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CC: 03-109

Anita Cheng
Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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Federal Communications Commission
Office of the Secretary

April 8, 2010

Dear Ms. Cheng,

I am writing to you as General Counsel of Xchange Telecom Corp. (Xchange), to request an interpretive ruling regarding the Lifeline and Linkup programs.

Xchange is a facilities-based CLEC, located in Brooklyn, New York, that recently began offering Lifeline and Linkup subsidies for low income and eligible customers. Xchange is dedicated to the ideals of universal service and does not seek to shirk any duty incumbent upon CLECs; however, as a CLEC who must turn to the area ILEC, Verizon, for installation services, Xchange cannot be stuck with customers that do not pay installation fees. This is because Verizon charges Xchange $125 for an install, regardless of whether Xchange's customer pays for it. Thus, Xchange has always collected such fees upfront where new service needs to be installed, whether the customer was a regular or Lifeline customer.

Recently, Xchange's practice has been called to question, and Xchange has been accused of misconduct. Xchange believes its practice is warranted by law; however, Xchange realizes that different parties may have different opinions. Thus, Xchange seeks an interpretive ruling from the FCC.

47 C.F.R. § 54.411 states:

> For purposes of this subpart, the term "Link Up" shall describe the following assistance program for qualifying low –income consumers, *which an eligible telecommunications carrier shall offer* as part of its obligation . . .
>
> (1) A reduction in the carrier's customary charge for commencing telecommunications service . . .
> (2) A deferred schedule for payment of the charges assessed for commencing service . . . not to exceed a year.

47 C.F.R. § 54.411 (a) (emphasis supplied). § 54.422 (b) further states that a "qualifying low income consumer may choose one or both of the programs set forth in paragraph (a)(1) and

(a)(2) of this section. . . ." The language quoted can be read to require that eligible carriers offer such programs, *if they exist*, to qualifying consumers. It does not, however, impose the obligation on the carrier to create such a program. However, where a carrier cannot afford to offer such deferral programs to any customers, it does not obligate them to offer such a program. Alternatively, it could be read to imply that a telecommunications carrier has an obligation of offering a deferred schedule of payments, regardless of whether such carrier even has in place a deferral option that it gives to other customers. According to this reading, the carrier *must* offer a deferral program, even if the carrier does not have in place such a deferral option for any other customer. Xchange's position is that the former reading is the better reading, because it prevents discrimination against low-income customers.

The problem with the second, obligatory, reading is that many carriers, including Xchange, do not offer deferral programs for installation charges to any of their customers. The reason why carriers do not offer deferral programs for installation fees is that there is an inherent credit risk in allowing a customer to defer installation charges. These charges are fixed, and most often paid by CLECs to ILECs, regardless of whether the customer pays the charge. If the customer refuses to pay, the CLEC is out a large sum of money even before the start of service. There is an additional risk because such installation fees are more common with customers of ILECs or other CLECs that have had their service disconnected for failure to pay. Since the CLEC cannot afford such a risk, it often does not allow any deferral for installation fees.

We reached out to USAC for their opinion on this reading. We were advised that USAC had never enforced an obligation on a carrier to offer a deferral program. They viewed the regulation as imposing only an obligation on a carrier that *already* offered a deferral program for installation charges to offer such a program to their Lifeline customers. If a carrier did not already offer such a program, there was no obligation for such a program to be created for Lifeline customers alone.

USAC pointed out that Section 8 of the FCC Report & Order In the Matter of Federal-State Joint Board on Universal Service, FCC 97-157 (1997), described the deferral aspect of the Link-up program as only applicable where a carrier has a preexisting deferral program for installation charges. Specifically, Paragraph 344 states, "The Commission's existing Link Up program helps low-income subscribers initiate telephone service by paying half of the first $60.00 of installation charges. *Where an ILEC has a deferred payment plan*, Link Up also will pay the interest on any balance up to $200.00, for up to one year." FCC 97-157 at 180 (emphasis supplied). Paragraph 380 further states:

> We also adopt the Joint Board's recommendation that we amend our Link Up program so that any eligible telecommunications carrier may draw support from the new Link Up support mechanism if that carrier offers to qualifying low-income consumers a reduction of its service connection charges equal to

> one half of the carrier's customary connection charge or $30.00, whichever is less. Support shall be available only for the primary residential connection. *When the carrier offers eligible customers a deferred payment plan for connection charges*, we agree with the Joint Board that we should preserve the current rule providing support to reimburse carriers for waiving interest on the deferred charges.

FCC 97-157 at 197 (emphasis supplied). Both of the quoted paragraphs indicate that the FCC's position is that only where a carrier already offers a deferral plan, the Link-up program requires that a carrier allow Lifeline customers to avail them of such a plan. However, it does not indicate any intent to force carriers to create deferral plans where they have not historically had such plans in place.

Thus, the question is which interpretation is correct? Does participation in Lifeline require the carrier to create a deferral program where it had no such program in place for any customer, or, does Lifeline require only that Lifeline participants be treated equally to other customers and that they be offered any deferral program that the carrier has already in place?

If the FCC interprets the Lifeline and Linkup program as requiring a carrier to create a deferral program, the second inquiry is what terms of deferral are acceptable. The regulations only state that the carrier need offer a "deferred schedule for payment of the charges assessed for commencing service . . . not to exceed a year." However, the regulations do not specify what is the least amount of deferral that a carrier may use. Can a carrier offer to defer charges for one month, payable in full at the beginning of the second month? Or is there a minimum amount of time required for deferrals.

Xchange requests that you review the aforementioned regulations and issue an interpretive ruling. Xchange would appreciate a prompt reply because the program is already in place and XChange would like to comply with the law. I thank you in advance for your help and assistance on this matter.

Sincerely,

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