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

In the Matter of	**:**	
	:	
Federal-State Joint Board on Universal	**:**	**WC Docket No. 96-45**
Service	**:**	
	:	
Lifeline and Link-Up	**:**	**WC Docket No. 03-109**

COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION AND SUMMARY

On May 4, 2010, the Federal Communications Commission (FCC) issued a Referral Order (Order) to the Federal-State Joint Board on Universal Service (Joint Board) to review the FCC's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs.[1] The Joint Board was charged to recommend changes to the programs, given the technological and marketplace developments that have transpired since the current rules were adopted. Consideration was to be given to the differences between the federal rules and those of the states, best practices among states for verifica-

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[1] *See Federal-State Joint Board on Universal Service, Lifeline and Link Up,* CC Docket No. 96-45, WC Docket No. 03-109, Order, FCC 10-72 (rel. May 4, 2010) (Referral Order).

tion, appropriateness of outreach and enrollment, and potential expansion of the low-income programs to broadband.

On June 15, 2010, the Joint Board issued a public notice, seeking comment on the questions the FCC presented in the Referral Order.[2] The Public Utilities Commission of Ohio (Ohio Commission) hereby submits its initial comments on these matters.

DISCUSSION

I. General Comments

A. Traditional Landline Lifeline and New Ohio Telecommunications Law

With regard to Lifeline service, Ohio is not considered to be a federal default state. Instead, in 2005, the Ohio Commission issued its Ohio Lifeline Order. Consistent with FCC rules, this Order established a state-specific Lifeline program to assist low-income Ohioans.[3]

On June 13, 2010, Governor Ted Strickland signed Ohio Amended Senate Bill 162 (Am. S.B. 162), updating Ohio's telecommunications laws and ushering in new regulatory rules for Ohio's incumbent local exchange companies (ILECs). Effective September 13 of this year, the new law affects the provision of Lifeline service by Ohio ILECs, requiring all ILECs to provide an enhanced state lifeline program. Income eligibility is

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[2] *See Federal-State Joint Board on Universal Service Seeks Comment on Lifeline and Link-Up Eligibility*, Verification, and Outreach Issues Referred to Joint Board, CC Docket No. 96-45, WC Docket No. 03-109, Order, FCC 10J-2 (rel. June 15, 2010).

[3] *See In the Matter of a Proceeding to Implement Lifeline Assistance Modifications as a Result of a Federal Communications Commission Order*, Case No. 05-461-TP-UNC (Entry) (April 13, 2005) ("Ohio Lifeline Order").

expanded for all, at 150% of the federal poverty level (FPL), and the monthly discount Lifeline subscribers will see is larger than that under the federal program. Additionally, ILECs will be required to automatically enroll customers, to the extent that state agencies are able to accommodate such enrollment. Finally, Am. S.B. 162 requires all ILECs to establish an annual marketing budget for promoting and performing outreach and establishes a single Lifeline Advisory Board composed of the ILECs and consumer groups to coordinate those activities.

B. Wireless Lifeline

Traditionally, in Ohio, only ILECs were certified as eligible telecommunications carriers (ETCs) for purposes of offering Lifeline service. The universe of carriers participating in low-income programs, which has expanded across the nation, has reached Ohio, as well. Ohio approved its first, and currently only, prepaid wireless ETC in May 2009.[4] TracFone, providing service under its Safelink brand, was granted conditional status to offer Lifeline service in Ohio. Recently, the Ohio Commission extended that status while it continues to investigate and evaluate TracFone's compliance with certification and annual verification rules.[5] Four other entities are intending to operate as competitive eligible telecommunications carriers (CETCs) for the sole purpose of provisioning Life-

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[4] *See In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, Case No. 97-632-TP-COI (Supplemental Finding and Order) (May 21, 2009) ("TracFone Order").

[5] *See In the Matter of the Petition of TracFone Wireless, Inc. dba SafeLink for Designation as an Eligible Telecommunications Carrier*, Case No. 10-614-TP-UNC (Entry) (May 13, 2010).

line in Ohio as well. Virgin Mobile USA, L.P. and Nexus Communications, Inc. have applications pending as prepaid wireless providers; Budget Prepay has applied as a pre-paid competitive local exchange carrier; and American Broadband and Telecommunications was recently granted ETC status to provide landline Lifeline.[6] As the Joint Board well knows, since the FCC last updated the Lifeline rules, in 2004,[7] the landscape for provisioning low-income telephone service has been dramatically altered. The roadmap for navigation is rapidly becoming out-dated, and any comments made to update that roadmap must allow for terrain on which a new vehicle – the prepaid wireless ETC – is to travel.

C. Broadband and Lifeline

The Ohio Commission is taking an active interest in the National Broadband Plan[8] that was recently issued by the FCC. The Ohio Commission will be making formal comments in that docket. To the extent that we limit our comment on broadband here, the Ohio Commission reserves the right to do so at another time, as appropriate.

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[6] 97-632-TP-COI Supplemental Finding and Order (January 27, 2010) [American Broadband & Telecommunications] In April 2010, Virgin Mobile USA, L.P. applied and was assigned Case. No. 10-429-TP-UNC; Nexus Communications, Inc. dba TSI applied and was assigned Case No. 10-432-TP-UNC; Budget PrePay, Inc. dba Budget Phone applied and was assigned Case No. 10-668-TP-UNC.

[7] *See Lifeline and Link-Up,* WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 199FCC Rcd 8302 (2004).

[8] Connecting America: The National Broadband Plan (rel. Mar. 16, 2010).

II. Eligibility

A. Lifeline Eligibility in Ohio: Current Practice

Pursuant to the aforementioned recent changes to Ohio's new telecommunications law, all of Ohio's landline companies will operate under a state Lifeline plan. Under this plan, eligibility will either be based on income set at 150% of the FPL or a qualifying low-income assistance program, which could have an income qualification greater than 150% of the FPL. Program-based qualification incorporates all of the federal requirements plus the Social Security Disability Income (SSDI), General Assistance and or/Disability Assistance, Ohio Works First (also known as Temporary Assistance for Needy Families or TANF) and any state program supplanting Medicaid. Regarding prepaid wireless Lifeline service, the Ohio Commission ordered its sole provider of this service to qualify its subscribers similarly.[9]

The Joint Board seeks comment as to whether Lifeline support based on income should be set at a percentage different than the current 135 percent threshold.[10] Because Ohio is not a federal default state, Ohio will not be affected by this federal income rule. Nonetheless, the Ohio Commission would like to point out that the majority of programs qualifying customers for Lifeline have unique income guidelines that are based on percentages higher than 135% of the FPL. Two qualifying programs, the Supplemental Nutrition Assistance Program (SNAP, or food stamp benefits) and the National School

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[9] *TracFone Order* at Finding 7.

[10] Referral Order at 15.

Lunch Program, have their income limits set at 200% and 185%, respectively. Ohio's Home Energy Assistance Program (HEAP), which is the largest program Lifeline service qualifier in Ohio, increased its enrollment cap from 175% to 200% of the FPL during the last winter heating season (which is not to say the increase is permanent and may change). In Ohio, enrollees in HEAP are automatically enrolled in Lifeline. Simply put, Lifeline customers who enroll under qualifying programs can have household incomes that are higher than customers who enroll under an income qualifier.

To put real dollar amounts on the issue, a family of four would currently qualify for the federal default plan program, based on income, if the household income did not exceed $29,768. But if this same family enrolled under the National School Lunch program, which has a qualifier of 200% FPL, the household income could be as high as $44,100, a difference of $14,332 from the federal income qualifier. Given the current economic climate, with wage and job cuts, there is no doubt that families nationwide are experiencing drastic economic situations. Since 1996, Lifeline service has been made available to low-income consumers nationwide.[11]Increasing the threshold of income-based qualification to something higher than 135%, --perhaps to 150% --would provide more consistency to the current dichotomy of state versus federal programs and income-based versus program based qualifiers. Also, doing so would alleviate some economic burden to families choosing to qualify through income and who, for whatever reason, are not taking advantage of qualifying programs that allow others with higher incomes (albeit

[11] *See* Universal Service First Report and Order, 12 FCC Rcd ___ .

still low-income) access to Lifeline benefits. Accordingly, should the Joint Board be seeking parity for Lifeline enrollees qualifying through income versus qualifying programs, we encourage them to explore the income parameters set through qualifying programs.

B. Automatic Eligibility of Certain Classes of Individuals / Homeless Shelters: Issues to Consider

The Joint Board is tasked with considering whether certain classes of individuals, such as residents of homeless shelters, should be automatically eligible for participation in the low-income programs.[12] In response to a 2009 FCC Public Notice, the Ohio Commission enumerated certain challenges and concerns about the provision of wireless handsets to residents of shelters and group homes.[13] Prepaid wireless service is, at its essence, mobile and it is this mobility factor that makes it such an attractive solution to the communication needs of homeless individuals. Nevertheless, it is also the mobility factor that makes the tracking of these communication devices difficult. The possibility of handsets being unused, stolen, damaged, never received, sold or discarded are obstacles to administering distribution of cell phones to a population that is, by definition, transient in nature. The Ohio Commission urges the FCC to have measures in place for adequate verification of eligibility should the Lifeline program be further extended in this manner.

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12 *See* Referral Order at 15.

13 *See Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program "One-Per-Household" Rule as Applied to Group Living Facilities*, WC Docket 03-109, Public Notice, DA 09-2257 (rel. Oct. 21, 2009).

C. Automatic Enrollment: Current Practice in Ohio

In Ohio, landline ETCs is to automatically enroll customers of qualifying programs when the state agency providing the program is able to accommodate such enrollment. Currently, Ohioans enrolling in HEAP are automatically enrolled when, twice a year, enrollment lists are sent to the large landline ETCs, who match those rolls against their own. The customers are given an option to decline participation. The coordination of ETCs with agencies that send their enrollment information is a good example of how to begin further coordination of enrollment to ensure legitimate use of USF funds, and will be discussed further, below.

III. CERTIFICATION

A. Income Based Certification in Ohio: Current Practice

The 2004 FCC Lifeline Order required all states to adopt certification procedures to document income-based eligibility for Lifeline/Link-Up enrollment. As previously noted, the Ohio Lifeline Order directed each Ohio ETC to review and modify its tariff to affect compliance with the FCC's rules. The Ohio Lifeline Order further directed that, within 60 days of service establishment, the ETC must verify consumer eligibility using any reasonable method of verification, with acceptable documentation the same or similar to that outlined in the 2004 FCC Lifeline Order. This is still the case for all landline Lifeline providers as well as for Ohio's prepaid wireless ETC, TracFone.

Consistent with its Lifeline Order, the Ohio Commission has required TracFone to obtain from its Lifeline subscribers the income documentation demonstrating Lifeline

eligibility within 60 days of a subscriber's application for Lifeline service. To the extent that the subscriber fails to produce the appropriate verification, TracFone must discontinue the provision of Lifeline benefits.[14]

B. Program Based Certification in Ohio: Current Practice

The 2004 FCC Lifeline Order brought no change to Ohio in regard to program based certification. The Ohio Commission concurred with the FCC that the "current certification procedures for program-based qualification were sufficient for easy verification and as a disincentive for abuse."[15] No tariff modifications were required of Ohio's Lifeline providers, who, at that time, were all landline, incumbent local exchange companies. Then, and now, a Lifeline applicant may simply self-certify, under penalty of perjury, that the applicant is receiving services from a qualifying program. The ILEC is permitted, however, to require any customer, once the customer is placed on Lifeline service, to provide additional documentation to verify eligibility.

C. Certification Proof and Documentation Beyond the Current Requirements: Issues to Consider

The Joint Board is to provide input to the FCC on whether additional documentation is needed for demonstration of program eligibility beyond that required by states.[16] Compliance with the FCC's "one-per-household" rule and what roles carriers have in

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[14] *See In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, Case No. 97-632-TP-COI (Entry on Rehearing) (July 8, 2009).

[15] *Ohio Lifeline* Order at Finding 9.

[16] Referral Order at ¶ 15.

ensuring the validity of a customer's self-certification are important issues on which the Joint Board has been asked to make recommendations to the FCC. The FCC is asking if "penalty under perjury" can be relied upon when enforcement of such perjury seems nebulous.[17]

As mentioned above, Ohio allows self-certification for program-based enrollment for its landline Lifeline subscribers. When the Ohio Commission last opined on the topic in 2005, there were no ETCs operating in Ohio except for the ILECs. As it did then, the Ohio Commission does not believe there is a certification problem when the discussion is solely focused on program-based enrollment of customers by landline ETCs. It is imperative, at least in Ohio, to consider an environment where a customer could potentially have five ETCs from which to subscribe to Lifeline: the incumbent landline carrier, three wireless carriers, one "traditional" competitive landline carrier and one prepaid carrier. (See footnotes five and six.) This accounts for the carriers who have officially come before the Ohio Commission seeking approval. It is unknown how many other carriers will come in seeking ETC status.

Requiring customers to provide proof of enrollment in qualifying programs, while not seeming unreasonable, may not go far enough in solving the issue at hand. If proof of enrollment in a food stamp program is sent to three wireless carriers, and all three carriers send the customer a mobile phone with minutes of use, that proof of enrollment does not

[17] Referral Order at ¶ 22.

help with the issue of "double-dipping" (or triple-dipping, or quadruple-dipping). The issue is larger than simply requiring customer documentation.

Accordingly, the Ohio Commission sees a need for coordination. The Nebraska Public Service Commission's and NASUCA's[18] suggestions of a universal database warrant consideration. Alternatively, coordination of customer information, in a manner that comports with other customer proprietary network information (CPNI) by the ETC carriers in each respective state could also be another method of ensuring legitimate claims by customers and, in turn, legitimate withdrawal of USF funds. Finally, consideration of a third-party administrator, charged with auditing and monitoring enrollment on Lifeline should be explored, if not separately, then in conjunction with the above.

The Universal Service Administrative Company issued quarterly Low-Income Program disbursements reports on May 4. The sky-rocketing disbursement of funds for CETCs from $55.2 million in first quarter 2009 to $146.6 million in first quarter 2010 shows why it is urgent to ensure legitimate enrollment of Lifeline customers. While under-enrollment in Lifeline was always a concern in the past, we believe that legitimate enrollment is the new concern. We urge exploration of a clearinghouse for certifying legitimate customer enrollment.

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[18] Referral Order at ¶ 20.

IV. VERIFICATION

A. Landline Verification in Ohio: Current Practice

In the 2005 Ohio Lifeline Order, the Ohio Commission, similar to its directives regarding certification, ordered the Ohio ETCs to establish procedures to verify customers' continued eligibility for both program and income-based criteria, saying that companies could use any reasonable method of verification.[19] In a subsequent entry, the Ohio Commission clarified what it expected of ETCs, stating:

> [t]hat Ohio ETCs had an obligation, under the FCC's order, to establish procedures to verify customers' continued eligibility for program-based lifeline services and that those companies must attest, as part of the periodic ETC certification process, that they comply with the FCC's requirements. Such procedures are not, however, subject to Commission approval. Nevertheless…we strongly encourage the ILECs to permit self-certification during the program-based verification process. In making this determination, we note that we can envision little justification for permitting lifeline customers to initially establish eligibility for lifeline assistance through program-based self-certification while requiring a more stringent standard for verifying continued eligibility….In the alternative, if an ILEC chooses not to permit verification of continued program-based eligibility for lifeline assistance through self-certification…those companies should be clear regarding the documentation they will accept.[20]

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19 *See Ohio Lifeline* Order at Finding 10.

20 *See In the Matter of a Proceeding to Implement Lifeline Assistance Modifications as a Result of a Federal Communications Commission Order*, Case No. 05-461-TP-UNC (Entry) (July 19, 2005).

It is the current practice of the majority of Ohio's landline ETCs to perform random samplings of their customers for purposes of verifications. Ohio has one small-to-mid size carrier that audits every customer, and to date, the practices appear satisfactory.

B. Prepaid Wireless ETC Verification

As previously noted, prepaid wireless ETC verification procedures differ due to the unique issues raised by the mobile nature of the service. Each TracFone customer in Ohio must be verified by TracFone each year. The success of this is currently under investigation by the Ohio Staff, and conclusions have not yet been drawn.[21]

The Ohio Commission urges the FCC to consider the issues prepaid wireless ETCs bring. We note that TracFone's *Petition of Modification of Annual Verification Condition* ("Petition") filed at the FCC on April 27, 2009, is still outstanding. This petition was made just a week after the Ohio Commission ordered TracFone, as a condition of certification and comporting with FCC directives, to verify every single customer who enrolled with them. While comments in that docket were not filed by the Ohio Commission, we believe that comments made to the Joint Board, in this instant Lifeline docket, will aid in any decision that the FCC should choose to make about verification procedures.

Without reiterating remarks we made in the discussion of certification, above, the Ohio Commission believes exploration of either a central database of Lifeline subscrib-

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[21] *See In the Matter of the Petition of TracFone Wireless, Inc. dba Safelink Wireless for Designation as an Eligible Telecommunications Carrier,* Case No. 10-614-TP-UNC (Entry at Finding 4) (May 13, 2010).

ers, coordination among and between ETC carriers, or third-party administration of enrollment is warranted to ensure legitimate enrollment and proper use of USF funds.

V. OUTREACH

Prior to the passage of Ohio's new telecommunications law, companies offering state Lifeline plans were required to establish a budget equal to 10 cents for each of their residential access lines to promote lifeline service. Each company had an advisory board, representing constituents. Outreach efforts varied, depending upon the company and the territory served, with some ILECs using media and others using more grass roots type promotion.

With the passage of Am. S.B. 162, a single State Lifeline Advisory Board ("Board"), composed of Ohio commission staff and company and consumer representatives, will be formed to coordinate all activities relating to the promotion of, marketing of, and outreach regarding Lifeline service. The new law requires companies providing Lifeline to establish an annual marketing budget for promoting Lifeline service, but does not set an amount for the budget, leaving that matter to be determined by the Board.

The FCC asks whether mandatory outreach requirements should be adopted. Like the FCC, Ohio understands the importance of reaching out to low-income consumers to ensure awareness of the availability of Lifeline to qualifying individuals. It is for that reason that Ohio's new telecommunications law establishes a state-wide advisory group to coordinate Lifeline outreach, marketing and education. However, we decline to comment where the other states are involved. We do note that an important part of marketing

– awareness of Lifeline – should include awareness of legitimate enrollment. Any FCC directive on outreach must include educating on the very serious message of customer responsibility for legitimate enrollment.

CONCLUSION

In conclusion, the Ohio Commission suggests that the Joint Board, when making recommendations to the FCC on Lifeline, encourage exploration of a centralized database or third-party administration for ensuring legitimate Lifeline enrollment. Alternatively, a method of communication between and among ETCs so that duplicative enrollment is caught (preferably prior to the disbursement of USF funds) should be considered.

Respectfully submitted,

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