

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054**

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

REPLY COMMENTS OF AT&T INC.

AT&T Inc. (AT&T) on behalf of its affiliates urges the Commission to act quickly to grant AT&T's and Qwest's pending appeals of Universal Service Administrative Company's (USAC's) erroneous findings concerning both companies' compliance with the Commission's low-income rules.¹ Without exception, commenters agree that USAC plainly has misinterpreted those rules, and that its audit findings (which are based on its misinterpretation) should be rejected promptly.² Failure to do so will only result in repetitious "me-too" appeals from other carriers challenging the same erroneous interpretation by USAC and raising the same issues posed in all three pending appeals.³ AT&T notes, in this regard, that two of the four USAC audit findings that AT&T contested in its August Request are identical to those contained in AT&T's January Request and the Qwest Request: ETCs are required to seek pro-rata Lifeline support for subscribers who take service for only part of a month despite the discretionary language of the

¹ See Request for Review by AT&T Inc. of Decision of Universal Service Administrator, WC Docket No. 03-109 (filed Jan. 7, 2008) (January Request); Request for Review by Qwest Communications International, Inc. of Decision of Universal Service Administrator, WC Docket No. 03-109 (filed April 25, 2008) (Qwest Request); Request for Review by AT&T Inc. of Decision of Universal Service Administrator, WC Docket No. 03-109 (filed Aug. 18, 2008) (August Request).

² In addition to USTelecom, Qwest also filed comments in support of AT&T's August Request.

³ USTelecom Comments at 2.

FCC Form 497 and instructions, and ETCs were required to retain subscriber self-certifications prior to the effective date of the Commission's document retention rule requiring ETCs to do just that. As such, AT&T respectfully requests that the Commission incorporate by reference here the record compiled in those earlier proceedings, and that it act expeditiously to resolve all three appeals.

USAC's other two findings are equally meritless. As discussed herein and in AT&T's appeal, USAC points to nothing to support its finding that ETCs violate section 54.417(a) of the Commission's rules if they cannot obtain certifications from resellers that the resellers comply with the Commission's low-income rules, nor can it insofar as the Commission's rules do not obligate resellers to provide such certifications to their underlying providers. Likewise, USAC provides no support for its conclusion that ETCs must advertise all of the supported services or functionalities listed in section 54.101(a) of the Commission's rules in their Lifeline advertisements. Simply put, nothing in the Commission's rules and orders imposes such an obligation.

Commission's Lifeline Document Retention Rule Applies Prospectively. As explained by AT&T in its August Request, beginning May 12, 2005, ETCs were required to retain copies of Lifeline subscriber self-certifications for as long as the subscriber receives Lifeline service from the ETC.⁴ The independent auditor retained by USAC to audit AT&T's compliance with the Commission's low-income rules nonetheless found fault with AT&T's inability to produce copies of some of its subscribers' self-certifications for periods that either predated May 2005 or included all of May 2005. As USTelecom notes, the only way in which USAC's application of this rule could be interpreted as not improperly applying on a retroactive basis is if the

⁴ See August Request at 3-4 (citing 47 C.F.R. § 54.417(a)).

Commission had required ETCs to obtain re-certifications from all of their pre-May 12, 2005 Lifeline subscribers.⁵ The Commission, of course, never imposed such a retroactive obligation on ETCs – nor could it absent a clear expression from Congress.⁶ The Commission should reverse this USAC finding and direct USAC to refund any reimbursement that it recovered from AT&T for this issue.⁷

No Rule Violation When Non-ETC Resellers Refuse to Provide Certifications to ETCs. Section 54.417(a) of the Commission’s rules requires ETCs to obtain certifications from non-ETC resellers that they are complying with the Commission’s low-income rules. Despite diligent efforts to obtain certifications from its resellers, some have ignored AT&T’s certification requests because the Commission’s rules do not require resellers to provide certifications to their underlying carrier. As a consequence, USAC concluded that, despite its efforts, AT&T violated this Commission rule by failing to obtain certifications from recalcitrant resellers.⁸ AT&T agrees with USTelecom that the Commission should revise its rules to take wholesale providers out of this compliance loop and enforce its Lifeline compliance certification requirement directly on non-ETC resellers.⁹ In the meantime, it should not hold carriers, like AT&T, liable for the

⁵ USTelecom Comments at 3-4.

⁶ See August Request at 9 (noting, among other things, that it took over one year for this rule to become effective after the Commission adopted it); Qwest Request at 11 (*citing Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208-09 (1988) (“congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result”)).

⁷ See August Request at 9-10 (explaining that the most USAC could recover from AT&T’s affiliates is \$68.55, not the \$1,181.00 stated in its recovery letters). *Id.* at Appendices A-C.

⁸ August Request at 11-12 (explaining the steps that AT&T’s affiliates have taken to obtain such certifications and noting the policy concerns associated with disconnecting a Lifeline subscriber’s service due to the failure of the subscriber’s provider to give a certification to AT&T).

⁹ USTelecom Comments at 3.

misdeeds of their reseller customers, particularly where, as here, such carriers have diligently sought to comply with the Commission's rules.

USTelecom is correct in noting that, due to how the Commission structured its rule, a wholesale provider's ability to comply with this rule is entirely within the control of another service provider who happens to be a direct competitor of that ETC.¹⁰ Penalizing wholesale providers for failing to obtain certifications of compliance from resellers would elevate form over substance since, as USTelecom explains, even if AT&T were able to obtain certifications from all of its resellers, the Commission's rules do not authorize (or permit) a wholesale provider to police a reseller's compliance.¹¹ Instead, under the existing rule, the wholesale provider's role is to assume the costs associated with collecting reseller certifications and the compliance risk if the reseller refuses to produce a certification, both of which are unrelated to the subject and purpose of the certification, which is to ensure, among other things, that non-ETC resellers flow-through Lifeline discounts to their Lifeline customers.¹² The Commission should reject USAC's finding of non-compliance and modify its rules to place the burden on non-ETC resellers to provide to their underlying providers certifications of their compliance with the Commission's low-income requirements. Thus, the responsibility for any failure to comply with this rule would fall where it should – on the reseller.

ETCs Are Not Required to Advertise the Commission's Supported Services When Publicizing the Availability of Lifeline Services. While ETCs are required to publicize the availability of Lifeline services and "Lifeline" is defined as including the services or

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.*

functionalities enumerated in section 54.101(a) of the Commission’s rules, USAC was incorrect to conclude that, taken together, this means that ETCs are required to mention each supported service or functionality in their Lifeline advertisements.¹³ As Qwest correctly observes, it serves no useful purpose for anyone to have ETCs advertise that Lifeline service includes, among other things, “dual tone multi-frequency signaling or its functional equivalent.”¹⁴ Not only would such an advertisement be impractical, it would obviously result in customer confusion. Moreover, as a matter of sound policy, it makes no sense to require ETCs to include “dual tone multi-frequency signaling” and “single-party service” in their advertisements but not mention the more tangible benefits of Lifeline such as the waiver of certain fees and taxes. In its sample outreach letter, even USAC seems to acknowledge the futility of listing all of the supported services or functionalities contained in section 54.101(a) because it makes no attempt to do so.¹⁵ The Commission should reject USAC’s conclusion that ETCs are required to advertise all services supported by section 54.101(a); instead, it should find that AT&T’s practice of publicizing the availability of Lifeline service and informing inquiring persons of all of the benefits of Lifeline service, including free toll blocking, was permissible under the Commission’s rules.

ETCs Are Not Required to Report Partial Month Lifeline Subscribers on Line 9 of FCC Form 497. Commenters uniformly urge the Commission to reject USAC’s finding that AT&T’s affiliates were required to populate Line 9 of FCC Form 497 with partial or pro-rata dollars attributable to Lifeline subscribers who either entered or left the Lifeline program during any given month, regardless of whether AT&T’s affiliates sought partial or pro-rata dollars from

¹³ August Request at 13-14.

¹⁴ Qwest Comments at 3.

¹⁵ *Id.* at 3-4 (providing the following USAC link: <http://www.usac.org/li/telecom/step05/outreach-letter.aspx>).

USAC.¹⁶ As noted previously, many other carriers follow AT&T's practice of not populating Line 9 when reporting their numbers of Lifeline subscribers.¹⁷ It would therefore be patently unfair and procedurally impermissible for the Commission to uphold USAC's incorrect finding and require AT&T and Qwest alone to claim partial or pro-rata dollars for Lifeline subscribers who either began or discontinued Lifeline service during each month. As discussed in AT&T's January Request, such a holding clearly would be a departure from existing, unambiguous Commission rules that would require notice and comment and action by the Commission itself.

As explained by USTelecom, USAC's audit finding that carriers are *required* to populate Line 9 by entering the number of Lifeline subscribers who initiated or terminated service during the month ignores the meaning of the word "if" and the existence of a box that carriers may or may not check.¹⁸ USTelecom also notes, "[c]ommon sense dictates that if there is a box to be checked, checking the box is optional, otherwise there would be an explicit instruction to provide the information and there would be no need for a box to be checked."¹⁹ Commenters also agree with AT&T's summary of the history of Line 9 and, in particular, the Commission's deliberate decision not to mandate partial month reporting.²⁰ In 2004, the Commission announced that it intended to amend FCC Form 497 to require partial month reporting. In response to carrier

¹⁶ USTelecom Comments at 5-10; Qwest Comments at 2.

¹⁷ See USTelecom Comments at 8. See also the record developed in response to AT&T's January Request and the Qwest Request (supportive comments filed by Embarq, ITTA, USTelecom, Sprint Nextel, and Verizon).

¹⁸ USTelecom Comments at 5.

¹⁹ *Id.*

²⁰ See USTelecom Comments at 6. See also the record developed in response to AT&T's January Request and the Qwest Request.

concerns, the Commission delayed and later suspended indefinitely adoption of the new form.²¹ As explained by USTelecom, “[t]he fact that the Commission felt that it needed to announce that it contemplated a change to the form makes clear that any change was a substantive revision of the content required on the form” and the fact that “no change was made confirms that the reporting [of partial month subscribers] was and remained optional.”²²

As described in its August Request, AT&T’s affiliates, like many other carriers, report their number of Lifeline subscribers using Lines 5 through 8²³ and purposefully do not seek partial monthly support because the cost and administrative burden to do so exceed any possible benefit insofar as the numbers of Lifeline subscribers entering and leaving the program essentially balances out over the long term.²⁴ USTelecom notes that its members would experience the same burdens as described by AT&T if they were required to extract the number of partial-month Lifeline subscribers from their systems on a daily basis.²⁵ So long as carriers are extracting this information in a consistent manner (*i.e.*, doing the database pull around the same date each month), there can be no suggestion that carriers are attempting to game Lifeline subscriber counts by somehow understating Lifeline subscriber deletions or overstating Lifeline subscriber additions that occur during the month. Thus, by processing Lifeline subscriber additions and deletions in the same manner, the amount of support a carrier claims on Lines 5

²¹ August Request at 7-8.

²² USTelecom Comments at 6 (also noting that USAC has no authority to contradict the Commission and establish a new rule).

²³ Lines 5 through 8 direct carriers to report the monthly number of Lifeline subscribers by Tier.

²⁴ *See* August Request 17.

²⁵ *See* USTelecom Comments at 8.

through 8 for those partial month subscribers “comes out in the wash.”²⁶ For the reasons explained in its August Request (*e.g.*, administrative burdens, cost), AT&T’s affiliates have decided not to claim partial or pro-rata dollars for those Lifeline subscribers who begin or end service during any given month. This decision is entirely appropriate and permissible under the Commission’s rules.

The Commission should reject USAC’s erroneous finding that AT&T and Qwest must report partial month Lifeline subscribers on FCC Form 497. To find otherwise would ignore the plain language of the instructions and the form itself, the Commission’s decision not to implement a revised form that would have required all carriers to report partial month Lifeline subscribers, and the extreme burdens that would be imposed on carriers by adopting and implementing such a requirement.

Respectfully Submitted,

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²⁶ August Request at 17. As noted by USTelecom, the Commission has previously recognized that administrative simplicity can outweigh the need for precision in reporting. USTelecom Comments at 9.