

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

In the Matter of )  
 )  
Request for Review by ) WC Docket No. 03-109  
Verizon/Alltel Management Trust )  
of Decision of Universal Service Administrator )

**COMMENTS OF VERIZON<sup>1</sup> AND VERIZON WIRELESS**

The Commission should grant the Verizon/Alltel Management Trust’s appeal<sup>2</sup> and reverse erroneous Lifeline program audit conclusions by the Universal Service Administrative Company (USAC) and its auditors regarding Universal Service Fund (USF) reimbursement payments to Alltel for services provided on tribal lands in North Dakota, South Dakota, and Texas. The issues raised by Alltel have also been addressed by others, and if the Commission desires to change Lifeline program procedures it should do so through prospective rulemaking.

**I. Eligible Lifeline Beneficiaries On Tribal Lands May Legitimately Have Common Mailing Addresses.**

USAC and its auditors suggest that Alltel violated a so-called “one-per-household” rule by providing Lifeline discounts in some instances to multiple parties on tribal lands with the same billing address. Management Trust Appeal at 11. It is common on tribal lands for eligible Lifeline beneficiaries to live in separate residences that do not have individual street addresses. Management Trust Appeal at Exhibit 5. Therefore, in some cases Alltel allowed multiple

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> Request for Review by Verizon/Alltel Management Trust of Decisions of Universal Service Administrator, WC Docket No. 03-109 (Oct. 5, 2009) (“Management Trust” and “Management Trust Appeal”).

Lifeline bills to be sent to the same mailing address on tribal lands. As explained in the Petition, it was Alltel's practice to provide Lifeline applicants materials that explained the requirements applicable to Lifeline qualification and to then have the applicant sign an application representing that he or she met the qualifications. Management Trust Appeal at 11. More recently Alltel obtains express certifications from Lifeline beneficiaries attesting that support is limited to a single subsidy per household. Management Trust Appeal at 14. These are appropriate practices under existing Lifeline rules.

There is no federal prohibition against billing multiple, qualified Lifeline beneficiaries at the same mailing address. The source of the "one-per-household" rule is apparently the Commission's 2004 Lifeline order. *See Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, ¶ 4 (2004) ("Lifeline provides low-income consumers with discounts of up to \$10.00 off of the monthly cost of telephone service for a *single telephone line in their principal residence.*") (emphasis added). This language suggests, if anything, that the Commission only allows for one Lifeline *subsidy per household*. But the language does not address whether multiple, independently eligible households may have their Lifeline bills sent to the same *mailing address*. And on tribal lands where many program beneficiaries simply do not have distinguishable mailing addresses, multiple Lifeline bills for separately qualified households may indeed reasonably be sent to the same mailing address.

If the Commission desires to prohibit this practice – which could, effectively, cut off Lifeline service to some qualified individuals on tribal lands – then it should do so through prospective rulemaking, not retroactive enforcement of ambiguous program requirements.<sup>3</sup> This

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<sup>3</sup> *See, e.g., Clark-Cowlitz v. FERC, et al.*, 826 F.2d 1074, 1082 (D.C. Cir. 1987) ("[T]he Administrative Procedure Act generally contemplates that when an agency proceeds by . . . rulemaking procedures, its orders ordinarily are to have only prospective effect."). Likewise,

situation is similar to another “one-per-household” issue already before the Wireline Competition Bureau. In July of last year, TracFone forwarded to the Bureau a complaint from the Commission’s Consumer & Government Affairs Bureau regarding wireless Lifeline services provided to multiple program beneficiaries with the same billing address, which in that situation was a homeless shelter.<sup>4</sup>

Moreover, carriers must be allowed to rely on representations by Lifeline beneficiaries regarding their residential status and larger eligibility to participate in the program. If Lifeline providers cannot rely on these representations then it is meaningless to obtain them. 47 C.F.R. §§ 54.409-10. It is also bad policy to hold carriers strictly liable for misrepresentations by program beneficiaries. Such a practice would create a situation where carriers must essentially underwrite all Lifeline funding, which discourages carriers from participating in the program and extending Lifeline benefits to needy individuals. Seeking funding recovery from Lifeline providers in all instances, even though they are not the party responsible for the rule violation, would further exacerbate fraud and abuse within the program by signaling to wrong-doers that the consequences for misrepresentations regarding program eligibility will extend only to the carrier.

The same dilemma is what prompted the Commission to change its practice with the E-rate program. Previously, in situations where the Commission identified a violation of an E-rate rule the Commission sought recovery of program funding from the E-rate service provider in every circumstance – even when the provider was not responsible for the violation. *See Federal-*

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nothing in the existing federal rules prohibits wireless carriers from offering Lifeline plans that provide nationwide calling with no separate “toll” charges. Management Trust Appeal at 26.

<sup>4</sup> See Letter from Mitchell F. Brecher, Counsel for TracFone Wireless, to Marlene H. Dortch, FCC, and FCC Wireline Competition Bureau – Telecommunications Access Policy Division, WC Docket No. 03-109 (July 17, 2009).

*State Joint Board on Universal Service*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, ¶ 10 (2004). In its E-rate reconsideration order the Commission specifically held that the party responsible for the rule violation, whether the provider or the program beneficiary, must repay the USF. *Id.* ¶ 15. The Commission changed course because:

[I]n many situations the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are now convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.

*Id.* ¶ 12. The Commission expressed concern that if “beneficiaries [did] not directly bear the consequence of any failure to comply with [FCC] rules,” such a lack of accountability would encourage fraud and abuse by program beneficiaries. *Id.* ¶ 13.<sup>5</sup> The same is true for the Lifeline program. If carriers cannot rely on representations made by program beneficiaries and instead must underwrite Lifeline distributions in all circumstances, then there is no incentive for beneficiaries to comply with program rules. Accordingly, if the Commission determines, contrary to the Management Trust Appeal, that otherwise qualified tribal residents should be denied Lifeline benefits because they do not have a unique mailing address, then the Commission should instruct USAC not to seek recovery of Lifeline distributions from the Lifeline provider.

## **II. Eligible Lifeline Beneficiaries On Tribal Lands May Legitimately Have An Off-Reservation Post Office Box Or Other Billing Address.**

In a related audit finding, USAC and its auditors suggest that Alltel improperly extended tribal land Lifeline discounts to eligible beneficiaries with a billing address located off of a

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<sup>5</sup> In April of last year Verizon also sought clarification from the Bureau that the same rule requiring USAC to seek universal service funding recovery from the party responsible for the violation applies to the Rural Healthcare program. *See Request for Review by Verizon of Decision of Universal Service Administrator*, WC Docket No. 02-60; CC Docket No. 96-45 (April 10, 2009). Verizon’s request remains pending.

reservation. Management Trust Appeal at 3. Again, many residences on tribal lands simply do not have a billing address and merely use Post Office or common mailing addresses.

Management Trust Appeal at Exhibit 5. It may, therefore, be perfectly reasonable to expect that an eligible Lifeline beneficiary who does in fact live on a reservation may sometimes make arrangements to receive Lifeline bills at an address not located on a reservation, such as a nearby Post Office box. Given the reality of these situations, Alltel relied on Lifeline beneficiary representations that the customer met the Lifeline qualifications and thus does in fact reside on the reservation. Management Trust Appeal at 22. This was a reasonable practice under the circumstances, and, as discussed above, to the extent a Lifeline beneficiary may misrepresent the individual's program eligibility, USAC should not seek funding recovery from the Lifeline provider.

### **III. Lifeline Providers Cannot Be Expected To Collaborate With Each Other And Decide Who Should Serve Particular Program Beneficiaries.**

USAC and its auditors identified some Alltel wireless Lifeline customers that apparently also received a wireline Lifeline discount from an incumbent LEC. Management Trust Appeal at 24. In response, USAC suggested that it would contact the carriers and "ask the companies to work together to determine which company should properly claim the Lifeline subscribers identified by the auditors as receiving Lifeline support from both companies." Management Trust Appeal at Exhibit 4. Verizon Wireless can confirm that USAC indeed did contact Verizon and requested that Verizon collaborate with the incumbent LECs in these areas to determine which carrier should "claim" the Lifeline beneficiaries.

Verizon appreciates that USAC often has a difficult task in ensuring program compliance in the absence of clear rules. But, as Verizon explained in its response to USAC,<sup>6</sup> this process of carrier collaboration to “divide up” Lifeline customers is not a workable solution. A Lifeline provider has no way of knowing if a beneficiary is inappropriately receiving subsidized service from another provider. More important, Lifeline providers cannot be expected to exchange customer information and make a judgment as to which provider should extend Lifeline benefits to an eligible program participant. Such collaboration by providers that compete directly with each other in a particular market raises many concerns, including but not limited to potential antitrust problems and potential tension with the customer proprietary network information requirements in the Act and the Commission’s rules. 47 U.S.C. § 222(c). Moreover, choosing a provider is solely the right and responsibility of the Lifeline beneficiary. And there is nothing in the Commission’s Lifeline rules, the Act, or otherwise to suggest that it is appropriate for Lifeline providers to collaborate with each other and determine who should serve particular program beneficiaries.

As discussed above, a better solution in instances where a program beneficiary is inappropriately receiving subsidized Lifeline service from more than one provider would be for USAC to determine if there was a violation of program rules and, if appropriate, to seek recovery of funding from the party responsible for the violation.

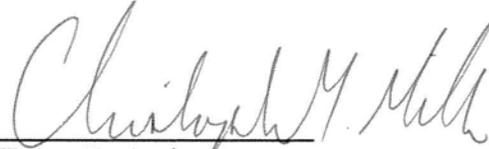
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<sup>6</sup> See Letter from Tamara Preiss, Verizon Wireless, to Pamela Gallant, USAC, at Attachment A (Sept. 2, 2009).

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For these reasons, the Commission should grant the Management Trust's appeal.

Respectfully submitted,



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January 29, 2010

# **ATTACHMENT A**



September 2, 2009

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**VIA FACSIMILE AND MAIL**

Ms. Pamela Gallant  
Director, Low Income Program  
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2000 L Street, N.W., Suite 200  
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**Re: Results of 2008 Low Income Audit of Alltel Wireless – Finding # 4  
(ND & SD SAC Nos. 389001, 399001, 399002, 44903)**

Dear Ms. Gallant:

Thank you for your letter of August 6, 2009, concerning the above matter. As you know, Alltel Communications, LLC, and each of its subsidiaries (collectively Alltel) were acquired by Cellco Partnership dba Verizon Wireless in January 2009. As a condition of approval for this transaction, Verizon Wireless was required to divest the markets served by Alltel in North Dakota and South Dakota. Pending divestiture, these markets are held in trust and subject to the supervision of an approved management trustee. This response is provided on behalf of Verizon Wireless as the owner of Alltel. The Trustee may also respond separately to your requests.

Alltel requested, and was granted, a short extension beyond the August 21, 2009 response date originally identified in USAC's letter of August 6. By mutual agreement, the response date was extended until September 2, 2009.

As set forth in the August 6 letter, USAC has requested that Golden West Telecommunications, Vivian Telephone Company, North Dakota Telephone Company and Turtle Mountain Communications, as incumbent ETCs, and Alltel, as a competitive ETC, collaborate for purposes of "allocating" certain subscribers identified as "duplicate Lifeline subscribers" and, further, that the carriers advise USAC whether they are willing to work together to "determine which company legitimately can claim support for serving each of the ... duplicate Lifeline subscribers." While Alltel desires to fully cooperate with USAC in confirming the continued eligibility of the low-income subscribers identified during the North Dakota and South Dakota audits, the proposed procedures outlined by USAC present a number of troubling legal and practical concerns. Alltel reserves the right to address the audit findings through the appropriate appeals procedures; in the meantime, however, we have the following concerns:

First, Alltel is concerned that the names and addresses of its Lifeline subscribers may have been disclosed to the incumbent ETCs by way of USAC's August 6 letter or otherwise, and we expect that the incumbents share our concerns. The disclosure of the Company's proprietary business information in this manner would violate the expectation and assurance of

Pamela Gallant  
September 2, 2009  
Page 2

confidentiality Alltel received when providing such information to the Internal Audit Division of USAC.

Second, Alltel is troubled by USAC's suggestion that the incumbent ETCs and Alltel collaborate in any way to "allocate" Lifeline subscribers. As direct competitors in the telecommunications market, discussions among the incumbent ETCs and Alltel as to which carrier should continue as a particular subscriber's Lifeline provider could raise potential issues under antitrust and/or consumer protection laws. In addition, the exchange of information and data necessary to discuss any such "allocation" would also likely raise concerns regarding the improper disclosure of customer proprietary network information (CPNI).

Third, Alltel does not agree with the suggestions of Turtle Mountain Communications (letter of August 17, 2009) or Golden West Telecommunications Cooperative, Inc. and Vivian Telephone Company (letter of August 19, 2009) that USAC should determine which carrier should receive Lifeline support based on the customer's earliest subscription date. Indeed, the more recent selection of a Lifeline provider may be more probative of the customer's intent.

Alltel remains committed to providing its full cooperation and will continue to do so within the bounds of what it understands is required under the FCC's rules and federal law. Given the concerns outlined above, we respectfully suggest that USAC convene a meeting among the parties and USAC to discuss how to proceed.

Very truly yours,



Tamara L. Preiss

cc: Perry Oster – Turtle Mountain Communications  
Denny Law – Vivian Telephone Company  
Shawna Senger – North Dakota Telephone Company  
Denny Law – Golden West Telecommunications