision”).

expanded eligibility requirements would increase subscribership. Recommended Decision, at paragraph. 15. The Joint Board analysis supported that determination. Id at 9, Appendix F. Ironically, the staff analysis assumed all states chose to adopt the federal eligibility standards thereby replicating OPC's recommendation that the federal eligibility requirements be minimum standards for state programs. Id. p. 5, footnote No. 44. The Joint Board admitted that if some states did not adopt the federal eligibility requirements, there would be fewer low income consumers qualifying for Lifeline and Link-up. Id. The failure to mandate that state programs contain minimum federal eligibility requirements will result in consumers identified under federal eligibility standards as low income qualifying for Lifeline and Link-up to be denied. Denying Lifeline and Link-up to these low income consumers is contrary to the goal of Universal Service. OPC recognizes problems may occur in state programs implementing mandatory federal eligibility standards. State programs can utilize the remedy of waiver in resolving their problems.

OPC urges the Commission to adopt minimum federal eligibility requirements for state programs.

III. Verification Procedures

OPC commends the Joint Board for adding an income-based criterion to determine eligibility for Lifeline and Link-up programs. OPC agrees with the Joint Board that adding this criterion will enhance subscribership.

This criterion comes with the Joint Board's recommendation that applicants be required to present documentation of income eligibility. The Joint Board received few public comments

² Alabama Public Service's website, www.puc.state.al.us

expressing concerns that this criterion would lead to fraud.³ These comments were unsupported by any study, analysis or report. Several public commentators had researched the subject. These commentators found that states utilizing self-certification to determine eligibility based on income had found no evidence of fraud.⁴ Texas uses self-certification to establish Lifeline and Link-up eligibility based on income. This criteria has been in use for several years. Since that time, there has been no problems of fraud.⁵

In addition several commentators explained to the Joint Board that self-certification is cost effective. Self-certification replaces resources that would be needed to process applications involving documentation. In addition, self-certification promotes increased subscribership by minimizing certification delays caused by absence of “proper” documentation.

OPC believes that the Joint Board’s recommendation does not demonstrate reasoned decisionmaking considering the comments presented it. The Joint Board’s recommendation hinders the goal of Universal Service unnecessarily and unreasonably. Its basis – prevention of fraud – is not supported in the rulemaking record. The Joint Board’s recommendation increases costs. It also adds an additional requirement in the subscribing process.

OPC understands that fraud is a valid concern. But the only evidence presented was that documentation to verify income eligibility as a deterrance to fraud would probably cost more than the revenues lost to fraud.⁶ Requiring that the application be certified under penalties of perjury should address the Joint Board’s concerns⁷.

³ See for instance, comments of SBC Communication, Inc. at 3. Comments of World Com, Inc. at 4.

⁴ See Reply Comments of the United States Conference of Catholic Bishops, et. al., pp. 10-12.

⁵ Telephone interview, Tex. PUC Staff, August 15, 2003.

⁶ See generally Comments of the United States Conference of Catholic Bishops, et. al., pp. 13-15.

⁷ See Texas Public Utility Commission of Texas Self-Certification form of income eligibility attached to these comments.

OPC urges the Commission to modify the Joint Board's recommended income eligibility criterion to permit self-certification. This requirement would be consistent with several states' current practices.

IV 150% of Poverty Level

The Joint Board's recommended addition of an income-based criterion to federal eligibility requirements for Lifeline and Link-up benefits is a significant step towards meeting the goal of Universal Service. Texas has an income-based criterion in its state program. Tex. PUC Subst. § 26.412(b). Since adding this requirement, enrollment in Lifeline and Link-up programs has substantially improved.^{8, 9}

The Joint Board chose 135% of poverty level as the cut-off for federal eligibility involving Lifeline and Link-up programs. In choosing 135% of poverty level, the Joint Board reasoned that its choice balanced increasing subscribership with not overburdening the universal support mechanism. Recommended Decision, paragraph 17.

OPC encourages the Commission to adopt a higher income threshold of 150% of poverty. This 15% incremental income amount will increase subscribership. Use of the 150% of poverty income level is not excessive and will not result in non-low income consumers obtaining Universal Service fund support. This Commission has already implicitly acknowledged that consumers with an income that is at or below 150% of poverty level are low income consumers. One of the public programs that identifies a program participant as a low income consumer eligible for Lifeline or Link-up Service is the Low-Income Home Energy Assistance Program (LIHEAP). 47 C.F.R. § 54.409(b). Consumers with a household income at or below 150% of

⁸Telephone Interview, Public Utility Commission of Texas Staff, August 15, 2003.

⁹ The Texas PUC has also established an automatic enrollment procedure. PUC Subst. Rule § 26.412 (a), (e), (f). Staff also associates this procedure with increasing subscribership.

federal poverty guidelines qualify for LIHEAP.¹⁰ Thus the FCC through the use of LIHEAP to determine federal eligibility of Lifeline and Link-up services has already determined that consumers whose income is at or below 150% of poverty level are low income consumers.

Not only would use of an income at or below 150% of poverty level be consistent with the FCC's use of the LIHEAP program to meet federal liability requirements, but the use would also be equitable. To treat two consumers with incomes at or below 150% of poverty differently based on LIHEAP participation is not fair. A consumer whose income is at or below 150% poverty should not be forced to take public assistance in order to obtain Lifeline and Link-up Services.

OPC encourages the Commission to adopt an income-based eligibility criterion and to adopt a 150% of poverty level threshold for federal eligibility for Lifeline and Link-up services.

Conclusion

As the Joint Board noted, "Lifeline/Link-up continues to service only a small portion of the low-income households in this country. "Recommended Decision, in Paragraph 9. Expanding the number of public programs utilized to determine federal eligibility for Lifeline and Link-up will increase subscribership. Utilizing automatic enrollment and online verification will also enhance subscribership. An income-based criterion for federal eligibility for Lifeline and Link-up services will substantially increase subscribership. Texas' use of automatic enrollment and income-based eligibility criterion has substantially improved subscribership within that State.

Unfortunately, unless the federal eligibility standards are determined by the FCC to be minimum standards for state programs, the goal of Universal Service will not be met. Establishing minimum eligibility standards for state programs should not be an undue hardship.

¹⁰ See 42 U.S.C.A. § 8624(b)(2)(B).

Even if a state would experience undue hardship by implementing a minimum eligibility standard, the state could seek a waiver.

Requiring documentary certification for income-based criterion for federal eligibility for Lifeline and Link-up Services would cost more than it would save. It also hinders and slows down the application process. It also is contrary to several states' practices, including Texas', who use self-certification for eligibility requirements based on income.

OPC encourages the Commission to adopt the Joint Board's recommended decision with the specific changes set out in the body of these comments. OPC may have additional suggestions based on other comments and upon further review of the proposed decision.

Respectfully submitted,

Suzi Ray McClellan
Public Counsel
State Bar No. 16607620

Lanetta Cooper
Assistant Public Counsel
State Bar No. 04780660

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500
512/936-7520 (Facsimile)