

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**REQUEST FOR REVIEW BY T-MOBILE USA, INC.  
OF THE DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR**

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## SUMMARY

Pursuant to Sections 54.719(c), 54.721 and 54.722 of the Commission's rules, T-Mobile USA, Inc. ("T-Mobile") requests that the Commission reverse the audit findings of the Universal Service Administrative Company ("USAC") regarding T-Mobile's compliance with the Commission's temporary universal service Lifeline Program ("Katrina Program") rules and rescind USAC's demand that T-Mobile reimburse USAC for certain Lifeline funds. Specifically, USAC alleges that T-Mobile: (1) failed to produce adequate documentation demonstrating the eligibility of its Katrina Program customers, and (2) provided services to ineligible customers with "business-like" names, and seeks to reclaim Lifeline support that T-Mobile received for providing services to those customers.

Hurricane Katrina caused tremendous damage and upended the lives of millions of people along the Gulf Coast of the United States, many of whom were displaced and cut off from their families, homes, and jobs. T-Mobile, in the midst of restoring and maintaining its own network and sales distribution points, went to great lengths to assist victims of the hurricane and provided free wireless services and handsets under the Katrina Program. T-Mobile's participation under the Katrina Program was tremendously successful and was largely attributable to its significant and effective outreach efforts performed under extremely compressed time schedules in a chaotic environment.

Two years after the conclusion of the Katrina Program, USAC commenced an audit of T-Mobile's compliance with program rules and regulations. Contrary to the auditors' conclusions, T-Mobile materially complied with the requirements of the Katrina Program by implementing a reasonable process for establishing customers' eligibility. The absence or purported inadequacy of certain documents requested by USAC during the audit process does not demonstrate that T-

Mobile erred or otherwise improperly granted Lifeline assistance to ineligible Katrina victims. Specifically, T-Mobile's inability to provide certain customer certifications is not evidence that T-Mobile failed to collect them prior to supplying Katrina service packages to its subscribers. Further, carriers participating in the Katrina Program were never required to retain victims' FEMA documentation or other corroborating documentation and thus had no notice of such requirements. Nonetheless, T-Mobile went further than required and used its best efforts to retain copies of any supporting documentation that its customers provided. In addition, even if T-Mobile's list of Katrina Program subscribers contains a de minimis number of "business-like names," that does not establish a material violation by the company.

The auditors' erroneous conclusions provide no basis for USAC to issue findings against, or to demand the reimbursement of Lifeline support from, T-Mobile. Accordingly, the Commission should reverse the auditors' findings and rescind USAC's demand that T-Mobile repay certain Lifeline funds associated with the Katrina Program.

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**I. STATEMENT OF INTEREST AND ISSUES.**

Pursuant to Sections 54.719(c), 54.721 and 54.722 of the Commission’s rules,<sup>1</sup> T-Mobile USA, Inc. (“T-Mobile”) seeks Commission review of the letter from Pamela Gallant, Director, Low Income Program, Universal Service Administrative Company (“USAC”), dated December 17, 2009, to T-Mobile (“USAC Letter”) and its accompanying USAC final audit report (“Audit Report”).<sup>2</sup> T-Mobile requests that the Commission reverse the USAC Letter and Audit Report and rescind USAC’s demand that T-Mobile reimburse USAC for certain Lifeline funds.<sup>3</sup>

Within three weeks of its designation as an eligible telecommunications carrier (“ETC”) under the Commission’s temporary universal service Lifeline Program to aid victims of Hurricane Katrina (the “Katrina Program”), T-Mobile began delivering free mobile service

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<sup>1</sup> 47 C.F.R. §§ 54.719(c), 54.721 and 54.722.

<sup>2</sup> See Letter from Pamela Gallant, Director, Low Income Program, Universal Service Administrative Company, to Jennifer L. Kostyu, counsel to T-Mobile (Dec. 17, 2009) (the “USAC Letter”), attached hereto as Exhibit A; Independent Auditor’s Report on T-Mobile USA’s Compliance with the Hurricane Katrina Order (USAC Audit No. LI2008LR004) (Aug. 26, 2009) (“Audit Report”), attached to the USAC Letter.

<sup>3</sup> Because the USAC Letter is directed at T-Mobile, T-Mobile’s interest in this matter is clear.

packages in the Gulf Coast area. Within six months, T-Mobile had provided these packages to more than 51,600 Katrina victims. Years after the conclusion of the program, however, USAC has concluded wrongly that T-Mobile did not comply with Commission rules and policies governing the Katrina Program and, therefore, the victims served by T-Mobile must have been ineligible for support. Based on these erroneous conclusions, USAC now demands that T-Mobile repay a portion of the monies it received under the Katrina Program.

As discussed below, T-Mobile urges the Commission to reverse USAC's findings that: (1) T-Mobile's alleged failure to produce adequate documentation demonstrating the eligibility of its Katrina Program customers, and (2) its alleged provision of services to ineligible customers with "business-like" names, is cause to reclaim Lifeline support from T-Mobile. Because T-Mobile complied materially and in good faith with Katrina Program requirements, and because there is no evidence that any of the customers for whom T-Mobile sought support were ineligible, the Commission should cancel USAC's demand that T-Mobile reimburse USAC for certain Lifeline funds received pursuant to the Katrina Program.

## **II. STATEMENT OF FACTS.**

On August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States and caused tremendous damage in Alabama, Louisiana and Mississippi. Hurricane Katrina upended the lives of millions of people, many of whom were displaced and cut off from their families, homes and jobs. Victims lost their communications services and were unable to contact loved ones or find new living arrangements or employment. The recent earthquake in Haiti serves as a stark reminder of the staggering devastation that natural disasters such as Hurricane Katrina can cause, as well as the need for swift action to assist helpless victims.

In the wake of Hurricane Katrina, the Commission took immediate and admirable steps to assist hurricane victims by targeting universal service Lifeline support for reconstruction and

rebuilding efforts, including the creation of the Katrina Program, a special, temporary program pursuant to which eligible consumers could acquire free wireless services and handsets (“Katrina service packages”) from designated ETCs.<sup>4</sup> The Commission required that each Katrina service package be of at least \$130 value. The Katrina Program extended from November 2005 to June 1, 2006.

To be eligible to receive free wireless services under the Katrina Program, a consumer had to meet certain Commission-mandated requirements. First, the consumer must have been a resident of a county or parish in Alabama, Louisiana or Mississippi that had been designated by the Federal Emergency Management Agency (“FEMA”) as eligible for individual housing assistance and have no obligation to repay any FEMA cash grant for housing.<sup>5</sup> Second, the consumer had to be the head of his or her household at the time of the hurricane.<sup>6</sup> Third, a consumer could receive only one Katrina service package from any wireless carrier participating in the Katrina Program.<sup>7</sup> Fourth, the consumer had to provide a letter or other documentation from FEMA showing that he or she had been approved for disaster housing assistance.<sup>8</sup>

T-Mobile applied for and was granted temporary status as an ETC to provide wireless services to qualifying consumers under the Katrina Program.<sup>9</sup> T-Mobile offered a variety of

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<sup>4</sup> See *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 16883 (2005) (the “*Katrina Order*”).

<sup>5</sup> See *id.* at 16891, 16895.

<sup>6</sup> See *id.* at 16895.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.* at 16892.

<sup>9</sup> See FCC Public Notice, Wireline Competition Bureau Announces the Designation of a Temporary Eligible Telecommunications Carrier for the Purpose of Providing the Hurricane Katrina Lifeline Assistance, 20 FCC Rcd 18983 (2005) (announcing T-Mobile’s designation as an ETC under the Katrina Lifeline Program).

prepaid and post-paid Katrina service packages that included airtime or airtime plus a handset (if the subscriber did not already have a handset), each valued at a minimum of \$130. To ensure that only eligible consumers, as defined in the *Katrina Order*, received Katrina service packages from T-Mobile, the company required that a consumer: (1) provide a copy of a letter from FEMA demonstrating eligibility for disaster housing assistance or other evidence that he or she had no obligation to repay any FEMA housing grant; (2) provide a valid photo identification; and (3) execute a self-certification attesting under penalty of perjury that he or she qualified for the Katrina Program.

T-Mobile went to great lengths to restore and maintain its network in the affected region. T-Mobile's extraordinary efforts included keeping its stores open in the wake of the disaster so that consumers could continue to be served. T-Mobile's participation in the Katrina Program was a tremendous success, as measured by its provision within a six-month period of wireless services at no charge to more than 51,600 Katrina victims who were struggling to recover from the hurricane. In fact, in the first three months of the program, T-Mobile provided wireless services at no charge to more than 25,000 hurricane victims. Although the program originally was slated to expire on March 1, 2006, T-Mobile realized that the success of the Commission's and the wireless industry's efforts to assist those affected by the hurricane would not be fully realized unless all qualified individuals had an opportunity to participate in the Katrina Program. Accordingly, T-Mobile petitioned the Commission to extend the Katrina Program by another three months, which the Commission granted.<sup>10</sup>

T-Mobile's successful implementation of the Katrina Lifeline Program was largely attributable to its significant and effective outreach efforts performed under extremely

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<sup>10</sup> See *Federal-State Joint Board on Universal Service*, 21 FCC Rcd 2803 (2006).

compressed time schedules in a hostile environment – the region devastated by Hurricane Katrina. T-Mobile used a variety of general media outlets, such as broadcast television and radio stations and newspapers, to advertise its Katrina service packages. For example, full page ads were run in local newspapers, and public service announcements were broadcast in the Gulf Coast region. Similarly, T-Mobile worked with local television news stations to promote the Katrina Program. T-Mobile also notified and provided a description of its Katrina service packages to the Alabama, Louisiana, Mississippi and Texas public service commissions. T-Mobile posted information regarding its offerings on its website, in retail stores, and widely distributed fliers within affected regions. In addition, T-Mobile implemented a comprehensive local campaign that focused on the retail stores in the Gulf Coast region and coordinated with FEMA officials to promote the program. T-Mobile outreach teams visited temporary housing sites for displaced hurricane victims (*e.g.*, the Carnival Cruise Line ship and temporary trailer parks) and other locations within affected communities, routinely setting up information tables and going door-to-door to distribute materials regarding the program.

T-Mobile had less than three weeks to create the internal processes – for engaging in this massive outreach effort, for offering the handsets and services, and for establishing consumer eligibility – before commencing wireless services under the Katrina Program. The processes for establishing and recording consumer eligibility were especially challenging to implement on this emergency basis because the requirements of the *Katrina Order* differed dramatically from T-Mobile’s usual procedures for signing and serving customers. In fact, the requirements adopted in the *Katrina Order* were unique in the history of the Commission, reflecting the unprecedented emergency that Hurricane Katrina posed. T-Mobile’s employees and representatives, many of whom were hurricane victims themselves, in good faith worked with urgency, commitment and

under devastating conditions to ensure that victims in the affected communities were able to communicate with their families, friends and emergency responders.

The *Katrina Order* directed “ETCs receiving this temporary support to maintain all necessary documentation to verify that the support was used for the intended purpose of assisting victims of Hurricane Katrina.”<sup>11</sup> Neither the *Katrina Order* nor USAC explained or defined “all necessary documentation.” Regardless, amid the chaos following the hurricane, T-Mobile implemented a reasonable process for establishing victims’ eligibility and collecting and retaining related documents. T-Mobile provided its sales representatives in the field with a checklist, developed in a matter of days, to help ensure that they collected the relevant documents and self-certifications from each eligible victim. Although it was unclear from the *Katrina Order* what types of documentation should be retained, out of an abundance of caution, T-Mobile directed its sales representatives to retain, when possible, photocopies of each eligible victim’s FEMA documentation and photo identification with the certifications (collectively, the “customer records”).

T-Mobile created ad hoc procedures for receiving and processing the Katrina customer records. T-Mobile’s billing system for prepaid services records only a customer’s name, telephone number and system-created billing account number. Accordingly, after entering the names and numbers of the Katrina subscribers into T-Mobile’s billing system, the sales representatives sent the Katrina customer records to a third-party vendor. The vendor then logged additional information about the Katrina subscribers, including their addresses and FEMA numbers, into its proprietary database and maintained copies of the customer records. The vendor processed about half (approximately 26,600) of T-Mobile’s Katrina Program

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<sup>11</sup> *Katrina Order*, 20 FCC Rcd at 16895.

customer records. The customer records processed by the vendor, including customer certifications, are available electronically in PDF format and in hard copy. During the Katrina Program, however, T-Mobile discovered certain challenges in carrying out the emergency procedures it had established to process the Katrina customer records. Accordingly, the remaining approximately 25,000 customer records were not sent to the vendor and were retained only in paper form by the retail stores, often in devastated areas, that provided Katrina service packages. Those paper customer records subsequently were moved to multiple storage facilities located throughout the United States, and remain only in paper format. The paper records can be accessed only by manually locating: (1) the store in which an eligible victim obtained services, (2) the storage facilities where the store's paper records were directed, (3) the individual box in which the victim's records were placed, and (4) the relevant records themselves.

T-Mobile in good faith participated in the Katrina Program with the understanding that it would be reimbursed for the Katrina service packages it distributed to eligible Hurricane Katrina victims. Even so, at the conclusion of the Katrina Program, T-Mobile took a very conservative approach to determining the number of subscribers for which it could seek Lifeline support from USAC. For example, although T-Mobile distributed both pre-paid and post-paid Katrina service packages, it ultimately did not seek Lifeline support for its post-paid Katrina subscribers because T-Mobile did not believe it could reasonably confirm their compliance with Katrina Program eligibility requirements. Similarly, T-Mobile did not seek Lifeline support for more than 7,500 pre-paid transactions for which it could not reasonably confirm prior to submitting its Lifeline support claim form to USAC.

Two years after the Katrina Program ended, USAC commenced an audit of T-Mobile's compliance with the Commission's rules and regulations. Ultimately, the auditors requested that T-Mobile provide the self-certifications and supporting documents for 240 Katrina Program

subscribers. T-Mobile determined that approximately 80 of the 240 customer records requested by USAC were in field storage and accessible only in paper format. T-Mobile undertook a comprehensive search for the relevant documents. The significant size and scope of the search, however, required examination of record boxes containing thousands of paper pages stored throughout the United States and some records could not be located in the time requested by the auditors. T-Mobile ultimately was able to provide the USAC auditors with copies of the requested records for 210 of the 240 customers.

The auditors first concluded that T-Mobile did not provide adequate documentation by which it could verify that its Katrina Program customers were eligible for services under the program.<sup>12</sup> The auditors' conclusions can be categorized as follows: (1) missing Katrina customer certifications (30 customer records out of 240 sampled); (2) no supporting FEMA documentation (eight customer records of 240 sampled); and (3) "non-eligible" supporting FEMA documentation (33 customer records of 240 sampled).<sup>13</sup> The 30 customer records identified by USAC as missing customer certifications are those among the paper documents in field storage that could not be located. The auditors applied the error rates from the sample of 240 subscriber records to the more than 51,600 total T-Mobile Katrina Program subscribers.<sup>14</sup> USAC then demanded that T-Mobile reimburse Lifeline funds it received according to the percentage of customer records that USAC found to be inadequate, totaling \$1,969,705, or

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<sup>12</sup> See Audit Report at 6-8.

<sup>13</sup> The "non-eligible" or "ineligible FEMA documentation" category includes 31 cases in which the customer allegedly did not provide the correct documents that demonstrated that he or she qualified for FEMA housing support, one case in which the FEMA documentation provided by the customer had no name on it, and one case in which the customer's documentation identified an ineligible FEMA county or parish. See *id.* at 7.

<sup>14</sup> See *id.* at 8.

almost 30 percent of the Lifeline monies T-Mobile received for helping hurricane victims under the Katrina Program.<sup>15</sup>

Second, the auditors found that T-Mobile's list of more than 51,600 Katrina Program subscribers included 11 "business-like" names.<sup>16</sup> Because only individuals, not businesses, were eligible under the Katrina Program, the auditors concluded that they could not verify that Lifeline support for these 11 customers was used for its intended purpose.<sup>17</sup> Accordingly, USAC concluded that T-Mobile must reimburse the Lifeline funds it received for providing service to these specific customers, totaling \$1,430.<sup>18</sup>

### **III. THE ABSENCE OR ALLEGED INADEQUACY OF CERTAIN SUBSCRIBER DOCUMENTS DOES NOT JUSTIFY USAC'S DEMAND FOR REIMBURSEMENT.**

T-Mobile materially complied with the requirements of the Katrina Program by implementing a reasonable process for establishing customers' eligibility. As explained below, the absence or purported inadequacy of certain documents requested by USAC during the audit process does not demonstrate that T-Mobile erred or otherwise improperly granted Lifeline assistance to ineligible Katrina victims. The auditors' erroneous conclusions provide no basis for USAC to issue findings against, or to demand the reimbursement of Lifeline support from, T-Mobile.

In addition, it is T-Mobile's understanding that other wireless carriers that participated in the Katrina Program are facing similar repayment demands from USAC based upon the alleged

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<sup>15</sup> See *id.* at 3; see also USAC Letter at 1.

<sup>16</sup> See Audit Report at 17.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*; see also USAC Letter at 1.

inability to produce certain supporting documentation.<sup>19</sup> These endemic issues demonstrate that any alleged violations claimed by USAC's auditors stem from the Commission's and carriers' rapid implementation of an emergency assistance program during chaotic circumstances, as well as the auditors' draconian and narrow interpretation of Katrina Program requirements. Upholding the auditors' flawed findings and conclusions will discourage future carrier participation in similar emergency response programs, to the detriment of those most in need.

**A. The Absence of Certain Customer Records Does Not Demonstrate that Ineligible Hurricane Victims Received Service.**

T-Mobile does not dispute that it did not produce 30 customer records out of the 240 requested by the auditors. T-Mobile's inability to provide these records, however, is not evidence that T-Mobile failed to collect them prior to supplying Katrina service packages to its subscribers.<sup>20</sup>

As noted above, T-Mobile's participation in the Katrina Program required emergency development and implementation of new internal procedures for collecting and processing customer certifications. Under these extreme circumstances, T-Mobile employed a reasonable process for collecting and storing its Katrina subscriber records. T-Mobile, which had not been designated as an ETC prior to the Katrina Program, had to create these processes in mere weeks without any prior experience or preparation. In addition to this time pressure, T-Mobile implemented these processes in the Gulf region, where T-Mobile's local stores and employees themselves were subject to the damage and disruption caused by Hurricane Katrina. Maintaining comprehensive customer records during this time was extremely challenging for the T-Mobile

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<sup>19</sup> See, e.g., Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109 (Feb. 1, 2010) ("*AT&T Katrina Audit Appeal*").

<sup>20</sup> See Audit Report at 8, 14-15.

representatives on the front lines as well as for those who had to administer the processes for which the *Katrina Order* gave very general guidance. Despite their own repair efforts, T-Mobile and its representatives still made every effort to help hurricane victims through the Katrina Program. Given that there is no evidence that the customers served by T-Mobile were ineligible for lifeline assistance, much less any evidence of double-dipping or even erroneous requests for support, T-Mobile should not be penalized for its inability to provide some customer records.<sup>21</sup>

**B. USAC's Conclusions Regarding FEMA Documentation Retention Are Erroneous and Do Not Support Reimbursement.**

The Audit Report incorrectly concluded that: (1) certain customer records contain no supporting FEMA documentation; (2) the lack of supporting FEMA documentation is evidence that those customers were not qualified for Katrina Program support; and (3) accordingly, USAC must recover the Lifeline support that T-Mobile received for providing Katrina service packages to those customers.<sup>22</sup> The auditors' conclusions are based on attempts to impose retroactively standards on a carrier's participation in the Katrina Program that did not exist in the *Katrina Order* and should be summarily rejected. As discussed below, the *Katrina Order* never required carriers to retain victims' FEMA documentation or other corroborating documentation, thus carriers were not on notice of such a requirement. Rather, the only reasonable reading of the *Katrina Order* is that carriers must retain copies only of each customer's self-certification that he or she qualified for the program, which is similar to the procedures used in the standard universal

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<sup>21</sup> T-Mobile's customer records are not the only means by which USAC's auditors can verify a customer's eligibility under the Katrina Program. The Commission and the auditors could cross-reference carriers' customer records with FEMA's database of individuals who received housing assistance after Hurricane Katrina. *See AT&T Katrina Audit Appeal* at 11-12.

<sup>22</sup> *See id.*

service Lifeline Program. Nonetheless, T-Mobile went further than required and used its best efforts to retain copies of any supporting documentation that its customers provided.

When the Commission created the Katrina Program, it simply noted that consumers must self-certify that they satisfy the eligibility criteria for the program and “provide documentary evidence to the ETC serving them to demonstrate that FEMA determined they were eligible for individual disaster housing assistance.”<sup>23</sup> The *Katrina Order* does *not* require ETCs to retain copies of any documentation provided by their Katrina Program customers. Rather, the *Katrina Order* states that ETCs should merely retain “any other forms or documentation already required to participate in the low-income program.”<sup>24</sup> But no FEMA forms or documentation were already required to participate in the low-income program. Other than the FCC Form 497, by which ETCs would seek reimbursement under the Katrina Program, the *Katrina Order* mentions no other forms or documentation that must be retained in order to participate in the Katrina Program (or the standard Lifeline Program, for that matter).<sup>25</sup>

Under the Commission’s rules, customers who qualify for standard Lifeline support because they participate in a need-based assistance program (*e.g.*, Medicaid, Food Stamps, etc.) need only self-certify to their eligibility under penalty of perjury.<sup>26</sup> Customers who qualify for standard Lifeline support based upon their income level, in addition to a self-certification, also

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<sup>23</sup> See *Katrina Order*, 20 FCC Rcd at 16892-93, 16895.

<sup>24</sup> *Id.* at 16891 n.35.

<sup>25</sup> The FCC Form 497 (for the standard Lifeline Program or as revised for the temporary Katrina Lifeline Program) does not require submission of any supporting documentation received from Lifeline customers.

<sup>26</sup> See 47 C.F.R. § 54.409(d); see also *Lifeline and Link-Up*, 19 FCC Rcd 8302, 8319 (2004) (“*Lifeline Order*”).

must provide the ETC with documentation of their income at the time of enrollment.<sup>27</sup> The Commission, however, does “not require ETCs to retain the consumer’s corroborating documentation. ETCs need only retain records of [the ETCs’] self-certifications and those made by the [customers].”<sup>28</sup> The *Katrina Order* did not adopt more stringent documentation requirements than the standard Lifeline Program. The only reasonable reading of the *Katrina Order* is that it requires ETCs only to retain the customer self-certifications. Ironically, USAC Management in its response in the Audit Report appears to agree, acknowledging that “[t]he *Katrina Order* states explicitly that the *same ‘information collection efforts, document retention, and certification requirements’* in effect for non-Katrina Lifeline also apply to recipients of Katrina Lifeline support.”<sup>29</sup>

USAC’s Internal Audit Division erroneously assumes in its response in the Audit Report that because T-Mobile, out of an abundance of caution, attempted to retain supporting FEMA documentation from its customers, it must have known that a requirement existed to collect and retain such documentation:

The Katrina Order clearly required consumers to **provide** documentary evidence to the ETC serving them to demonstrate that FEMA determined that they were eligible for individual housing disaster assistance (emphasis added). We believe [T-Mobile] understood the requirement, necessity and importance of maintaining such documentation by its retaining of and ability to provide FEMA documentation for 202 out of the 240 items requested.<sup>30</sup>

The Audit Report, however, does not and cannot cite any authority in the *Katrina Order* itself for the adoption of such a requirement. Simply because T-Mobile went beyond existing

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<sup>27</sup> See 47 C.F.R. § 54.410(a).

<sup>28</sup> *Lifeline Order*, 19 FCC Rcd at 8321.

<sup>29</sup> Audit Report at 14-15, citing *Katrina Order*, 20 FCC Rcd at 16914 (emphasis added).

<sup>30</sup> *Id.* at 14.

requirements to retain copies of customers' supporting documentation does not automatically impart some specialized knowledge on T-Mobile's part. Such a leap subjects T-Mobile to a higher document retention standard than required by the Commission. Moreover, USAC's interpretation would effectively mean that any company or person who aspires to do more than the bare minimum in complying with a given law or regulation somehow establishes a new, self-imposed higher legal standard. This result is illogical and counter to the regulatory process that requires notice and comment before new rules and regulations can be imposed on carriers.

In addition, USAC attempts to draw a distinction between the requirement that customers "provide" proof of FEMA eligibility under the Katrina Program and the requirement that customers "present" documentation of household income under the standard Lifeline program as legal support for USAC's assertion that T-Mobile was required to *retain* all FEMA documentation.<sup>31</sup> This is a distinction without a difference with respect to document retention. Each of the verbs "provide" and "present" is commonly and interchangeably used in the English language to refer to a person's act of giving, supplying, or showing something to another.<sup>32</sup> In fact, Commission precedent uses these terms interchangeably in the context of the standard Lifeline program.<sup>33</sup> Neither verb implies that the entity receiving the "presented" or "provided"

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<sup>31</sup> *See id.* at 15.

<sup>32</sup> *See* Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/present> and <http://www.merriam-webster.com/dictionary/provide> (visited Feb. 4, 2010) (defining "present" in relevant part as "to make a gift to," "to give," and "to offer to view" or "show;" and defining "provide" in relevant part as "to supply or make available").

<sup>33</sup> *See Lifeline Order*, 19 FCC Rcd at 8320 ("For federal default states, we adopt rules reflecting the Joint Board's recommendation that consumers must *provide* documentation of income eligibility at enrollment" for the Lifeline program.) (emphasis added); *id.* at 8321 ("We conclude that if a consumer chooses to *proffer* any document other than a previous year's tribal, federal, or state income tax return as evidence of income, such as current pay stubs, the consumer must *present* three consecutive months worth of the same type of statements within that calendar year.") (emphasis added); *see also Federal-State Joint Board on Universal Service*,

item must *retain* that item. As discussed above, the Commission’s standard Lifeline rules make clear that customers are not required to leave behind with an ETC the documentation showing that they meet the program’s income eligibility requirements. And, as discussed above, the contextual references in the *Katrina Order* refer to the standard Lifeline rules and requirements.

Moreover, in light of the special circumstances triggered by Hurricane Katrina, T-Mobile exceeded the requirements of the *Katrina Order* by employing an extensive and reasonable process for collecting and retaining supporting FEMA documents from its Katrina Program subscribers. T-Mobile’s successful provision of wireless service to hurricane victims under the Katrina Program is largely attributable to its significant and effective outreach efforts, which are described above. Although T-Mobile used its best efforts to make copies of customers’ supporting FEMA documentation, in some cases it may have been difficult to do so because many of the off-site locations did not have readily available copying equipment.

Accordingly, it is irrelevant that some of the customer records that T-Mobile produced during the audit did not include supporting FEMA documentation. T-Mobile was not required by the Commission’s rules to retain that documentation, and the lack of such documentation is not a valid basis for reclaiming Lifeline support. Furthermore, at the very least, it is clear that significant ambiguities exist regarding whether Katrina Program rules required retention of customers’ FEMA documentation. It is well settled that where regulations are unclear and a party’s interpretation of those regulations is reasonable, the party does not have “notice” of the Commission’s ultimate interpretation of those regulations and cannot be penalized for any

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Recommended Decision, 18 FCC Rcd 6589, 6607 (2003) (“States could access the documentation via an online database, if available in that state, or could require consumers to *provide* one or more forms of documentation from the following list.”) (emphasis added); *id.* (“We recommend that the federal default criteria require consumers to *provide* one or more forms of documentation from the list above.”) (emphasis added).

alleged non-compliance.<sup>34</sup> As discussed above, in light of the circumstances surrounding the Katrina Program T-Mobile's belief that program rules do not require retention of customers' FEMA documentation is undeniably reasonable. Thus, it should not be penalized for its inability to produce the FEMA documentation during the audit.

**C. USAC's Conclusions Regarding "Non-eligible" Supporting FEMA Documentation Are Erroneous and Do Not Support Reimbursement.**

T-Mobile disputes the relevance of, and opposes, USAC's conclusions that: (1) certain customer records contain non-eligible supporting FEMA documentation; (2) the non-eligible supporting documentation is evidence that those customers were not qualified for Katrina Program support; and (3) USAC should recover the Lifeline support that T-Mobile received for providing Katrina service packages to those customers.<sup>35</sup> As further discussed below, neither the Commission nor USAC provided any direction regarding what FEMA documentation demonstrated whether a customer was eligible for Lifeline support under the Katrina Program.<sup>36</sup> Nonetheless, T-Mobile used its best efforts in good faith to verify its customers' eligibility based on the FEMA documents provided by the customers.

The sole formal guidance available to T-Mobile as it was serving victims during the Katrina Program regarding the appropriate documentation came from the *Katrina Order*, which states only that "proof of FEMA's determination of eligibility for individual housing disaster

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<sup>34</sup> See, e.g., *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618, 632 (D.C. Cir. 2000) (concluding that in the absence of notice of the Commission's minority preference rules, which were not sufficiently clear to warn an applicant about what is required under those rules, the Commission should not have denied a renewal application for a commercial television broadcast license).

<sup>35</sup> See Audit Report at 8, 14.

<sup>36</sup> Moreover, as discussed above, the *Katrina Order* did not even require that T-Mobile retain any supporting FEMA documentation that its Katrina Lifeline customers provided.

assistance without repayment obligations is sufficient.”<sup>37</sup> USAC’s Internal Audit Division argued in the Audit Report that “[t]he *Katrina Order* does not recognize any other qualifying criteria such as personal grants, FEMA assistance applications, or information letters regarding disaster assistance programs.”<sup>38</sup> The Audit Report, however, does not cite to any specific guidance presented by the *Katrina Order* or the Commission, because none exists. In fact, despite repeated inquiries to Commission staff, neither the Commission nor USAC provided further information about how individual housing disaster assistance might differ from other forms of FEMA assistance, what kind of documents would demonstrate adequately the lack of a repayment obligation, or even what the relevant documentation might look like. Specifically, while the Katrina Program was in operation, Jennifer Kostyu, one of T-Mobile’s undersigned counsel, spoke multiple times to one of the Commission’s designated contact persons for the Katrina Program regarding the kinds of FEMA documentation that would be sufficient to support a customer’s claim of eligibility. The staff informally suggested that a bank statement, deposit slip, or other indication that FEMA had deposited a cash grant in the customer’s bank account may be sufficient proof that the customer was approved for FEMA disaster housing assistance, but otherwise could provide no other direction.

Other carriers also struggled with identifying acceptable FEMA documentation under the Katrina Program. For example, TracFone Wireless, Inc. (“TracFone”) at one point noted its difficulty in verifying customers’ eligibility based upon the *Katrina Order* and asked that the

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<sup>37</sup> See *Katrina Order*, 20 FCC Rcd at 16892.

<sup>38</sup> Audit Report at 14.

Commission clarify or modify the customer certification process.<sup>39</sup> Similarly, representatives from CTIA – The Wireless Association (“CTIA”) attempted to obtain additional information about qualifying FEMA documentation from the Commission staff without success. In fact, CTIA and T-Mobile representatives asked for, but did not receive, exemplars of the FEMA letters and other documents that would be acceptable under the Katrina Program.

Even in a non-emergency context, the Commission previously recognized that creating and implementing procedures to review customer eligibility for Lifeline support is neither straightforward nor easy. When the Commission modified the standard Lifeline program to allow end users to qualify for support based upon their income level, ETCs were given *a full year* to implement internal procedures for reviewing (but not retaining) the eligibility documentation provided by customers.<sup>40</sup> In contrast, T-Mobile had mere weeks to implement the Katrina Program, which marked its first time serving as an ETC.

Although the Audit Report – apparently as a matter of first impression – includes a list of “eligible” and “ineligible” FEMA documentation,<sup>41</sup> that list was first provided to T-Mobile during the audit process, almost three years after the conclusion of the Katrina Program. No legal or policy rationale can support USAC’s demand for reimbursement based on an *ex post facto* list of “acceptable” documentation that the Commission failed to make available to ETCs while the Katrina Program was in operation.<sup>42</sup>

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<sup>39</sup> See Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-109 (filed Jan. 5, 2006). The Commission did not act on TracFone’s request.

<sup>40</sup> See 47 C.F.R. § 54.410(a)(2).

<sup>41</sup> See Audit Report at Exhibit A.

<sup>42</sup> T-Mobile also questions further whether such a list created by USAC staff, rather than the Commission by rule, could be a basis for a reimbursement order. See 47 C.F.R. § 54.702(c)

In light of the necessarily rapid implementation of the Katrina Program and the overall lack of guidance regarding FEMA documentation, T-Mobile reasonably and understandably relied on victims' self-certifications as to their eligibility and was presented with a variety of FEMA documents as evidence of eligibility. For example, some victims provided a letter from FEMA stating that they were eligible for a "personal property" grant. Similarly, some victims provided other FEMA letters providing information about disaster recovery programs, FEMA requests for additional information, or parts of customers' FEMA assistance applications, any of which might reasonably be interpreted as documentation demonstrating that the customer received FEMA assistance.

Consistent with Commission rules for the standard Lifeline Program and the *Katrina Order*, as well as the emergency conditions posed by the Katrina disaster, T-Mobile used its best efforts to verify victims' eligibility for services under the Katrina Program. T-Mobile's representatives necessarily had to rely on their good faith judgment with regard to the validity of supporting FEMA documentation, particularly when T-Mobile was provided no specific direction about the appearance and contents of that documentation. Accordingly, T-Mobile should not be faulted or otherwise required to repay any Lifeline support it received for accepting supporting FEMA documentation from its customers that the USAC auditors consider, years after the fact, to be "ineligible" or "inadequate" under some arbitrary standard. Moreover, T-Mobile should not be penalized for accepting what appeared to be valid FEMA documentation from potentially ineligible individuals who may have been attempting to unlawfully obtain free wireless services.

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("[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.").

#### **IV. THE DE MINIMIS NUMBER OF “BUSINESS-LIKE NAMES” ON T-MOBILE’S SUBSCRIBER LIST DOES NOT JUSTIFY RECOVERY OF LIFELINE SUPPORT.**

USAC also examined T-Mobile’s list of more than 51,600 subscribers associated with the Katrina Program and found that 11 of these subscribers had “business-like names,” and therefore did not fulfill the requirement that subscribers be individual consumers. Although T-Mobile acknowledges that its subscriber list includes 11 entries with so-called “business-like names,” this does not support a reimbursement requirement.<sup>43</sup>

All but one of the customer records associated with the business-like names are in paper format, and the supporting documentation is stored in one or more remote facilities. To check each of these paper records further would be prohibitively costly. However, there is a significant likelihood that the customers in question actually were eligible for the Katrina Program. T-Mobile discovered through the audit process that the data entry of Katrina Program sales records resulted in a number of typographical errors in, or omitted information from, T-Mobile’s billing system. T-Mobile cannot verify at this time whether the 11 entries with business-like names are due to a data entry error, an error at the point of sale, or in the information provided by the Katrina victim.<sup>44</sup> For example, it is possible that a hurricane victim mistakenly provided his or her business name on the certification even though he or she was otherwise fully qualified under the Katrina Program.

In any event, the identification of only 11 customers with so-called “business-like names” out of the more than 51,600 customers that T-Mobile in good faith served under the Katrina Program is immaterial to T-Mobile’s overall compliance with the requirements of the program.

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<sup>43</sup> See Audit Report at 18.

<sup>44</sup> The actual customer records associated with these names were not available when the audit was conducted and are not readily available now.

In light of T-Mobile's necessarily rapid implementation of the program, T-Mobile employed a reasonable process for verifying customer eligibility and maintaining its records. The fact that T-Mobile implemented this process shortly after Hurricane Katrina devastated the Gulf region further mitigates any finding that T-Mobile did not materially comply with program requirements by allegedly providing assistance to 11 business customers. Accordingly, T-Mobile should not be required to reimburse USAC for the support provided to these customers.

## V. CONCLUSION.

For the reasons stated above, T-Mobile requests that the Commission reject USAC's erroneous conclusions that: (1) T-Mobile's alleged failure to produce adequate documentation demonstrating the eligibility of its Katrina Program customers, and (2) its alleged provision of services to ineligible customers with "business-like" names, are cause for findings against, and reclamation of Lifeline support from, T-Mobile. T-Mobile requests that the Commission reverse the USAC Letter and Audit Report and rescind USAC's demand that T-Mobile reimburse USAC for certain Lifeline funds associated with the Katrina Program.

Respectfully submitted,

William F. Maher, Jr.  
Jennifer L. Kostyu  
MORRISON & FOERSTER, LLP  
2000 Pennsylvania Avenue, N.W.  
Suite 6000  
Washington, D.C. 20006  
Voice: (202) 887-1500  
Fax: (202) 887-0763

/s/ Kathleen O'Brien Ham

Kathleen O'Brien Ham  
Sara F. Leibman

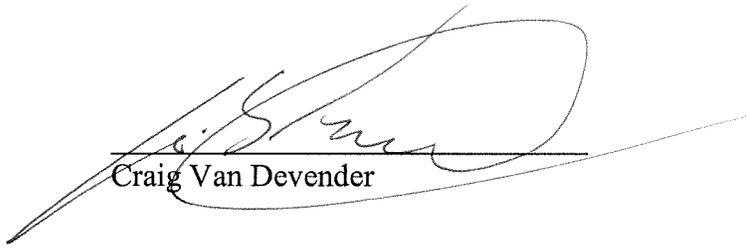
T-MOBILE USA, INC.  
401 Ninth Street, N.W.  
Suite 550  
Washington, D.C. 20004  
(202) 654-5900

February 16, 2010

**DECLARATION**

I, Craig Van Devender, declare and state under penalty of perjury that:

1. I am currently Finance Manager, Sales Analytics for T-Mobile USA, Inc. In that capacity, I have responsibility for providing financial insight and guidance to the company's sales management team. During T-Mobile's participation in the temporary universal service Lifeline Program established by the Federal Communications Commission ("Commission") to aid victims of Hurricane Katrina ("Katrina Program"), I was Finance Manager, Rebates for T-Mobile. In that capacity, I oversaw and helped administer T-Mobile's rebate programs as well as the company's participation in the Katrina Program.
2. In accordance with Section 54.721(b)(2) of the Commission's rules, 47 C.F.R. § 54.721(b)(2), I have reviewed the factual statements set forth in the Request for Review and certify that they are true and correct to the best of my personal knowledge, information and belief.

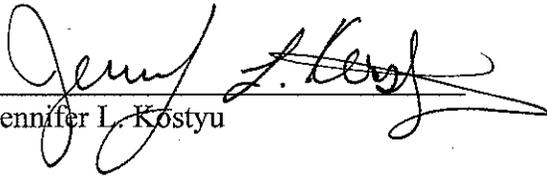
  
\_\_\_\_\_  
Craig Van Devender

Date: February 16, 2010 

**DECLARATION**

I, Jennifer L. Kostyu, declare and state under penalty of perjury that:

1. I am an associate with the law firm Morrison & Foerster LLP. In that capacity, I assisted T-Mobile USA, Inc. with its implementation the temporary universal service Lifeline Program established by the Federal Communications Commission (“Commission”) to aid victims of Hurricane Katrina (“Katrina Program”).
2. In accordance with Section 54.721(b)(2) of the Commission’s rules, 47 C.F.R. § 54.721(b)(2), I have reviewed the factual statements set forth in the Request for Review regarding efforts to obtain additional information from Commission staff regarding the kinds of documentation that would be sufficient to support a customer’s claim of eligibility under the Katrina Program. I certify that those factual statements are true and correct to the best of my personal knowledge, information and belief.

  
Jennifer L. Kostyu

Date: February 16, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on February 16, 2010, a copy of the foregoing REQUEST FOR REVIEW was served by U.S. Mail, postage prepaid, upon the following:

Universal Service Administrative Company  
Attention: David Capozzi, Acting General Counsel  
2000 L Street N.W.  
Suite 200  
Washington, DC 20036



Theresa Rollins  
Theresa Rollins

**EXHIBIT A**



Pamela Gallant  
Director, Low Income Program

High Cost and Low Income Division

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*Via Certified Mail*

December 17, 2009

Jennifer L. Kostyu  
T-Mobile USA  
Morrison & Foerster LLP  
1290 Avenue of the Americas  
New York, NY 10104

RE: Results of 2008 Hurricane Katrina Lifeline Audit of T-Mobile USA (T-Mobile)

Dear Ms. Kostyu:

As you know, the Internal Audit Division of the Universal Service Administrative Company (USAC) conducted an audit of Hurricane Katrina Lifeline support received between November 2005 and June 2006. The final report from that review was sent to the company and an additional copy is attached for your reference. The auditors found that T-Mobile was not compliant with the rules.

Subscriber Listing and Proof of Eligibility. The auditors reviewed T-Mobile's subscriber list and found that of the 52,156 records, 25,215 had blank address fields and an additional 187 had invalid data. The auditors tested 120 subscribers from this population of 25,402 and noted that T-Mobile could not produce certifications or adequate FEMA documentation for 39%. Additionally, the auditors tested 120 of the remaining subscribers and found that T-Mobile could not produce adequate FEMA documentation for 20% of the sample.

The auditors have reasonable cause to believe that the conditions identified in the samples exist in each population. As a result, the auditors calculated, and Management concurs, that the overpayment for this finding equals the error rate identified in each sample times the respective populations. Therefore, the monetary effect of this finding is \$1,969,705.

Subscriber Listing. The auditors found that T-Mobile's subscriber list contained business-like names, resulting in a \$1,430 overpayment of support. T-Mobile does not dispute the accuracy of the finding.

Consistent with the auditors' overall recommendation, USAC will issue an invoice to T-Mobile in the amount of \$1,971,135. If the company fails to pay the invoice

within 30 days, T-Mobile will be placed on the Red Light list, which will result in suspension of all disbursements from USAC.

If you wish to appeal this decision to the FCC, the appeal must be filed within 60 days of the date of this letter. Additional information about the appeals process may be found on USAC's web site at [www.universalservice.org/li/about/filing-appeals](http://www.universalservice.org/li/about/filing-appeals).

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Gallant', written over a faint circular stamp.

Pamela Gallant

Director, Low Income Program

Enclosures



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**To:** Ms. Karen Majcher, Vice President, High Cost and Low Income Division

**From:** Mr. Wayne Scott, Vice President of Internal Audit

**Date:** August 26, 2009

**Re:** **Independent Auditor's Report on T-Mobile USA's Compliance with the Hurricane Katrina Order (USAC Audit No. LI2008LR004)**

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### **Introduction**

The Universal Service Administrative Company (USAC) Internal Audit Division (IAD) audited T-Mobile USA (Beneficiary) for compliance with the Federal Communications Commission's Hurricane Katrina Order<sup>1</sup> (the Rules). Compliance with the Rules is the responsibility of the Beneficiary's management. USAC IAD's responsibility is to express an opinion on the Beneficiary's compliance with the Rules based on our audit.

### **Purpose and Scope**

The *Katrina Order* required all entities receiving \$1 million or more of support to undergo an audit or other investigatory review to verify the accuracy of all data submitted and that the support was used for intended purposes and to validate that the eligible telecommunications carrier has not obtained double-recovery from a single household.<sup>2</sup>

IAD conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2007 Revision, as amended).<sup>3</sup> Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included examining, on a test basis, evidence supporting the data used to calculate support, as well as performing such other procedures, as we considered necessary to form an opinion. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We obtained and examined the Beneficiary's documentation to support the amounts reported on its submittal that is the equivalent to the FCC Form 497 (Form 497) for the period December 2005 through May 2006. The following chart summarizes the support the Beneficiary received during the audit period.

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 20 FCC Red 16883, FCC 05-178 (2005) (*Katrina Order*).

<sup>2</sup> *Katrina Order* at ¶ 23.

<sup>3</sup> See *Government Accountability Office, Government Auditing Standards: July 2007 Revision*, GAO-07-731G, (July 2007) (*GAGAS*).

	Number of Subscribers	Amount of Support
Lifeline	51,626	\$6,711,380
Link Up	0	\$0
Total		\$6,711,380

We performed procedures to determine whether the Beneficiary complied with the Rules. For the purposes of this report, a finding is a condition that shows evidence of noncompliance with the Rules.

### Conclusion

USAC IAD concludes that the Beneficiary was not compliant with the Rules for the period reviewed. Our examination disclosed two findings, and based on these results, IAD recommends that support paid to the Beneficiary in the amount of \$1,971,135 be recovered.

IAD is required to conduct its audits in accordance with GAGAS,<sup>4</sup> which requires that an auditor must obtain sufficient, appropriate evidence to substantiate audit findings and recommendations.<sup>5</sup> The *Katrina Order* states that beneficiaries must make available any documentation and records necessary to verify compliance with the rules (e.g., substantiate that the beneficiary used the funds to provide support to eligible subscribers).<sup>6</sup> As described in detail in Audit Finding #1 below, during the course of this audit, the Beneficiary was unable to provide adequate documentation to support the number of subscribers it claimed for support. The documentation provided by the Beneficiary contained incomplete information as it included blank or invalid data. Despite these discrepancies, IAD continued test work by selecting two samples for testing (i.e., one sample from the complete population, one sample from the incomplete population). There was a 39% error rate for the testing performed on the incomplete sample and a 20% error rate for the testing performed on the complete sample.

Considering the impact on the samples, IAD has reasonable confidence that the finding that exists with both samples, also exists for their respective populations. As such, for Audit Finding #1, we noted a monetary effect of a \$1,969,705 overpayment of support that is consistent with the error rates noted during testing. Audit Finding #2 resulted in a \$1,430 overpayment of support. IAD provided the Beneficiary with an opportunity to undertake its own audit to demonstrate its exact error rate within its entire population. However, the Beneficiary decided that it would not conduct its own audit. Therefore, USAC IAD recommends that USAC management recover \$1,971,135 of Katrina Lifeline support.

<sup>4</sup>Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 18 FCC Rcd 19911, FCC 03-232 (2003) (*USAC GovGAAP Order*).

<sup>5</sup> See GAGAS, § 7.55 (July 2007).

<sup>6</sup> *Katrina Order* at ¶ 23.

## Findings

- Eligibility and Certification – Inadequate Documentation.
- Subscriber Listing – Business-like Names.

## Exceptions Taken and Recovery Action

Finding	Monetary Effect of Finding	USAC Management Recovery Action
#1 - Eligibility and Certification – Inadequate Documentation	\$1,969,705	\$1,969,705
#2 - Subscriber Listing – Business-like Names	\$1,430	\$1,430
<b>Total Net Effect</b>	<b>\$1,971,135</b>	<b>\$1,971,135</b>

## Audit Procedures Overview

### A. General Procedures

We obtained and reviewed the Beneficiary's Eligible Telecommunications Carrier (ETC) designation order to ensure the Beneficiary was designated prior to receiving support.

### B. Application Process

We obtained an understanding of the Beneficiary's application process relating to the *Katrina Order* and the Low Income Support Mechanism. Prior to receiving Lifeline support, the Beneficiary's customers were required to provide a copy of a letter from the Federal Emergency Management Agency (FEMA) demonstrating eligibility for disaster housing assistance or other proof that the customer has received monies from FEMA that need not be repaid. The customers also had to provide valid photo identification and execute a self-certification attesting under penalty of perjury that the applicant qualifies for Katrina Lifeline Program and that the applicant had not previously received support from T-Mobile or another wireless carrier.

### C. Advertising

We obtained and examined the Beneficiary's evidence of advertising to ensure it publicized the availability of Lifeline and Link Up service in a manner reasonably designed to reach those likely to qualify for the service.

### D. Form 497

We obtained and examined the Beneficiary's Form 497s for accuracy by comparing the amounts reported against the Beneficiary's data files.

### E. Subscriber Listing

We obtained and examined the Beneficiary's subscriber listing and used computer assisted auditing techniques to analyze the data files and perform the following procedures:

- Compared the total number of subscribers to what was reported on the Form 497s.
- Verified whether the data file contains any duplicate subscriber names, telephone numbers, or addresses.
- Verified whether the data file contains blank telephone numbers/addresses or business names/addresses.
- Verified whether subscriber lines were connected prior to October 14, 2005 or subsequent to June 1, 2006.
- Verified whether the impacted address is in the counties or parishes designated by FEMA for individual disaster relief.

#### **F. Subscriber Discounts**

We obtained and examined 240 handset invoices to ensure that the Hurricane Katrina temporary Low Income support received by the Beneficiary was passed on to the subscriber.

#### **G. Subscriber Eligibility**

We requested 240 certification forms. The Beneficiary could not provide 30 certification forms. As such, we obtained and examined 210 certification forms to verify the following:

- The name and address on the eligibility certification matched the subscriber listing and the handset invoice.
- The Beneficiary required applicants to certify that they were residents of counties designated by FEMA as eligible for individual assistance, that they were head of their household, and that they are receiving only one Lifeline support per household.

We also requested 240 FEMA eligibility letters. The Beneficiary could not provide 38 FEMA eligibility letters<sup>7</sup>. As such, we obtained and examined 202 FEMA eligibility letters to verify the following:

- The name and address on the FEMA documentation matched the subscriber listing and subscriber handset invoice.
- The Beneficiary obtained appropriate documentation from the subscriber that confirmed that FEMA determined the subscriber was eligible for individual disaster housing assistance and that the subscriber did not have any obligations under FEMA rules to repay the support received.

Our audit findings as well as responses to the findings are included below. We have evaluated the validity of the carrier's responses to each of our findings. Although the

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<sup>7</sup> Of the 38 FEMA eligibility letters that were not provided, 30 pertain to the same subscribers for which the carrier could not provide their certification form. In order to avoid double counting, we noted the 30 exceptions as "missing certification" while the remaining eight were noted as "no FEMA documentation" in Audit Finding #1.

Beneficiary disagreed with portions of the Eligibility and Certification – Inadequate Documentation finding, our position on this matter remains unchanged.

**Audit Finding #1**  
**Eligibility and Certification – Inadequate Documentation**

**Criteria**

Any person approved for FEMA disaster assistance determined by FEMA to be eligible for individual assistance relating to the hurricane will be eligible for temporary federal Lifeline and Link-Up support, on a per household basis.<sup>8</sup>

[W]e require consumers qualifying for this support to provide documentary evidence to the ETC serving them to demonstrate that FEMA determined that they were eligible for disaster housing assistance. Proof of FEMA's determination of eligibility for individual housing disaster assistance without repayment obligations is sufficient.<sup>9</sup>

[W]e require applicants for the temporary Lifeline support pursuant to this Order to certify that they were residents of counties that are designated by FEMA as eligible for individual assistance, that they are head of their household, and that they are that they are receiving one Lifeline support package. Applicants seeking Link-Up support must certify that they were residents of counties that are designated by FEMA as eligible for individual assistance. We require ETC's receiving this temporary support to maintain all necessary documentation to verify that the support was used for the intended purposes of assisting victims of Hurricane Katrina.<sup>10</sup>

All eligible telecommunications carriers, service providers, or beneficiaries requesting support under these temporary rules shall be subject to audit or investigation by the Commission's Office of Inspector General ("OIG"), or other authorized federal or state governmental agency and, upon request, must make available any documentation and records necessary to verify compliance with these rules.<sup>11</sup>

**Condition**

We obtained and examined the Beneficiary's subscriber listing to verify that the subscribers met the eligibility requirements to receive temporary federal Lifeline and Link-Up support. We examined 52,156 records within the subscriber listing and noted that it contained 25,402 incomplete and/or invalid records as indicated below:

- 25,215 records with blank addresses.
- 186 records with invalid names.
- 1 record with an invalid telephone number.

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<sup>8</sup> *Katrina Order* at ¶ 17.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at ¶ 23.

<sup>11</sup> *Id.* at ¶ 5.

Because the subscriber listing contained 25,215 blank address records, we are unable to determine whether the subscribers resided in the counties or parishes designated by FEMA. Because the subscriber listing contained 186 invalid names and one invalid telephone number, we are unable to determine the validity of these subscribers. Despite these discrepancies, we continued with testing by selecting a sample of this population and requesting documentation to determine if the Beneficiary was able to provide adequate documentation to resolve some, if any, of the discrepancies.

We selected 120 samples from the 25,402 incomplete and/or invalid records for testing. (The sample consisted of 83 subscribers from the 25,215 blank address records and 37 subscribers from the 187 invalid records). We requested the eligibility determination letters to ensure that the subscribers met the eligibility requirements to receive temporary federal Lifeline and Link Up support. We also requested certifications for the same 120 subscribers to verify they were residents of counties that are designated by FEMA as eligible for individual assistance; that they are head of their household; and that they received only one Lifeline support package.

We noted 47 exceptions (39% error rate):

- (a) Missing certifications 30.
- (b) Ineligible FEMA documentation 12.
- (c) No FEMA documentation 4.
- (d) No name on the FEMA letter 1.

In addition to the above sample, we randomly selected 120 samples from the 26,224 valid records<sup>12</sup> for testing. We requested the eligibility determination letters to ensure that the subscribers met the eligibility requirements to receive temporary federal Lifeline and Link Up support. We also requested certifications for these same 120 subscribers to verify they were residents of counties that are designated by FEMA as eligible for individual assistance; that they are head of their household; and that they received only one Lifeline support package.

We noted 24 exceptions (20% error rate):

- (a) Ineligible FEMA documentation 19.
- (b) No FEMA documentation 4.
- (c) Ineligible FEMA county\parish 1.

The Beneficiary could not provide adequate documentation to verify the eligibility of its subscribers. As a result, the Beneficiary did not fulfill its obligation to retain and make available eligibility documentation necessary to verify compliance with the *Katrina Order*.<sup>13</sup>

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<sup>12</sup> 52,156 records within the subscriber listing - 25,402 inadequate records (25,215 blank addresses + 186 invalid names + 1 invalid phone number) - 530 duplicate records = 26224.

<sup>13</sup> *Katrina Order* at ¶ 23.

**Cause**

According to the Beneficiary, the data entry undertaken by the third party vendor and the local sales representatives resulted in a significant amount of typographical information and omitted information from the Beneficiary's billing system, which resulted in incomplete and invalid records. In addition, the Beneficiary believes that some records are stored in paper format in various storage facilities located throughout the United States. The 30 certifications that were missing are among the paper documents in a storage facility that could not be located.

**Effect**

There is a 39% error rate for the testing performed on the "blank address and invalid" sample. There is a 20% error rate for the testing performed on the "valid" sample. Considering the impact on our samples, we have reasonable confidence that the condition that exists with both samples, also exists for their respective populations. As such, the monetary effect of this finding is a \$1,969,705 overpayment of Katrina Lifeline support consistent with the error rates noted during testing ( $39\% * (25,402 * \$130) + 20\% * (26,224 * \$130)$ ).

**Recommendation**

We recommend that USAC management recover \$1,969,705 of Katrina Lifeline support. However, if the Beneficiary would like to undertake its own audit to demonstrate its exact error rate within its entire population of 51,626 subscribers claimed for reimbursement, it will be given the opportunity. If this option is taken, the following must occur:

- Acknowledge that its audit will be conducted in accordance with the *Katrina Order* and Low Income Support rules. (See Exhibit A for guidelines.)
- Provide the results of the audit within 60 days of receiving the final audit report.
- Acknowledge that USAC IAD will conduct a review of the Beneficiary's audit results and will make its audit documentation available for inspection.

Based on the results of the Beneficiary's audit, USAC IAD may amend its recommendation to USAC management.

**Beneficiary Response**

T-Mobile materially complied with the requirements of the Katrina Lifeline Program by implementing a reasonable process for establishing customers' eligibility. As explained below, the absence of certain documents requested by USAC during the audit process does not demonstrate that T-Mobile acted fraudulently, erred, or otherwise improperly granted Lifeline assistance to ineligible customers. Upon receipt of the auditors' revised audit findings, T-Mobile was provided with the opportunity to undertake its own audit of its Katrina Lifeline records. T-Mobile has decided that it will not conduct its own audit.

The auditors' conclusions regarding T-Mobile's alleged failure to provide adequate documentation regarding the eligibility of its Katrina Lifeline customers can be categorized as follows: (1) missing Katrina customer certifications; (2) no supporting FEMA documentation; or (3) "ineligible" supporting FEMA documentation. None of these conclusions, however, is cause to issue an adverse finding against, or to demand the reclamation of Katrina Lifeline support from, T-Mobile.

#### **A. Missing Customer Certifications**

T-Mobile does not dispute that it did not produce 30 customer certifications out of the records the auditors requested for 240 subscribers. T-Mobile's inability to provide these certifications, however, is not evidence that T-Mobile failed to collect them prior to supplying Katrina Lifeline services to its subscribers.

T-Mobile's participation in the Katrina Lifeline Program required rapid development and implementation of new internal procedures for collecting and processing customer certifications. In fact, it had only two to three weeks to create the processes – for offering the Katrina Lifeline handsets and services, for community outreach, and for establishing consumer eligibility – before the program commenced. T-Mobile provided its sales representatives in the field with a checklist to help ensure that they collected the relevant certifications from each customer. The sales representatives then sent the customer records to a third-party vendor that helped T-Mobile manually enter the sales information for its Katrina Lifeline Program into T-Mobile's billing system and to store the customer records.

The third-party vendor input about half (approximately 26,600) of T-Mobile's Katrina customer records into T-Mobile's billing database. The records processed by the third party vendor, including customer certifications, are available electronically in PDF format. The remaining approximate 25,000 customer records were retained by the retail stores that provided Lifeline packages and the customer's basic information (name and telephone number) were entered by the local sales representatives into T-Mobile's billing database. Those records subsequently were moved by T-Mobile to various storage facilities located throughout the United States, and are stored only in paper format. The paper records can be accessed only by manually locating: (1) the store in which a Katrina customer obtained services, (2) then the storage facilities where the store's records were directed, (3) the individual box in which the customer's records were placed, and (4) then the relevant documentation.

Through the audit process, T-Mobile discovered that the data entry undertaken by the third-party vendor and the local sales representatives

resulted in a significant number of typographical errors in or omitted information from T-Mobile's billing system. For example, names were sometimes misspelled, abbreviated or left blank. Similarly, the local sales representatives often did not insert the customers' addresses into T-Mobile's billing system.

T-Mobile determined that approximately 80 of the 240 customer records requested by USAC during the audit were in field storage and accessible only in paper format. Therefore, T-Mobile undertook a comprehensive search for the relevant documents. However, some records could not be located given the significant size and scope of the search, which included tens of thousands of records. T-Mobile ultimately was able to provide USAC with copies of the requested records for 210 of the 240 customers. The 30 customer records identified by USAC as missing customer certifications are those among the paper documents in field storage that could not be located.

In light of the necessary rapid implementation of the Katrina Lifeline Program, T-Mobile employed a reasonable process for collecting and storing its records relating to its Katrina subscribers. T-Mobile, which had not been designated as an Eligible Telecommunications Carrier ("ETC") prior to the Katrina Lifeline Program, had to create these processes without any prior experience or preparation in mere weeks. Further, it cannot be disregarded that these processes were implemented shortly after Hurricane Katrina devastated the Gulf region, the effects of which were also felt by T-Mobile's local stores and employees. Maintaining comprehensive customer records during this time was extremely challenging. Despite having to deal with their own repair efforts, however, T-Mobile and its representatives still took every effort to help hurricane survivors through the Katrina Lifeline Program. T-Mobile should therefore not be penalized for its inability to provide copies of a relatively small fraction of customer certifications.

## **B. No Supporting FEMA Documentation**

T-Mobile disputes the relevance of, and opposes, the conclusions that: (1) certain customer records contain no supporting FEMA documentation, (2) the lack of supporting FEMA documentation is evidence that those customers were not qualified for Katrina Lifeline support, and (3) USAC should recover the Lifeline support that T-Mobile received for providing Katrina Lifeline services to those customers. As discussed below, the FCC's order establishing the Katrina Lifeline Program (the "*Katrina Order*") never required carriers to retain its customers' FEMA documentation or other corroborating documentation.<sup>14</sup> Rather, the only reasonable reading of the *Katrina Order* is that carriers must retain copies only of each customer's self-certification that he or she qualified for the

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<sup>14</sup> See *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 16883 (2005) ("*Katrina Order*").

program, which is similar to the procedures used in the standard universal service Lifeline Program. Nonetheless, T-Mobile went further than required and used its best efforts to retain copies of any supporting documentation that its customers provided.

When the FCC created the Katrina Lifeline Program, it simply noted that consumers must self-certify that they satisfy the eligibility criteria for the program and “provide documentary evidence to the ETC serving them to demonstrate that FEMA determined they were eligible for individual disaster housing assistance.”<sup>15</sup> The *Katrina Order* does not specifically require ETCs to retain copies of any documentation provided by their Katrina Lifeline customers. Rather, the *Katrina Order* states that ETCs should merely retain “any other forms or documentation already required to participate in the low-income program.”<sup>16</sup> Other than the FCC Form 497, by which ETCs would seek reimbursement under the Katrina Lifeline Program, the *Katrina Order* mentions no other forms or documentation that must be retained in order to participate in the Katrina Lifeline Program (or the standard Lifeline Program, for that matter).<sup>17</sup>

Under the FCC’s rules, customers who qualify for standard Lifeline support because they participate in a need-based assistance program (e.g., Medicaid, Food Stamps, etc.) need only self-certify to their eligibility under penalty of perjury.<sup>18</sup> Customers who qualify for standard Lifeline support based upon their income level, in addition to a self-certification, also must provide the ETC with documentation of their income at the time of enrollment.<sup>19</sup> The FCC, however, does “not require ETCs to retain the consumer’s corroborating documentation. ETCs need only retain records of [the ETCs’] self-certifications and those made by the [customers].”<sup>20</sup> The *Katrina Order* did not adopt more stringent documentation requirements than the standard Lifeline Program. Therefore, the only reasonable reading of the *Katrina Order* is that it requires ETCs only to retain the customer self-certifications.

Moreover, in light of the special circumstances triggered by the hurricane, T-Mobile exceeded the requirements of the *Katrina Order* by employing an extensive and reasonable process for collecting and retaining supporting FEMA documents from its Katrina Lifeline subscribers. T-Mobile’s successful implementation of the Katrina Lifeline Program is largely attributable to its significant and effective outreach efforts. T-

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<sup>15</sup> See *id.* at 16892-93, 16895.

<sup>16</sup> *Id.* at 16891 n.35.

<sup>17</sup> The FCC Form 497 (for the standard Lifeline Program or as revised for the temporary Katrina Lifeline Program) does not require submission of any supporting documentation received from Lifeline customers.

<sup>18</sup> See 47 C.F.R. § 54.409(d); see also *Lifeline and Link-Up*, 19 FCC Rcd 8302, 8319 (2004) (“*Lifeline Order*”).

<sup>19</sup> See 47 C.F.R. § 54.410(a).

<sup>20</sup> *Lifeline Order*, 19 FCC Rcd at 8321.

Mobile implemented a comprehensive local campaign that focused on the retail stores in the Gulf Coast region and coordinated with FEMA officials to promote the program. Outreach teams also visited temporary housing sites for displaced hurricane survivors (e.g., the Carnival Cruise Line ship and temporary trailer parks) and other locations within affected communities, routinely setting up information tables and going door-to-door to distribute materials regarding the program. Although T-Mobile used its best efforts to make copies of customers' supporting FEMA documentation, in some cases it was difficult to do so because many of the off-site locations did not have readily available copying equipment. Accordingly, it is irrelevant that some of the customer records that T-Mobile produced during the audit did not include supporting FEMA documentation, because T-Mobile was not required by the FCC's rules to retain that documentation. The lack of such documentation is not a valid basis for reclaiming Katrina Lifeline support from T-Mobile.

### C. Ineligible Supporting FEMA Documentation

T-Mobile disputes the relevance of, and opposes, the conclusions that: (1) certain customer records contain non-eligible supporting FEMA documentation, (2) the non-eligible supporting documentation is evidence that those customers were not qualified for Katrina Lifeline support, and (3) USAC should recover the Lifeline support that T-Mobile received for providing Katrina packages to those customers. As further discussed below, neither the FCC nor USAC provided adequate direction regarding what FEMA documentation demonstrated whether a customer was eligible for Katrina Lifeline support.<sup>21</sup> Nonetheless, T-Mobile used its good faith and best efforts to verify its customers' eligibility based upon the FEMA documents provided by the customers.

The sole formal guidance available to T-Mobile prior to and during the Katrina Lifeline Program regarding the appropriate documentation came from the *Katrina Order*, which stated only that "proof of FEMA's determination of eligibility for individual housing disaster assistance without repayment obligations is sufficient."<sup>22</sup> Despite repeated inquiries to FCC staff, neither the FCC nor USAC provided further information about how individual housing disaster assistance might differ from other forms of FEMA assistance, what kind of documents would demonstrate adequately the lack of a repayment obligation, or even what the relevant documentation might look like. Specifically, Jennifer L. Kostyu of Morrison & Foerster LLP, counsel to T-Mobile, spoke multiple times to Amy Bender, one of the FCC's designated contact persons for the Katrina Lifeline Program, in December 2005 and January 2006 regarding the

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<sup>21</sup> Moreover, as discussed above, the *Katrina Order* did not even require that T-Mobile retain any supporting FEMA documentation that its Katrina Lifeline customers provided.

<sup>22</sup> See *Katrina Order*, 20 FCC Rcd at 16892.

kinds of FEMA documentation that would be sufficient to support a customer's claim of eligibility. Ms. Bender informally suggested that a bank statement, deposit slip, or other indication that FEMA had deposited a cash grant in the customer's bank account may be sufficient proof that the customer was approved for FEMA disaster housing assistance, but otherwise could provide no other direction.

Other carriers also struggled with determining what types of FEMA documentation were acceptable under the Katrina Lifeline Program. For example, TracFone Wireless, Inc. ("TracFone") at one point noted its difficulty in verifying customers' eligibility based upon the *Katrina Order* and asked that the FCC clarify or modify the customer certification process.<sup>23</sup> Similarly, representatives from CTIA – The Wireless Association ("CTIA") attempted to obtain further information about qualifying FEMA documentation from the FCC staff without success. In fact, CTIA and T-Mobile representatives asked for, but did not receive, exemplars of the FEMA letters and other documents that would be acceptable under the Katrina Lifeline Program.

The FCC previously recognized that creating and implementing procedures to review customer eligibility for Lifeline support is neither straightforward nor easy. When the FCC modified the standard Lifeline program to allow end users to qualify for support based upon their income level, ETCs were given a **full year** to implement internal procedures for reviewing (but not retaining) the eligibility documentation provided by customers.<sup>24</sup> In contrast, T-Mobile had mere weeks to implement the Katrina Lifeline Program, which marked its first time serving as an ETC.

In light of the necessary rapid implementation of the Katrina Lifeline Program and lack of guidance regarding FEMA documentation, T-Mobile reasonably and understandably relied on customers' self-certifications and accepted in good faith a variety of FEMA documents as evidence of eligibility. For example, some T-Mobile customers provided a letter from FEMA stating that the customer was eligible for a "personal property" grant. Similarly, some customers provided other FEMA letters providing information about possible disaster recovery programs, FEMA requests for additional information, or parts of customers' FEMA assistance applications, any of which might reasonably be interpreted as documentation demonstrating that the customer received FEMA assistance.

Consistent with FCC rules for the standard Lifeline Program and the *Katrina Order*, T-Mobile used its best efforts to verify its customers' eligibility for services under the Katrina Lifeline Program. T-Mobile's sales representatives were by no means experts with regard to the validity of

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<sup>23</sup> See Letter from Mitchell F. Brecher, counsel to TracFone Wireless, Inc., to Marlene H. Dortch, FCC, WC Docket No. 03-109 (filed Jan. 5, 2006). The FCC did not act on TracFone's request.

<sup>24</sup> See 47 C.F.R. § 54.410(a)(2).

supporting FEMA documentation and should not be held to such a standard, particularly when the FCC did not provide T-Mobile with any specific direction about the appearance and contents of that documentation. Accordingly, T-Mobile should not be penalized or otherwise required to repay any Lifeline support it received for accepting supporting FEMA documentation from its customers that USAC staff considers, after the fact, to be “inadequate” under some undefined standard.

#### **USAC IAD Response**

The *Katrina Order* requires that all eligible telecommunication carriers receiving over \$1 million will be subject to an audit to ensure that the support is used for intended purposes.<sup>25</sup> The *Katrina Order* also states that the Beneficiary must make available any documentation and records necessary to verify compliance with the rules.<sup>26</sup> As such, the Beneficiary was on notice that it would be required to make available documentation necessary to verify its compliance.

The Beneficiary’s position that “the FCC’s order establishing the Katrina Lifeline Program (the “Katrina Order”) never required carriers to retain its customers’ FEMA documentation or other corroborating documentation” is without merit. The *Katrina Order* clearly required consumers to **provide** documentary evidence to the ETC serving them to demonstrate that FEMA determined that they were eligible for individual housing disaster assistance (emphasis added).<sup>27</sup> We believe the Beneficiary understood the requirement, necessity, and importance of maintaining such documentation by its retaining of and ability to provide FEMA documentation for 202 out of the 240 items requested.

Finally, the *Katrina Order* limited eligibility for temporary support to persons approved for FEMA disaster housing assistance or determined by FEMA to be eligible for housing assistance. The *Katrina Order* does not recognize any other qualifying criteria such as personal grants, FEMA assistance applications, or information letters regarding disaster assistance programs. While we acknowledge the Beneficiary’s expedited efforts to assist Hurricane Katrina victims, it remains the Beneficiary’s responsibility to ensure compliance with the *Katrina Order* and to provide documentation to verify such compliance.

#### **USAC Management Response**

USAC management concurs with the audit finding. The Commission’s *Katrina Order* requires companies to maintain documentation to verify that the support provided assisted eligible consumers.<sup>28</sup> Without the customers’ certifications of eligibility, the auditors cannot ascertain that the Hurricane Katrina support assisted only victims of Hurricane Katrina. The *Katrina Order* states explicitly that the same “information collection efforts, document retention, and certification requirements” in effect for non-

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<sup>25</sup> *Katrina Order* at ¶ 5.

<sup>26</sup> *Id.*

<sup>27</sup> *Katrina Order* at ¶ 17.

<sup>28</sup> *Id.* at ¶ 23.

Katrina Lifeline also apply to recipients of Katrina Lifeline support.<sup>29</sup> Companies receiving non-Katrina low-income support are required to retain customer self-certifications.<sup>30</sup>

Moreover, the Commission limited eligibility for Katrina Lifeline support to persons approved for FEMA disaster housing assistance or determined by FEMA to be eligible for housing assistance relating to the hurricane.<sup>31</sup> The Commission could have expanded the eligibility criteria to include, for example, households that could demonstrate income below a certain level or participation in a specific social service program. In its order, the Commission provided resources for determining FEMA-specific assistance.<sup>32</sup>

Additionally, the *Katrina Order* states explicitly: “[W]e require consumers qualifying for this support to provide documentary evidence to the ETC serving them to demonstrate that FEMA determined they were eligible for individual disaster housing assistance.<sup>33</sup> Without proof of eligibility provided by the Beneficiary, there is no way to validate the customers’ eligibility and, thus, no way to ensure that support was “used for the intended purpose of assisting victims of Hurricane Katrina.”<sup>34</sup> For these reasons, the *Katrina Order* required customers to provide proof of eligibility to companies<sup>35</sup> and required companies to “maintain all necessary documentation to verify that the support was used for the intended purpose of assisting victims of Hurricane Katrina.”<sup>36</sup> Therefore, we agree with the audit finding that without copies of the FEMA letters, subscriber eligibility cannot be verified.

We disagree with the Beneficiary’s contention that it was not required to retain FEMA letters because the Commission’s rules do not require ETCs to retain certain personal information from non-Katrina Lifeline subscribers. In fact, the *Katrina Order* specifically required that customers *provide*<sup>37</sup> proof of FEMA eligibility, which is different from the requirement that customers qualifying for regular Lifeline merely *present* documentation of their household income.<sup>38</sup>

USAC management will seek to recover the amount recommended by the auditors. We note that the *Katrina Order* clearly states that Beneficiaries that receive more than \$1

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<sup>29</sup> “All information collection efforts, document retention, and certification requirements that normally apply to applications for low-income . . . support will continue to apply for these temporary USF support initiatives.”

*Id.* at ¶ 60.

<sup>30</sup> 47 C.F.R. § 54.410(b) (“Eligible telecommunications carriers must retain records of their self-certifications and those made by consumers.”).

<sup>31</sup> *Katrina Order* at ¶ 17.

<sup>32</sup> *Katrina Order* at notes 39 and 40.

<sup>33</sup> *Katrina Order* at ¶ 17.

<sup>34</sup> *Id.* at ¶ 23.

<sup>35</sup> *Id.* at ¶ 17.

<sup>36</sup> *Id.* at ¶ 23.

<sup>37</sup> *Id.* at ¶ 17.

<sup>38</sup> See 47 C.F.R. § 54.416.

million in support will be subject to an audit.<sup>39</sup> Thus, the Beneficiary was on notice that it would be audited and that the auditors would require proof of subscriber eligibility.

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<sup>39</sup> *Katrina Order* at ¶ 23.

**Audit Finding #2**  
**Subscriber Listing - Business-like names**

**Criteria**

For the low-income program, we adopt Lifeline rules to provide households eligible for individual housing assistance under FEMA rules with temporary wireless communication service.<sup>40</sup>

**Condition**

We obtained the Beneficiary's subscriber listing and utilized computer assisted auditing techniques to test for indications of business accounts. We noted 11 records within the subscriber name field with "business-like" names.

Business-like names	11
Support amount	<u>x \$130</u>
<b>Total overpayment</b>	<b><u>\$1,430</u></b>

**Cause**

We are unable to determine the cause of this finding.

**Effect**

The monetary effect of this finding is a \$1,430 overpayment of support.

**Recommendation**

We recommend that USAC management recover \$1,430 of Katrina Lifeline support.

The monetary effect and recommendation of this finding is subject to change if the Beneficiary opts to conduct its own audit in accordance with the recommendation outlined in Audit Finding #1.

**Beneficiary Response**

T-Mobile acknowledges that its subscriber list includes 11 entries with so-called "business-like names," but disputes that such an immaterial finding requires USAC to recover any Katrina Lifeline support.

Through the audit process, T-Mobile discovered that the data entry of Katrina Lifeline sales records resulted in a significant number of typographical errors in, or omitted information from, T-Mobile's billing system. T-Mobile cannot verify at this time whether the 11 entries with business-like names are due to a data entry error, an error at the point of sale, or in the information provided by the customer. For example, it is possible that a residential customer mistakenly provided his or her business name on the certification even though he or she was otherwise fully qualified under the Katrina Lifeline Program.

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<sup>40</sup> *Katrina Order* at ¶ 4.

As explained in response to Finding #1 [DAF Eligibility and Certification – Inadequate Documentation], approximately half of T-Mobile’s Katrina customer records are available only in paper format, including all but one of customer records associated with the business-like names. The paper records can be accessed only by manually locating: (1) the store in which a Katrina customer obtained services, (2) then the storage facilities where the store’s records were directed, (3) the individual box in which the customer’s records were placed, and (4) then the relevant documentation. A comprehensive search of T-Mobile’s storage facilities is not reasonable given the significant size and scope of the search that would be required to locate the records associated with the business-like names.

In any event, the identification of only 11 customers with so-called “business-like names” out of more than 51,600 customers that T-Mobile served under the Katrina Lifeline Program is immaterial to T-Mobile’s overall compliance with the requirements of the program. In light of T-Mobile’s necessarily rapid implementation of the program, T-Mobile employed a reasonable process for verifying customer eligibility and maintaining its records. The fact that T-Mobile implemented this process shortly after Hurricane Katrina devastated the Gulf region further mitigates any finding that T-Mobile did not materially comply with program requirements by allegedly providing Katrina Lifeline assistance to 11 business customers. Accordingly, T-Mobile should not be required to reimburse USAC for the support provided to these 11 customers.

#### **USAC Management Response**

USAC management agrees with the audit finding. T-Mobile does not dispute that it provided Hurricane Katrina support to subscribers with “business-like names” thus substantiating the auditors’ conclusion that Hurricane Katrina support was not used for its “intended purpose”<sup>41</sup> in 11 instances. For the reasons stated in response to the finding “Subscriber Listing – Business-Like Names,” USAC management will recover the support associated with this finding.

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This concludes the results of our audit. Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC and the FCC and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. However, this report is a matter of public record and its distribution is not limited.

cc: Mr. D. Scott Barash, USAC Acting Chief Executive Officer

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<sup>41</sup> *Katrina Order* at ¶ 23.

**Exhibit A**

<b>Eligible FEMA Grants, Programs &amp; Documentation</b>	<b>Ineligible FEMA Grants, Programs &amp; Documentation</b>
Emergency Assistance for Housing or Other Essential Needs	Disaster Unemployment Assistance
Expedited Assistance for Housing or Other Essential Needs	FEMA Application
FEMA Agreement to Rules of Occupancy	FEMA ID Number
FEMA Housing Proof of Residency	FEMA Information Letter
FEMA Housing Residency ID	FEMA Inspection Notice
Grant - Housing Assistance	FEMA Letter of Receipt
Grant - Housing Repair / Home Repair	FEMA National Flood Insurance Program Letter
Grant - Permanent Housing Construction	Grant - Debris Removal
Grant - Readily Fabricated Dwelling	Grant - Dental

Mr. David Capozzi, USAC Acting General Counsel

Grant - Rental Assistance	Grant - Funeral / Burial
Grant - Replacement Housing	Grant - Medical
Grant - Transient Accommodations	Grant - Moving / Storage
Hurricane Rental Assistance Voucher & Agreement	Grant - Other
Temporary Housing Assistance Program	Grant - Personal Property
	Grant - Transportation
	Loan Programs
	Small Business Administration Programs