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

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

TO: Federal-State Joint Board on Universal Service

<u>COMMENTS OF SMITH BAGLEY, INC.</u>

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SUMMARY

It has been a decade since the Commission last sought guidance from the Federal-State Joint Board on Universal Service regarding the policies, objectives, and administration of the Commission's low-income universal service programs. As the Commission has observed, the landscape of the telecommunications marketplace has dramatically changed in those ten years.

Two changes have been particularly significant: First, the use of mobile telephones has become increasingly prevalent throughout the Nation's states and territories. And, second, as the Commission notes in the *Referral Order*, "high-speed broadband service has become an essential mode of communication for many Americans . . . ."

The Joint Board, in developing recommendations regarding eligibility, verification, and outreach issues associated with the Lifeline and Link Up programs, should focus on these changed circumstances and ensure that the impact they are having on consumers' use of telecommunications and information services is reflected in these programs.

Specifically, in acknowledgment of the fact that the shift to wireless services is resulting in households having multiple wireless telephone accounts, sometimes in conjunction with wireline service, the Joint Board should recommend eliminating the restrictive "one-per-household" requirement. Similarly, the Joint Board should recommend that residents of homeless shelters be permitted to automatically qualify for Lifeline and Link Up assistance, and each qualifying family living in a Native American hogan or other subdivided dwelling be permitted to have a Lifeline discount. Moreover, the Commission should abolish the wireline-centric prohibition against customers receiving Lifeline discounts from multiple service providers. At a minimum, if this prohibition is retained, then carriers should not have the burden of policing whether particular customers are receiving duplicate Lifeline support.

The Joint Board should recommend that the broadband Lifeline program use eligibility criteria that are the same or similar to those used for the existing program. Avoiding more stringent criteria would help ensure that low-income consumers no longer lag behind other consumers in gaining access to advanced broadband services.

The Joint Board also should recommend liberalizing income-based Lifeline eligibility criteria, because doing so would help open the door to both traditional and wireless telephone service, and to broadband service, for many households that have limited financial resources but are currently excluded from the Lifeline program.

As another means of facilitating wider access for low-income consumers to wireless and broadband services (as well as traditional wireline telephone service), the Commission should encourage states and territories to use automatic enrollment processes for Lifeline assistance, so long as these processes do not inadvertently disqualify eligible consumers and do not result in any anticompetitive effects. It would not be appropriate, however, for states or territories to be required to provide automatic enrollment because some states or territories may lack sufficient funding mechanisms or face other obstacles.

Finally, the current Lifeline outreach guidelines have worked effectively, eliminating any need for the Commission to attempt the difficult task of codifying specific outreach requirements. The guidelines should be retained because they are sufficiently detailed but have enough flexibility to be applied in areas with varying demographics, cultures, and other characteristics.

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TO: Federal-State Joint Board on Universal Service

COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. ("SBI"), by its undersigned counsel and pursuant to the *Public Notice* issued by the Commission on June 15, 2010,[1] hereby submits comments relating to various eligibility, verification, and outreach issues discussed in the *Referral Order*.[2]

I. INTRODUCTION AND BACKGROUND.

SBI is licensed to provide cellular radiotelephone service and personal communications service ("PCS") throughout portions of Arizona, New Mexico, Utah, and Colorado. SBI has been designated as an eligible telecommunications carrier ("ETC") pursuant to Section 214 of the Communications Act of 1934 ("Act")[3] in Arizona, New Mexico, and Utah, and is engaged in providing telecommunications services throughout the Navajo Nation and also on the tribal lands

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[1] 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, Public Notice, FCC 10J-2, rel. June 15, 2010 ("Public Notice"). Comments are due not later than July 15, 2010. Id. at 1.

[2] *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 24 FCC Rcd 5079 (2010) ("*Referral Order*").

[3] 47 U.S.C. § 214.

of the Hopi Nation, and of the White Mountain Apache, Ramah Navajo, and Pueblo of Zuni tribes.

SBI has substantial experience in using Lifeline support to improve access to wireless telecommunications services by consumers living on tribal lands. The company has taken the initiative to offer Tier 4 Lifeline benefits on the tribal lands where it has been designated as an ETC, helping to increase subscribership levels and providing members of Indian tribes with an opportunity to have access to basic and advanced telecommunications services.

Improving access to telecommunications on tribal lands is still very much a work in progress, as the problems faced by residents of tribal lands continue to be severe. These problems—including pervasive poverty, low income levels, high levels of unemployment, geographic isolation, and severe health care issues—continue to make it difficult for subscribership levels on tribal lands to reach parity with the nation as a whole. These same factors serve as obstacles to the widespread availability of broadband service on tribal lands on par with the rest of the country. The cumulative impact of these problems makes the challenges faced by carriers attempting to serve tribal lands virtually unique. These challenges underscore the importance—and the urgency—of continuing and enhancing the Commission's efforts to assist the deployment of telecommunications services on tribal lands, while establishing an effective mechanism to help tribal residents gain access to broadband.

II. DISCUSSION

SBI supports the Commission's referral of Lifeline reform issues to the Joint Board. SBI has worked aggressively and effectively to help increase telephone subscribership in on tribal lands through its participation in the Commission's Lifeline program. Thus, SBI has an interest in ensuring that the Commission develops policies that do not inadvertently hinder the ability of low-income Native American consumers to fully participate in society. SBI provides comment below on several issues presented for comment in the *Public Notice*.

A. Modification of "One-Per-Household" Requirement.

SBI urges the Joint Board to take this opportunity to re-examine the underlying premises of the one-per-household requirement,[4] and to recommend modifications to the rule in light of changes that are occurring with respect to consumers' utilization of telephone services. American households are increasingly viewing their subscription to more than one wireless telephone line as a necessity rather than a luxury, because individual members of the household need mobility for countless uses and activities, including seeking employment, in a mobile workplace, for participation in school activities, and for emergency situations.

As its orders make clear, the Commission is committed to ensuring that low-income consumers have access to affordable telecommunications and information services that are reasonably comparable to those available in urban areas.[5] The Commission should examine whether the one-per-household requirement has become too restrictive to serve as an effective vehicle for pursuing the agency's commitment to low-income consumers. These concerns are particularly relevant with respect to the Navajo Nation and other tribal communities, in light of the economic and other deprivations faced by many Native Americans and the woefully inadequate levels of telephone service being provided on tribal lands.

[4] The Commission's one-per-household Lifeline requirement provides that "qualifying subscribers may receive assistance for a single telephone line in their principal residence." *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957 (para. 341) (1997) ("*First Report and Order*"), *aff'd in part, rev'd in part, remanded in part sub nom., Texas Office of Pub. Util. Counsel v. FCC,* 183 F.3d 393 (5th Cir. 1999), *cert. denied,* 530 U.S. 1210 (2000), *cert. dismissed,* 531 U.S. 975 (2000). *See Lifeline and Link Up,* WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306 (para. 4) (2004) ("*Lifeline and Link Up Order*"). The rules prescribed by the Commission implementing its Lifeline program do not specifically codify the one-per-household limitation adopted in the *First Report and Order,* although the Commission's Link Up rules specify that Link Up assistance involves "[a] reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence." 47 C.F.R. § 54.411(a)(1).

[5] *Lifeline and Link Up Order*, 19 FCC Rcd at 8306 (para. 3).

Replacing the one-per-household requirement with eligibility standards that permit each adult in a single household to receive Lifeline assistance, subject to appropriate certification requirements, would be more in keeping with the Commission's commitment and more reflective of the importance of each adult having access to mobile communications in low-income communities, especially those in remote rural areas.

Should the Commission choose to retain the one-per-household requirement, the term "household," for Lifeline purposes, should be defined in a manner that ensures that low-income residents of homeless shelters, other group living facilities, and multiple-family dwellings prevalent in Native American communities are not lumped together and treated as members of a single household (which would have the effect of disqualifying many of these residents from participation in the broadband Lifeline program).

SBI has supported of Tracfone's request[6] for clarification of the one-per-household requirement as it applies to homeless shelters.[7] In addition to agreeing with Tracfone that it is unreasonable to restrict Lifeline to a single discount for a homeless shelter, SBI explained how it was similarly unreasonable to apply the restriction to "hogans" and other Native American dwellings that have been subdivided for use as multi-family housing units. These families are separately eligible for Lifeline assistance under the one-per-household requirement, because each family residing in a separate living space in the hogan constitutes a separate household for purposes of the requirement. Yet, under the current application of the one-per-household requirement, such families are prevented from obtaining a discount if another family in the dwelling al-

[6] Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program "One-Per-Household" Rule As Applied to Group Living Facilities, WC Docket No. 03-109, Public Notice, DA 09-2257, 2009 WL 3393068 (rel. Oct. 21, 2009) ("Public Notice").

[7] *See* Comments of Smith Bagley, Inc. in WC Docket No. 03-109 (Nov. 20, 2009).

ready has a discount. Recognizing each family in a subdivided housing unit as being eligible for a Lifeline discount would avoid this unfair result.

The Joint Board should also ensure that the absence of a mailing address in no way disqualifies a person from receiving Lifeline or Link Up. For example, many residents of tribal lands that SBI serves are located in such remote areas that they do not have any street address and do not receive U.S. Postal Service mail delivery. They must pick up mail at the nearest post office, which is often miles away. The Joint Board should recommend that the absence of a separate mailing address does not in any way affect an otherwise eligible consumer's eligibility for Lifeline assistance.

B. Duplicate Claims for Lifeline Support.

As discussed in section II.A. above, the Joint Board should recommend changes to the one-per-household requirement that reflect the increased reliance of low-income populations on mobile wireless service both inside and outside the home. As part of these changes, the Joint Board should consider recommending that the Commission do away with the prohibition on customers receiving Lifeline discounts from multiple providers. The Commission has a mandate from Congress to ensure that consumers across the nation, "including low-income consumers[,]" have access to telecommunications and information services that are reasonably comparable to those available in urban areas, at prices reasonably comparable to those in urban areas.[8] According to the most recent National Health Interview Survey published by the Centers for Disease Control and Prevention, 62.5% of adults have both a landline and wireless telephone service.[9] Because consumers across the country typically have both wireline and wireless service, the

[8] 47 U.S.C. § 254(b)(3).

[9] "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009" (rel. May 12, 2010) at Table 1.

Commission's "reasonable comparability" principle includes a mandate to ensure that low-income citizens have access to affordable wireline and wireless, should they choose to have both.

Should the prohibition on receiving discounts from multiple providers be retained, SBI urges the Joint Board to recommend that carriers are not responsible for ensuring that a particular individual does not receive Lifeline discounts from multiple providers. We note that this clarification requires no rule change whatsoever, as the Commission's rules currently provide for customer self-certifications under penalty of perjury. Nonetheless, USAC auditors have been requiring carriers to prove that a customer is not receiving a Lifeline discount from any other provider. This is an impossible task because concerns of privacy and competitive sensitivity prevent carriers from sharing information about the customers they serve.

The current rule, together with random audits of individual subscribers by USAC in conjunction with state commissions, should be an adequate safeguard against customers receiving discounts from multiple providers.

C. Consumer Eligibility Requirements.

SBI submits that the current Lifeline eligibility requirements under the federal rules are overly restrictive. In SBI's experience, the current rules have the unintended effect of disqualifying numerous low-income citizens in tribal areas from accessing the telephone network.

1. Income-based eligibility.

SBI recommends changing the federal Lifeline eligibility rules to allow consumers to qualify under the income-based criteria by demonstrating a household income at or below 150% of the federal poverty guidelines. Currently, the 135% threshold is $29,768 for a family of four and $34,817 for a family of five. Raising the threshold to 150% would mean an upper income limit of $33,075 for a family of four and $38,685 for a family of five.

The current income thresholds are unreasonably low as they disqualify many low-income families from receiving critical benefits. The current threshold for a family of four—$29,768—is less than ***half*** the median family income for the United States according to 2008 Census data.[10] This threshold is unacceptably low given the reduced access to telephone service by families in that income range. For example, according to the most recent FCC data available, 99.1% of New Mexicans with household incomes of $40,000 or more have access to telephone service, whereas the penetration figure for households with incomes between $30,000 and $39,999 is only 92.0%.[11] In Arizona, telephone penetration for households with incomes of $40,000 or higher is 97.9%, while for households with incomes between $30,000 and $39,999 is only 93.5%. This data evidences a drop off in telephone penetration between households making $40,000 or more, and those that make less.

If the income eligibility threshold were raised to 150% of the federal poverty guidelines, the thresholds for both a family of four and a family of five would be below $40,000. This change would, therefore, make Lifeline discounts available to many households with very low incomes who currently cannot afford telephone service. It would also bring the Lifeline program in line with other federal benefits such as LIHEAP (150% in most states).[12] By increasing the availability of telephone discounts to low-income individuals, this change would promote the congressional objective of advancing universal service.

2. Eligibility criteria for broadband services.

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[10] U.S. Census Bureau, Selected Economic Characteristics: 2006-2008, viewed at http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2008_3YR_G00_DP3YR3&-ds_name=&-_lang=en&-redoLog=false&-format=.

[11] *See* "Telephone Penetration by Income by State (data through March 2009)" (Ind. Analysis Div., Wireline Comp. Bur., rel. May 2010) at p. 22, Table 4: Percentage of Households With Telephone Service in March, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297986A1.pdf.

[12] *See* U.S. Dept. of Health and Human Svcs., Admin. for Children and Families, LIHEAP Clearinghouse, available at http://www.liheap.ncat.org/tables/FY2009/POP09.htm.

The broadband Lifeline program should use the same or similar eligibility requirements as those used by the Commission in the existing Lifeline and Link Up programs, except that the list of eligible programs and income thresholds should be comprised of a single nationwide standard. Currently eligible households should automatically qualify for participation in the new broadband Lifeline program.

3. Automatic qualification of certain classes.

Residents of homeless shelters should automatically qualify for Lifeline and Link-Up. Furthermore, as discussed in section II.A. above, residents of homeless shelters and other multi-family dwellings should not be disqualified by application of a one-per-household requirement that views a homeless shelter or subdivided multi-family dwelling as a single household.

4. Documentation requirements.

SBI believes that no additional document collection requirements should be imposed at the federal level for Lifeline eligibility or verification at this time. If the Commission were to adopt rules that subject low-income consumers to restrictive and burdensome requirements, these consumers will be less likely to participate in the programs. In addition, if carriers are faced with costly and burdensome reporting requirements, or are assigned the *de facto* role of policing the way in which consumers seek to participate in the low-income broadband programs, then carriers may lack a sufficient incentive to aggressively utilize the low-income broadband programs.

The current Lifeline and Link Up programs rely upon various certification, self-certification, and verification requirements[13] to protect against waste, fraud, and abuse, while at the same time avoiding more burdensome requirements that could prove to be counter-

[13] *See* 47 C.F.R. §§ 54.410, 416.

productive. SBI encourages the Commission to retain existing requirements and use these mechanisms as a model for low-income broadband programs.

5. Consistency of eligibility and certification requirements.

To increase efficiency and accuracy of reporting, a standardized set of eligibility and verification rules should be adopted for all states. The federal Lifeline and Link Up mechanisms, while complementing state programs, are nonetheless federal programs. It is, therefore, appropriate for the Commission to establish uniform rules governing the way consumers can qualify for the associated discounts.

In SBI's experience, having different eligibility requirements from state to state makes the discounts difficult and costly to administer, and increases errors. Moreover, in some states the eligibility criteria are significantly more restrictive than the federal criteria. In those states, uniform application of the federal eligibility criteria would enable a greater number of low-income citizens to qualify for Lifeline and Link Up discounts. Meanwhile, states would remain free to apply their own set of criteria to determine eligibility for discounts provided by applicable state telephone assistance programs. In that way, the applicable rules would be determined by the appropriate governing body depending on whether the particular discount is from a state fund or the federal USF.

D. Automatic Enrollment.

The Commission should continue to encourage, but not require, states to use automatic enrollment for Lifeline. Automatic enrollment can help simplify consumer qualification and reduce the costs and administrative burdens involved in processing Lifeline eligibility during service initiation as well as verifying ongoing eligibility. Although state rules currently do not give

SBI the opportunity to take advantage of automatic enrollment, SBI has been supportive of state efforts to extend automatic enrollment for Lifeline

SBI's support for automatic enrollment is conditioned on the enrollment mechanisms being designed to avoid inadvertently disqualifying otherwise eligible consumers, and to eliminate any anticompetitive effects. First, any automatic enrollment system must not prevent people from qualifying for Lifeline under the household income criteria. In SBI's service territory, many Native American subscribers qualify under the income criteria and do not have the types of official documentation that are required under the program-based criteria. If an automatic enrollment mechanism requires customers to present government-issued identification or other official documentation, such a system would exclude many consumers who qualify by virtue of their household income but lack government-issued documentation. Automatic enrollment, therefore, should not be the sole means of qualifying for Lifeline.

In addition, automatic enrollment and electronic certification systems can be designed to identify instances of customers receiving Lifeline discounts from more than one carrier.[14] However, any such system should be designed in a way that avoids potential anticompetitive effects. With multiple ETCs in a given area, customers clearly have a choice among carriers. Any centralized enrollment system would have to identify the ETCs in a particular individual's area, and then pick the ETC that would be submitted into the automated system for that individual. In designing such a system, there is the danger that the incumbent service provider will be naturally favored or even selected by default. Thus, any automatic enrollment system should be structured in such a way as to eliminate any anticompetitive effects.

[14] As discussed in section II.B. above, the Joint Board should recommend eliminating the prohibition against consumers receiving Lifeline discounts from more than one provider. However, in the event the prohibition is retained, SBI recommends that any automated enforcement of this restriction be designed with appropriate safeguards.

SBI does not believe it would be appropriate for states to be required under federal rules to provide automatic enrollment because some states may lack funding mechanisms to cover the cost of establishing and operating automatic enrollment programs. States are best equipped to determine, through public proceedings, whether automatic enrollment is appropriate for the specific states and how best to design their own systems if appropriate.

E. Electronic Certification and Verification of Eligibility.

SBI supports the idea of establishing a centralized electronic mechanism for certification and verification of Lifeline eligibility, subject to the mechanism containing sufficient safeguards to protect consumer privacy, as well as avoid inadvertent disqualification of eligible consumers and anticompetitive effects as discussed in section II.D. above.

F. Consumer Outreach.

SBI submits that the Commission's current Lifeline outreach guidelines, together with the annual ETC recertification process, are sufficient to ensure adequate outreach efforts by ETCs. The guidelines are detailed and provide ETCs with many examples of appropriate ways to make potentially qualifying populations aware of the availability of the discounts. And they are flexibile enough for carriers to adopt their own programs to suit particular community needs. Any attempt to codify specific outreach requirements would create innumerable problems as carriers attempt to apply them in areas with widely diverging cultures, economies, local governments, and demographics. SBI's own outreach efforts vary depending on the community of interest. Accordingly, the Commission should continue to rely on its current guidelines – and periodically update the guidelines – to promote awareness of the programs among low-income populations. The current guidelines form a valid basis for Commission enforcement should a carrier fail to conduct appropriate outreach to its communities of interest.

III. CONCLUSION

As consumers continue to shift to wireless telecommunications services, and as broadband continues to assume a central role in the everyday activities of Americans, the responsibilities of the Joint Board in this proceeding take on heightened importance. The Lifeline and Link Up programs must be revised so that they better ensure that low-income consumers have the opportunity to access wireless and broadband services.

SBI respectfully urges the Joint Board, in framing its recommendations to the Commission, to consider the actions advocated by SBI in these Comments. The actions proposed by SBI are intended to serve the goal of greater accessibility for low-income consumers, without raising any concerns regarding waste, fraud, or abuse in the administration of the Lifeline and Link Up programs.

Respectfully submitted,

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