

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:

High-Cost Universal Service Support

WC Docket No. 05-337

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

## **Comments of the USA Coalition**

The Universal Service for America Coalition (“USA Coalition”),<sup>1</sup> by its attorneys, hereby submits these comments in the above-captioned proceeding in response to the Public Notice requesting comment on several policy issues related to the administration of the universal service high-cost support mechanism.<sup>2</sup> The USA Coalition urges the Commission to clarify that ETCs do not need to advertise separately each supported service enumerated in section 54.101 of the Commission’s rules when advertising the availability of Lifeline services. Rather, the Commission should provide USAC with a common-sense and consumer-oriented standard for the enforcement of the advertising requirements imposed upon Lifeline service providers. In addition, the USA Coalition urges the Commission not to sanction ETCs that lack adequate documentation of the universal service support they received for periods prior to the effective date of the Commission’s new five year record retention requirement.

### **I. INTRODUCTION**

The USA Coalition consists of four of the nation’s leading rural providers of wireless services and is dedicated to advancing regulatory policies that will enable Americans to

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<sup>1</sup> The members of the USA Coalition include Carolina West Wireless, Mobi PCS, SouthernLINC Wireless, and Thumb Cellular LLC.

<sup>2</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, WC Docket No. 06-122, CC Docket No. 96-45, Public Notice, DA 09-2117 (rel. Sep. 28, 2009).

enjoy the full promise and potential of wireless communications, regardless of where they live and work. The Coalition seeks to ensure that our nation’s universal service programs are technologically and competitively neutral, which ultimately will facilitate competition that benefits consumers.

A vibrant, robust, and redundant communications network is essential to the economic strength of the United States and the public safety of its citizens. In order to ensure the strength of the communications network in rural, insular, and high-cost areas, service must be affordable to residents of those areas. In some rural, insular, and high-cost areas, however, service will be affordable only with support from the Universal Service Fund (“USF”).

**II. THE COMMISSION SHOULD CLARIFY THAT ETCs DO NOT NEED TO ADVERTISE ALL SUPPORTED SERVICES INCLUDED IN THEIR LIFELINE OFFERINGS**

The Commission should overturn USAC’s unsupported conclusion that ETCs are required to advertise all of Lifeline’s supported services when publicizing the availability of such services pursuant to Rule 54.405(b). Section 54.405 simply requires carriers to “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for service.”<sup>3</sup> Nothing in the language of the current rules requires ETCs to advertise or otherwise publicize the availability of any specific functionality that must be provided as part of the Lifeline service.<sup>4</sup> USAC’s decision to place such a requirement on a carrier during the

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<sup>3</sup> 47 C.F.R. 54.405(b).

<sup>4</sup> Rule 54.201(d)(2) also requires ETCs to “advertise the availability of ... services and the charges therefore using media of general distribution,” but does not mandate inclusion of the technical names for the individual components of the overall telecommunications service.

course of an audit is puzzling given that USAC lacks authority to interpret the Commission's rules and that the Commission has never voiced support for such an interpretation.<sup>5</sup>

The Commission has made it clear in its NOI on advertising practices and consumers disclosures that it seeks to “educate consumers about the information that is, or should be, available to them regarding communications service options.”<sup>6</sup> However, requiring carriers providing Lifeline services to include in their advertising the technical terms used in the Commission's rules to list the services that must be provided as part of a Lifeline offering (*e.g.*, “toll blocking” and “dual-tone multi-frequency signaling”) would serve only to confuse customers. Indeed, enumerating the various supported services would obscure the main message inherent in publicizing the Lifeline service – the availability of subsidized phone service for low-income consumers – and also would fail to achieve the goal of increasing awareness of, and participation in, the Lifeline program.<sup>7</sup> This goal, and not an unsupported and overly technical reading of the Commission's rules, should govern both the Commission's and USAC's administration of Rule 54.405.

### **III. THE COMMISSION SHOULD NOT SANCTION ETCs FOR FAILING TO COMPLY WITH DOCUMENTATION RETENTION REQUIREMENTS PRIOR TO THE EFFECTIVE DATE OF THE REQUIREMENTS.**

In August 2007, the Commission established explicit High Cost Program documentation rules that require carriers to retain documentation necessary to demonstrate to

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<sup>5</sup> *Changes to the Bd. of Directors of NECA*, 13 FCC Rcd 25058, ¶ 16 (1998); *see also* 47 C.F.R. § 54.702(c) (“The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”).

<sup>6</sup> *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CC Docket No. 09-158, CC Docket No. 98-170; WC Docket No. 04-36, Notice of Inquiry, FCC 09-68, ¶ 24 (rel. Aug. 28, 2009).

<sup>7</sup> USTA Comments at 3.

auditors that support received from the USF was consistent with High Cost Program rules for a period of five years.<sup>8</sup> Those rules became effective March 1, 2008. However, prior to that time, there was no clear required retention period for documentation. USAC now seeks guidance from the FCC as to what remedial action, if any, should be taken against carriers that did not maintain documentation for periods being audited prior to the establishment of the Commission's new rule.

The Commission should not impose sanctions on carriers that failed to maintain adequate records for periods prior to the effective date of the new rules. Applying the current rule retroactively to a period prior to the time when the current rule went into effect is both unfair and inconsistent with the Administrative Procedure Act.<sup>9</sup> As an initial matter, there was no way for a carrier to know the length of the period for which it would be required to maintain records.<sup>10</sup> Second, even once the FCC began its inquiry into record keeping requirements, an ETC could not recreate records that had already been destroyed. As such, sanctioning ETCs for failing to comply with regulations that had not yet been adopted, could not be predicted, and the results of which cannot be rectified amounts to an arbitrary punishment of ETCs that, through ill-

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<sup>8</sup> *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket No. 05-195, CC Docket No. 96-45, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 03-109, CC Docket No. 97-21, Report & Order, 22 FCC Rcd 16372 (2007) (adopting Commission Rule 54.202(e) requiring carriers to retain records “required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules” for five years.”).

<sup>9</sup> 5 U.S.C. § 706.

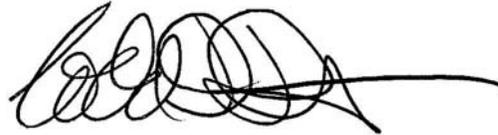
<sup>10</sup> *Id.* ¶ 24 (noting that commenters proposals for record retention requirements ranged from two to seven years).

luck or happenstance, could not comply with regulations developed after the fact.<sup>11</sup> Such sanctions lack any rational basis and cannot be reconciled with the overall goals of the USF program.

#### **IV. CONCLUSION**

For the reasons set forth above, the USA Coalition urges the Commission to (1) clarify that ETCs are not required to list all of the supported services in its Lifeline service advertising and (2) refrain from sanctioning carriers that did not maintain five full years of records for the period prior to the effective date of 47 C.F.R. 54.202(e).

Respectfully submitted,



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<sup>11</sup> Although the constitutional prohibition on *ex post facto* applies only in the case of criminal prosecution, imposing sanctions on ETCs for failing to comply with the regulation prior to its effective date violates the same basic principles of fairness.