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By *ECFS*

April 9, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109

Dear Secretary Dortch:

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits this letter pursuant to the Public Notice request for comment issued by the Federal Communications Commission’s (“FCC” or “Commission”) Wireline Competition Bureau (“Bureau”) on March 10, 2010, in the above-captioned proceeding.² The Bureau seeks comment on a letter filed by the Universal Service Administrative Company (“USAC”) requesting guidance on how Line 9 of FCC Form 497 should be used by an eligible telecommunications carrier (“ETC”) requesting reimbursement for participation in the federal low-income Lifeline universal service program.³ USAC asserts that Line 9 requires ETCs to pro-rate Lifeline support,⁴ since “[a] carrier is not entitled to be reimbursed for a full month of

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. MASS. GEN. LAWS ch. 25C, § 1.

² See *Wireline Competition Bureau Seeks Comment on Universal Service Administrative Company Letter Seeking Guidance on FCC Form 497 for Low-Income Universal Service Program*, WC Docket No. 03-139, Public Notice, DA 10-401 (rel. Mar. 10, 2010) (“Public Notice”).

³ Public Notice, at 1; see also Letter from Richard Belden, USAC Chief Operating Officer, to Marlene H. Dortch, FCC Secretary, WC Docket No. 03-109, at 1 (filed Feb. 23, 2010) (“USAC Letter”).

⁴ USAC Letter, at 1-2.

support for a subscriber that began [or ended] Lifeline service mid-month.”⁵ However, through its auditing process, USAC has found that certain ETCs do not comply with this requirement.⁶ Further, other ETCs indicate that they do not comply with this requirement either.⁷ Therefore, USAC requests that the Commission confirm that Line 9 requires ETCs to pro-rate partial month Lifeline customer support, and, if so, inquires as to the recovery action that it may take for an ETC’s failure to do so.⁸

The MDTC agrees that a carrier is not entitled to reimbursement for a full month of service for a subscriber that initiated or terminated Lifeline service mid-month. The MDTC believes that if such a practice occurs, then it would be an improper and inefficient use of universal service funding. As such, the MDTC urges the Bureau to confirm the Line 9 pro-rata reporting requirement and offers the following for comment.

The instructions to ETCs for completing Line 9 state:

*If claiming partial or pro-rata dollars, check the box on line 9. Enter the dollar amount (if applicable) for all partial or pro-rated subscribers. Amount should be reported in whole dollars, and may be either positive or negative, depending on whether there are more new subscribers being added part way through a month or more subscribers disconnecting during the reported month. DO NOT include partial or pro-rata amounts on lines 5 – 8.*⁹

According to USAC, appropriately, “[t]he instructions to Line 9 of FCC Form 497 include the word ‘if’ because pro-rating *is not mandatory unless* a company has Lifeline customers who started or terminated Lifeline support mid-month.”¹⁰

⁵ AT&T April 2009 Petition, Appendix A, USAC Management Response letter dated June 28, 2007, at 2 (“USAC Management Response Letter”) (emphasis added).

⁶ USAC Letter, at 1-2; *see also* Request for Review by AT&T Inc. of Decision of the Universal Service Administration, WC Docket No. 03-109 (filed Apr. 14, 2009) (“AT&T April 2009 Petition”); Request for Review by AT&T Inc. of Decision of the Universal Service Administration, WC Docket No. 03-109 (filed Aug. 18, 2008) (“AT&T August 2008 Petition”); Request for Review by Qwest Communications International, Inc. of Decision of the Universal Service Administration, WC Docket No. 03-109 (filed Apr. 15, 2008) (“Qwest Petition”); Request for Review by AT&T Inc. of Decision of the Universal Service Administration, WC Docket No. 03-109 (filed Jan. 7, 2008) (“AT&T January 2008 Petition”).

⁷ *See e.g.*, Verizon Comments, WC Docket No. 03-109, at 4 (filed Jun. 16, 2008); Embarq Comments, WC Docket No. 03-109, at 1 (filed May 14, 2008).

⁸ *See* Public Notice, at 1; USAC Letter at 2. USAC also seeks guidance on whether ETCs may use Line 9 for any purpose other than to report the amount of support attributed to partial-month Lifeline customers. *See* USAC Letter, at 2. The MDTC does not address this question in the instant letter.

⁹ USAC Letter, at 1 (emphasis added); *see also* Instructions for Lifeline and Link-Up Worksheet, OMB 3060-0819 (July 2008) (“FCC Form 497”), available at <http://www.usac.org/res/documents/li/pdf/Form-497-instructions-FY2008.pdf> (last viewed Apr. 1, 2010).

¹⁰ *See, e.g.*, AT&T April 2009 Petition, Appendix A, USAC Management Response letter dated June 28, 2007, at 2 (“USAC Management Response Letter”) (emphasis added).

Previous comments in pending appeals before the Commission on the same issue counter that the plain meaning of the word “if” makes the clause conditional and that ETCs have the option, but are not required, to report pro-rata data.¹¹ These comments also specify that the monthly reporting on FCC Form 497 essentially accounts for ETCs’ monthly gains and losses of Lifeline subscribers and “comes out in the wash” or “off-set each other” (i.e., the subscriber variations throughout the month essentially even each other out, which makes failing to account for partial month subscribers proper).¹² They propose that ETCs “are willing to tolerate the variability of Lifeline support and absorb a reimbursement from the program that may not be fully compensatory.”¹³

These comments are both unavailing and troubling. First, USAC’s interpretation is reasonable, and USAC already has Commission authorization to require ETCs to provide and maintain records for pro-rata subscriptions. Pursuant to Section 54.407, in order for an ETC to receive Lifeline support reimbursement, the ETC “must keep accurate records of the revenues it forgoes ... [and] [s]uch records shall be kept in the form directed by [USAC] and provided to [USAC] at intervals as directed by [USAC] [.]”¹⁴ In accordance with this provision, USAC has directed ETCs to maintain, and submit, accurate records of pro-rata support as it relates to Line 9’s requirement.¹⁵

Second, available data does not support the contention that partial-month subscriptions and universal service reimbursement “evens out.” Indeed, available data points to quite the opposite. For instance, as of 2008, nationwide federal Lifeline support payments exceeded \$780 million.¹⁶ This amount represents more than double the amount paid out in 1998 – a consistent increase each year for ETC support payments.¹⁷ Averaged, this represents a consistent increase in Lifeline support payments each month for over a decade. This amount is likely to increase further now that federal Lifeline support has been extended to certain wireless carriers granted

¹¹ See, e.g., USTelecom Comments, WC Docket No. 03-109, at 4-5 (filed Jul. 6, 2009). Currently, USAC’s Line 9 determinations are the subject of at least four pending appeals before the Commission. See Public Notice, n.3. USAC specifies that it has not taken any action against carriers they have found to not have pro-rated Lifeline support claims, pending resolution of these appeals. See USAC Letter, at 2. The Bureau should resolve these appeals by confirming that Line 9 requires ETCs to pro-rate partial month Lifeline support.

¹² See, e.g., Verizon Comments, WC Docket No. 03-109, at 4 (filed Jul. 6, 2009); AT&T Reply Comments, WC Docket No. 03-109, at 3-4 (filed May 29, 2008).

¹³ USTelecom Comments, WC Docket No. 03-109, at 6 (filed Jul. 6, 2009);

¹⁴ 47 C.F.R. § 54.407(c).

¹⁵ See, e.g., USAC Management Response Letter, at 2.

¹⁶ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report (Data Received Through August 2009)*, CC Docket Nos. 98-202 and 96-45, Table 2.2, at 2-8 (rel. Dec. 31, 2009) (“December 2009 Monitoring Report”).

¹⁷ See December 2009 Monitoring Report, Table 2.2, at 2-8. While federal support has appeared to increase overall nationwide, a limited number of states like Massachusetts have seen a consistent *decline* in federal Lifeline support each year since 2003. See December 2009 Monitoring Report, Table 2.4, at 2-10 through 2-15. In 2003, Massachusetts Lifeline support payments totaled roughly \$17.55 million. As of 2008, this amount had decreased to \$10.88 million.

ETC status for Lifeline/Link-Up only.¹⁸ A consistent increase in support denotes a consistent increase in subscribership. It also denotes that new Lifeline subscribership and support far outpaces the loss of subscribers and support, at least, for the majority of carriers. Since carriers concede that mid-month subscription and termination exists, then the possibility also exists that certain ETCs are inappropriately receiving full month reimbursement for partial month subscribership. In other words, certain ETCs may be receiving a larger reimbursement than they are eligible to receive. This likelihood therefore strengthens USAC's interpretation that pro-rata reporting is required.¹⁹

Finally, the MDTC notes that previous comments have also argued that the Bureau's indefinite delay in implementing an amended FCC Form 497 represents Bureau rejection of pro-rated reporting.²⁰ These arguments are without merit. The MDTC concedes that the Bureau once announced then twice delayed (once indefinitely) an effective date for the revised FCC Form 497.²¹ However, while comments correctly noted that the proposed form would have *amended* the reporting requirement for pro-rata Lifeline reimbursement claims,²² they ignored or overlooked the fact that the Bureau did not offer any official explanation for its delay of the revised form's effective date. Instead, they simply point to the Bureau's action as support for the assertion that the Bureau previously rejected mandatory pro-rata Lifeline reimbursement claims.²³ Until the Bureau makes an official statement on the issue, then the reason for the Bureau's indefinite delay for the revised FCC Form 497's effective date is pure conjecture.

¹⁸ See, e.g., *In the Matters of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A), Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et. al.*, CC Docket No. 96-45, Order, FCC 09-18 (rel. Mar. 5, 2009).

¹⁹ With the data so obviously skewed in one direction and the possibility that certain ETCs are being overcompensated, then the Bureau should commence a proceeding to determine whether ETCs are, indeed, being overcompensated. In order to determine whether this is the case, then the Bureau should inquire: (1) whether the ETC pulls its reported numbers on the same day each month – if so, which day; (2) whether the ETC has established a single billing day for all of its subscribers (Lifeline and non-Lifeline; Lifeline only) – if so, which day; (3) whether the ETC has established a single day of the month on which to initiate or terminate service for all of its Lifeline subscribers – if so, which day; (4) whether 'partial' month subscribers are included in the ETC's monthly FCC Form 497 reporting totals; and (5) whether the ETC pro-rates its billing for any of its subscribers (Lifeline and non-Lifeline; service initiation and service termination). Based on any responses received, the Bureau may also consider revisiting the adoption of a newer revised FCC Form 497.

²⁰ See e.g., Qwest Reply Comments, WC Docket No. 03-109, at 2-3 (filed Jul. 1, 2008); Verizon Reply Comments, WC Docket No. 03-109, at 1-2 (filed May 29, 2008).

²¹ See *Wireline Competition Bureau Announces Effective Date of Revised Form 497 Used to File Low-Income Claims with USAC*, WC Docket No. 03-109, Public Notice, DA 04-3016 (rel. Sept. 21, 2004); *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income Universal Service Support*, WC Docket No. 03-109, Public Notice, DA 04-3188 (rel. Oct. 4, 2004); *Wireline Competition Bureau Announces Delay of Effective Date for Revised Form 497 Used for Low-Income Universal Service Support until Further Notice*, WC Docket No. 03-109, Public Notice, DA 05-604 (rel. Mar. 4, 2005).

²² See, e.g., Verizon Comments, WC Docket No. 03-109, at 3-4 (filed Jul. 6, 2009); USTelecom Comments, WC Docket No. 03-109, at 5 (filed Jul. 6, 2009); see also Draft Revised FCC Form 497, OMB 3060-0819, at 1 (dated Dec. 2003), available at http://www.usac.org/res/documents/li/pdf/497_draft.pdf (last viewed Apr. 2, 2010); Draft Revised FCC Form 497 Instructions, OMB 3060-0819, at 5-6 (dated Dec. 2003), available at http://www.usac.org/res/documents/li/pdf/497i_draft.pdf (last viewed Apr. 2, 2010).

²³ See, e.g., Verizon Comments, WC Docket No. 03-109, at 3-4 (filed Jul. 6, 2009); USTelecom Comments, WC Docket No. 03-109, at 5 (filed Jul. 6, 2009).

The MDTC welcomes this opportunity to comment, and thanks the Bureau for its consideration.

Sincerely,

/s/ Geoffrey G. Why

Geoffrey G. Why, Commissioner
Massachusetts Dept. of
Telecommunications and Cable