

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

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

COMMENTS OF GENERAL COMMUNICATION, INC.

INTRODUCTION

GCI Communication, Inc. d/b/a GCI Communication Corp and GCI (“GCI”) Communication Inc. d/b/a GCI Communication Corp. and GCI (“GCI”), by its attorneys, hereby submits these comments in support of Verizon/Alltel Management Trust’s (“Alltel”) appeal requesting a reversal of certain audit conclusions by the Universal Service Administrative Company (“USAC”) and its auditors regarding reimbursement payments made to Alltel under the Lifeline Program.¹ This appeal was publicly noticed for comments.² The FCC should grant Alltel’s appeal. The issues raised by Alltel, in part, implicate the so-called “one per household” limitation, which was recently the subject of public comments in response to a request for clarification by Tracfone Wireless, Inc. (“Tracfone”).³ Both the *Alltel Appeal* and the *Tracfone Clarification Request* demonstrate a lack of clarity in the Lifeline Program on this subject. The present appeal is even more disturbing because it concerns USAC’s attempt to

¹ Request for Review by Verizon/Alltel Management Trust of Decisions of Universal Service Administrator, WC Docket No. 03-109 (Oct. 5, 2009) (“*Alltel Appeal*”).

² *Public Notice*, DA 09-2639 (rel. Dec. 30, 2009).

³ *Public Notice*, DA 09-2257 (rel. Oct. 21, 2009); Letter from Mitchell F. Brecher, Counsel for Tracfone, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-109 (filed July 17, 2009) (“*Tracfone Clarification Request*”).

interpret and expand this un-codified limitation despite the confusion that exists. Such action is beyond USAC's authority.⁴

I. THERE IS NO CLEAR ONE-PER HOUSEHOLD RESTRICTION AND USAC'S ATTEMPT TO ENFORCE ONE IS IMPROPER

In the present case, USAC, in part, apparently refused to allow reimbursement of Lifeline discounts provided by Alltel to eligible residents of Tribal lands in North and South Dakota whose billing addresses were the same as other eligible residents.⁵ Based on Alltel's appeal, it appears that many of the consumers on the Tribal reservations in North and South Dakota lacked an official residential address and, thus, shared a common billing address such as a Post Office box. USAC viewed this as a violation of the "one per household" limitation.

USAC's attempt to enforce this limitation, however, is improper because no such limitation actually exists in the FCC's regulations and the Commission's orders provide little guidance regarding the meaning and scope of the restriction. The confusion about this limitation and whether and how it should apply in the Lifeline Program was recently the subject of public comments in this same docket in response to a request for clarification by Tracfone.⁶ GCI submitted comments in response to the *Tracfone Clarification Request* that, in part, demonstrated that the Commission's regulations and orders do not establish an enforceable rule implementing a "one per household" limitation.⁷ GCI urged the Commission to provide clarification on this subject pointing out that in the absence of clear rules program participants are left to their own interpretations for compliance.⁸

⁴ 47 C.F.R. § 54.702(c).

⁵ Alltel refers to this as "USAC Finding No. 2." *Alltel Appeal* at 6.

⁶ See Note 3 above.

⁷ Comments of General Communication, Inc. filed in the *Matter of Request for Clarification by Tracfone Wireless, Inc.*, WC Docket No. 03-109, dated Nov. 20, 2009 (attached hereto).

⁸ *Id.*

In the present case, despite the absence of clear rules on the subject, USAC apparently is attempting to interpret and even expand the “one per household” restriction to include a prohibition on multiple consumers sharing the same billing address. The “rule,” however, does not even purportedly prohibit eligible consumers from sharing a single billing address; it purportedly prohibits eligible consumers from sharing a single “household,” a term that also has yet to be defined by FCC rule. USAC’s action in this case goes beyond its limited authority to enforce clear Commission rules⁹ and demonstrates, at a minimum, a compelling need for Commission guidance and clarification on the meaning and scope of this alleged restriction. Ideally, the Commission should develop a clear rule in a prospective rulemaking proceeding. In the absence of a clear rule or guidance from the Commission, it is unfair and unreasonable to allow USAC free reign to enforce this vague restriction.

II. USAC’S ATTEMPT TO IMPOSE STRICT LIABILITY ON ALLTEL FOR MISREPRESENTATIONS MADE BY THE CUSTOMER IS IMPROPER

USAC additionally erred in this case by finding that Alltel should not have received Lifeline reimbursement for customers that were receiving Lifeline service from another carrier, even if the customer certified to Alltel that they were not receiving Lifeline service from another carrier.¹⁰ Apparently, USAC seeks to impose strict liability on the provider despite the certification by the customer. Again, however, there is no Commission rule imposing strict liability on the ETC provider for misrepresentations made by the customer. In the absence of such a rule, USAC has no authority to impose strict liability on Alltel.¹¹

Furthermore, it appears that USAC believes that carriers in a market should collaborate to determine whether customers have more than one Lifeline service, and if so, the carriers,

⁹ See Note 4 above. Indeed, when a “rule” is unclear or does not address a particular situation, USAC is required to seek guidance from the Commission.

¹⁰ Alltel refers to this as “Finding No. 4.” *Alltel Appeal* at 7.

¹¹ See Note 4 above.

according to USAC, apparently should agree on which carrier should provide the service. Again, there is no such rule directing carriers to divide up Lifeline customers. Indeed, such coordination and sharing of competitive information by the carriers in a market is unrealistic and raises potential antitrust issues. USAC simply is not permitted to enforce requirements and duties upon ETC carriers that are not clearly set forth in the Commission's rules, nor may it impose new requirements or duties to fill holes in those rules that may exist.¹² There clearly is a need, however, for the FCC to take action and provide swift guidance on these matters.

CONCLUSION

For the foregoing reasons, the Commission should grant Alltel's appeal. Additionally, the Commission should consider undertaking a thorough review of the current rules in the Lifeline Program in a rulemaking proceeding in order to provide clarity for carriers, consumers, and USAC regarding the Program's requirements.

Respectfully submitted,

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¹²

Id.