

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

In the Matter of)
)
Request for Review by AT&T Inc.) WC Docket No. 03-109
Of Decision of Universal Service Administrator)

REPLY COMMENTS OF VERIZON¹

The Commission should grant AT&T's appeal² and reverse erroneous Lifeline program audit conclusions by the Universal Service Administrative Company ("USAC") and its auditors regarding partial month Lifeline reimbursement claims, document retention, reseller certifications, and toll blocking service advertising.

I. Carriers Are Not, And Should Not Be, Required To Pro-Rate Lifeline Reimbursement Claims.

USAC and its auditors fault AT&T for failing to pro-rate monthly Lifeline reimbursement claims. AT&T Appeal at 15. This conclusion is wrong. Carriers are reimbursed from the Universal Service Fund for providing certain discounted services to low income customers that participate in the federal Lifeline program. To seek reimbursement, carriers submit monthly worksheets, FCC Form 497, to USAC. Carriers are not required to pro-rate their reimbursement claims for Lifeline customers that initiate or discontinue service during the course of the month. As both AT&T and Qwest have explained in earlier, separate audit finding appeals, the Commission previously considered and rejected mandatory pro-rata Lifeline

¹ The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Request for Review by AT&T Inc. of Decisions of Universal Service Administrator, WC Docket No. 03-109 (filed Aug. 18, 2008) ("AT&T Appeal").

reimbursement claims. *See Wireline Competition Bureau Announces Effective Date of Revised Form 497 Used to File Low Income Claims with USAC*, 19 FCC Rcd 18574 (2004); and *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income Universal Service Support Until Further Notice*, 20 FCC Rcd 4395 (2005) (indefinitely suspending new Lifeline reimbursement form that would have required partial month claims).

The Commission's decision not to require carriers to track and submit partial month claims for Lifeline customers that initiate or discontinue service during a month makes sense. Such a requirement, particularly for carriers with large bases of Lifeline participants such as AT&T, Qwest, and Verizon, would be extremely complicated and burdensome. Lifeline customer counts are dynamic. To track Lifeline counts on a granular level, carriers would likely have to pull data every day and calculate pro-rated support for each Lifeline customer. For large carriers with millions of Lifeline customers, such a process would be prohibitively expensive. Complex modifications to carrier billing systems (likely costing millions of dollars) would be necessary to capture required data and to adjust reimbursement claims.

Moreover, there is nothing to be gained from mandatory, pro-rata Lifeline reimbursement claims. The current process allows carriers to report Lifeline counts used for reimbursement claims on a fixed day each month. Using this methodology, some partial month Lifeline customers are included in the count while other partial month customers are excluded. In other words, Lifeline additions and drops during the course of a month off-set each other. There is no reason to believe that, over time, reporting on this basis would substantially overstate or understate a carrier's monthly count of eligible Lifeline customers. Undoubtedly, this method is more efficient and less complicated to administer, equally accurate, and easier to audit than the pro-rata approach advocated by USAC and its auditors.

Moreover, the plain language used on Form 497 and the attendant Worksheet Instructions makes clear that pro-rata Lifeline reimbursement claims are not mandatory. *See* Lifeline and Link Up Worksheet, FCC Form 497 (July 2008) (requiring additional data on Line 9 of the form only if the reporting carrier pro-rates its reimbursement claims); *see also* Instructions for Lifeline and Link Up Worksheet, FCC 497 Instructions, at 4 (July 2008) (requiring same).

II. Audit Findings Regarding Lifeline Document Retention, Lifeline Reseller Certifications, And Toll Blocking Service Advertising Should Also Be Reversed.

Document Retention Findings. Section 54.417 of the Commission’s rules requires eligible telecommunications carriers (“ETCs”) to retain certain self-certifications regarding program eligibility from Lifeline program participants “for as long as the consumer receives Lifeline service from that eligible telecommunications carrier”. 47 C.F.R. § 54.417(a); *see also* 47 C.F.R. § 54.409(d). This rule was adopted in 2004 and did not become effective until 2005.³ Nevertheless, USAC and its auditors fault AT&T for failing to retain certain program participant self-certifications for periods that pre-date this rule. AT&T Appeal at 8-13. Administrative rules are presumed *not* to apply retroactively. *See, e.g., Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988). AT&T cannot be found to have violated a document retention rule that did not exist when the alleged violation occurred.

Lifeline Reseller Certification Findings. Section 54.417(a) of the Commission’s rules (at least prior to 2007) provides that ETCs selling Lifeline discounted services on a wholesale basis to Lifeline resellers “obtain a certification from that reseller that it is complying with all Commission requirements governing the Lifeline/Link Up programs.” 47 C.F.R. § 54.417(a). AT&T has a process to obtain these certifications from its Lifeline reseller customers, but USAC

³ *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004).

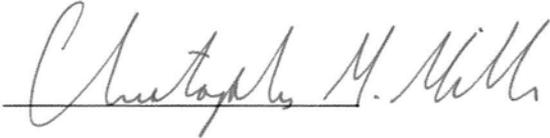
and its auditors apparently fault AT&T for failing to force certain of its Lifeline reseller customers to provide a certification. AT&T Appeal at 11. Neither AT&T nor any other carrier has any means to force Lifeline resellers to comply. Section 54.417(a) does not even expressly mandate that Lifeline resellers must provide these certifications to their wholesale carriers. The Commission should modify section 54.417(a) to expressly require Lifeline resellers to do so, and should fault the resellers (rather than the underlying carrier) for their failure to comply.

Toll Blocking Advertising Findings. Section 54.405(b) of the Commission's rules requires that ETCs "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service." 47 C.F.R. § 54.405(b). USAC and its auditors fault AT&T for failing to advertise the free toll-blocking service available to Lifeline customers. AT&T Appeal at 13. The rules, however, do not require carriers to advertise each and every component of their Lifeline service. While there are many benefits and discounts available to universal service low income program participants, *see, e.g.*, 47 C.F.R. 54.403, the general Lifeline advertising requirement does not require ETCs to enumerate all such benefits when publicizing the availability of Lifeline service.

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For these reasons, the Commission should grant AT&T's appeal.

Respectfully submitted,

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